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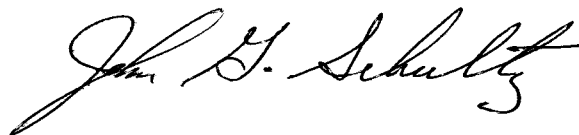
REVISED CODE OF WASHINGTON

2004 Edition

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JOHN G. SCHULTZ, Chair
STATUTE LAW COMMITTEE

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PREFACE

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

Citation to the Revised Code of Washington: The code should be cited as RCW; see RCW 1.04.040. An RCW title should be cited Title 7 RCW. An RCW chapter should be cited chapter 7.24 RCW. An RCW section should be cited RCW 7.24.010. Through references should be made as RCW 7.24.010 through 7.24.100. Series of sections should be cited as RCW 7.24.010, 7.24.020, and 7.24.030.

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

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

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

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

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

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

Sections repealed or decodified; Disposition table: Memorials to RCW sections repealed or decodified are tabulated in numerical order in the table entitled "Disposition of former RCW sections."

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

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

(2) Although considerable care has been taken in the production of this code, within the limits of available time and facilities it is inevitable that in so large a work that there will be errors, both mechanical and of judgment. When those who use this code detect errors in particular sections, a note citing the section involved and the nature of the error may be sent to: Code Reviser, Box 40551, Legislative Building, Olympia, WA 98504-0551, so that correction may be made in a subsequent publication.

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Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

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47.01.011 Legislative declaration. The legislature hereby recognizes the following imperative needs within the state: To create a statewide transportation development plan which identifies present status and sets goals for the future; to coordinate transportation modes; to promote and protect land use programs required in local, state and federal law; to coordinate transportation with the economic development of the state; to supply a broad framework in which regional, metropolitan, and local transportation needs can be related; to facilitate the supply of federal and state aid to those areas which will most benefit the state as a whole; to provide for public involvement in the transportation planning and development process; to administer programs within the jurisdiction of this title relating to the safety of the state's transportation systems;

and to coordinate and implement national transportation policy with the state transportation planning program.

The legislature finds and declares that placing all elements of transportation in a single department is fully consistent with and shall in no way impair the use of moneys in the motor vehicle fund exclusively for highway purposes.

Through this chapter, a unified department of transportation is created. To the jurisdiction of this department will be transferred the present powers, duties, and functions of the department of highways, the highway commission, the toll bridge authority, the aeronautics commission, and the canal commission, and the transportation related powers, duties, and functions of the *planning and community affairs agency. [1977 ex.s. c 151 § 1.]

***Reviser's note:** "Planning and community affairs agency" means "department of community, trade, and economic development."

47.01.012 Intent—2002 c 5. It is the intent of the legislature to establish policy goals for the operation, performance of, and investment in, the state's transportation system. The policy goals shall consist of, but not be limited to, the following benchmark categories, adopted by the state's Blue Ribbon Commission on Transportation on November 30, 2000. In addition to improving safety, public investments in transportation shall support achievement of these and other priority goals:

No interstate highways, state routes, and local arterials shall be in poor condition; no bridges shall be structurally deficient, and safety retrofits shall be performed on those state bridges at the highest seismic risk levels; traffic congestion on urban state highways shall be significantly reduced and be no worse than the national mean; delay per driver shall be significantly reduced and no worse than the national mean; per capita vehicle miles traveled shall be maintained at 2000 levels; the nonauto share of commuter trips shall be increased in urban areas; administrative costs as a percentage of transportation spending shall achieve the most efficient quartile nationally; and the state's public transit agencies shall achieve the median cost per vehicle revenue hour of peer transit agencies, adjusting for the regional cost-of-living.

These policy goals shall be the basis for establishment of detailed and measurable performance benchmarks.

It is the intent of the legislature that the transportation commission establish performance measures to ensure transportation system performance at local, regional, and state government levels, and the transportation commission should work with appropriate government entities to accomplish this. [2002 c 5 § 101.]

Effective date—2002 c 5 § 101: "Section 101 of this act takes effect July 1, 2002." [2002 c 5 § 102.]

Captions not law—2002 c 5: "Captions and part headings used in this act are not part of the law." [2002 c 5 § 419.]

Severability—2002 c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 5 § 420.]

47.01.021 Definitions. As used in this title unless the context indicates otherwise:

(1) "Department" means the department of transportation created in RCW 47.01.031;

(2) "Commission" means the transportation commission created in RCW 47.01.051;

(3) "Secretary" means the secretary of transportation as provided for in RCW 47.01.041. [1977 ex.s. c 151 § 2.]

Additional definitions: RCW 47.04.010.

47.01.031 Department created—Transfer of powers, duties, and functions. (1) There is created a department of state government to be known as the department of transportation.

(2) All powers, duties, and functions vested by law in the department of highways, the state highway commission, the director of highways, the Washington toll bridge authority, the aeronautics commission, the director of aeronautics, and the canal commission, and the transportation related powers, duties, and functions of the *planning and community affairs agency, are transferred to the jurisdiction of the department, except those powers, duties, and functions which are expressly directed elsewhere in **this or in any other act of the 1977 legislature.

(3) The board of pilotage commissioners is transferred to the jurisdiction of the department for its staff support and administration: PROVIDED, That nothing in this section shall be construed as transferring any policy making powers of the board of pilotage commissioners to the transportation commission or the department of transportation. [1988 c 167 § 11; 1977 ex.s. c 151 § 3.]

Reviser's note: *(1) The "planning and community affairs agency" has been renamed the "department of community, trade, and economic development."

** (2) For codification of "this . . . act" [1977 ex.s. c 151], see Codification Tables, Volume 0.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.01.041 Secretary of transportation—Appointment, salary, removal. The executive head of the department of transportation shall be the secretary of transportation, who shall be appointed by the transportation commission, and shall be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The secretary shall be an ex officio member of the commission without a vote. The secretary shall be the chief executive officer of the commission and be responsible to it, and shall be guided by policies established by it. The secretary shall serve until removed by the commission, but only for incapacity, incompetence, neglect of duty, malfeasance in office, or failure to carry out the commission's policies. Before a motion for dismissal shall be acted on by the commission, the secretary shall be granted a hearing on formal written charges before the full commission. An action by the commission to remove the secretary shall be final. [1983 1st ex.s. c 53 § 28; 1977 ex.s. c 151 § 4.]

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802.

47.01.051 Commission created—Appointment of members—Terms—Qualifications—Removal. There is hereby created a transportation commission, which shall consist of seven members appointed by the governor, with the consent of the senate. The present five members of the highway commission shall serve as five initial members of the

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transportation commission until their terms of office as highway commission members would have expired. The additional two members provided herein for the transportation commission shall be appointed for initial terms to expire on June 30, 1982, and June 30, 1983. Thereafter all terms shall be for six years. No elective state official or state officer or state employee shall be a member of the commission, and not more than four members of the commission shall at the time of appointment or thereafter during their respective terms of office be members of the same major political party. At the time of appointment or thereafter during their respective terms of office, four members of the commission shall reside in the western part of the state and three members shall reside in the eastern part of the state as divided north and south by the summit of the Cascade mountains. No more than two members of the commission shall reside in the same county. Commissioners shall not be removed from office by the governor before the expiration of their terms unless for a disqualifying change of residence or for cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office by the superior court of the state of Washington in and for Thurston county upon petition and show cause proceedings duly brought therefor in said court and directed to the commissioner in question. No member shall be appointed for more than two consecutive terms. [1977 ex.s. c 151 § 5.]

47.01.061 Commission—Procedures and internal operations. The commission shall meet at such times as it deems advisable but at least once every month. It may adopt its own rules and regulations and may establish its own procedure. It shall act collectively in harmony with recorded resolutions or motions adopted by majority vote of at least four members. The commission may appoint an administrative secretary, and shall elect one of its members chairman for a term of one year. The chairman shall be able to vote on all matters before the commission. The commission may from time to time retain planners, consultants, and other technical personnel to advise it in the performance of its duties.

The commission shall submit to each regular session of the legislature held in an odd-numbered year its own budget proposal necessary for the commission's operations separate from that proposed for the department.

Each member of the commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission, and actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested by a majority vote of the commission or by the secretary of transportation, but in no event shall a commissioner be compensated in any year for more than one hundred twenty days, except the chairman of the commission who may be paid compensation for not more than one hundred fifty days. Service on the commission shall not be considered as service credit for the purposes of any public retirement system. [1987 c 364 § 2; 1984 c 287 § 94; 1983 1st ex.s. c 53 § 29; 1981 c 59 § 1; 1977 ex.s. c 151 § 6.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802.

47.01.070 Director's and commissioner's prior assignments may be delegated. In all situations wherein the director of highways, the director of aeronautics or any one of their designees, or any member of the highway commission, the toll bridge authority, the aeronautics commission, or the canal commission or any one of their designees was on September 21, 1977, designated or serving as a member of any board, commission, committee, or authority, the chairman of the transportation commission or the chairman's designee who shall be an employee of the department of transportation, shall hereafter determine who shall serve as such member. [1977 ex.s. c 151 § 27; 1961 c 13 § 47.01.070. Prior: 1951 c 247 § 5. Formerly RCW 43.27.120.]

47.01.071 Commission—Functions, powers, and duties. The transportation commission shall have the following functions, powers, and duties:

(1) To propose policies to be adopted by the legislature designed to assure the development and maintenance of a comprehensive and balanced statewide transportation system which will meet the needs of the people of this state for safe and efficient transportation services. Wherever appropriate the policies shall provide for the use of integrated, intermodal transportation systems to implement the social, economic, and environmental policies, goals, and objectives of the people of the state, and especially to conserve nonrenewable natural resources including land and energy. To this end the commission shall:

(a) Develop transportation policies which are based on the policies, goals, and objectives expressed and inherent in existing state laws;

(b) Inventory the adopted policies, goals, and objectives of the local and area-wide governmental bodies of the state and define the role of the state, regional, and local governments in determining transportation policies, in transportation planning, and in implementing the state transportation plan;

(c) Propose a transportation policy for the state, and after notice and public hearings, submit the proposal to the legislative transportation committee and the senate and house transportation committees by January 1, 1978, for consideration in the next legislative session;

(d) Establish a procedure for review and revision of the state transportation policy and for submission of proposed changes to the legislature;

(e) To integrate the statewide transportation plan with the needs of the elderly and handicapped, and to coordinate federal and state programs directed at assisting local governments to answer such needs;

(2) To establish the policy of the department to be followed by the secretary on each of the following items:

(a) To provide for the effective coordination of state transportation planning with national transportation policy, state and local land use policies, and local and regional transportation plans and programs;

(b) To provide for public involvement in transportation designed to elicit the public's views both with respect to adequate transportation services and appropriate means of minimizing adverse social, economic, environmental, and energy impact of transportation programs;

(c) To provide for the administration of grants in aid and other financial assistance to counties and municipal corporations for transportation purposes;

(d) To provide for the management, sale, and lease of property or property rights owned by the department which are not required for transportation purposes;

(3) To direct the secretary to prepare and submit to the commission a comprehensive and balanced statewide transportation plan which shall be based on the transportation policy adopted by the legislature and applicable state and federal laws. After public notice and hearings, the commission shall adopt the plan and submit it to the legislative transportation committee and to the house and senate standing committees on transportation before January 1, 1980, for consideration in the 1980 regular legislative session. The plan shall be reviewed and revised prior to each regular session of the legislature during an even-numbered year thereafter. A preliminary plan shall be submitted to such committees by January 1, 1979.

The plan shall take into account federal law and regulations relating to the planning, construction, and operation of transportation facilities;

(4) To propose to the governor and the legislature prior to the convening of each regular session held in an odd-numbered year a recommended budget for the operations of the commission as required by RCW 47.01.061;

(5) To approve and propose to the governor and to the legislature prior to the convening of each regular session during an odd-numbered year a recommended budget for the operation of the department and for carrying out the program of the department for the ensuing biennium. The proposed budget shall separately state the appropriations to be made from the motor vehicle fund for highway purposes in accordance with constitutional limitations and appropriations and expenditures to be made from the general fund, or accounts thereof, and other available sources for other operations and programs of the department;

(6) To review and authorize all departmental requests for legislation;

(7) To approve the issuance and sale of all bonds authorized by the legislature for capital construction of state highways, toll facilities, Columbia Basin county roads (for which reimbursement to the motor vehicle fund has been provided), urban arterial projects, and aviation facilities;

(8) To adopt such rules, regulations, and policy directives as may be necessary to carry out reasonably and properly those functions expressly vested in the commission by statute;

(9) To delegate any of its powers to the secretary of transportation whenever it deems it desirable for the efficient administration of the department and consistent with the purposes of this title;

(10) To exercise such other specific powers and duties as may be vested in the transportation commission by this or any other provision of law. [1981 c 59 § 2; 1980 c 87 § 45; 1977 ex.s. c 151 § 7.]

Powers, duties, and studies by legislative transportation committee: RCW 44.40.020.

47.01.081 Department—Organization—Management personnel. (1) Initially the department shall be orga-

nized into divisions, including the division of highways, the division of public transportation, the division of aeronautics, the division of marine transportation, and the division of transportation planning and budget.

(2) The secretary may reorganize divisions in order to attain the maximum possible efficiency in the operation of the department. Each division shall be headed by an assistant secretary to be appointed by the secretary. The secretary may also appoint a deputy secretary as may be needed for the performance of the duties and functions vested in the department and may also appoint up to twelve ferry system management positions as defined in RCW 47.64.011. The secretary may delegate to officers within the several divisions of the department authority to employ personnel necessary to discharge the responsibilities of the department.

(3) The officers appointed under this section shall be exempt from the provisions of the state civil service law and shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for officers exempt from the operation of the state civil service law. [1984 c 48 § 1; 1977 ex.s. c 151 § 8.]

47.01.091 Advisory councils. The secretary shall establish such advisory councils as are necessary to carry out the purposes of *this 1977 amendatory act, and to insure adequate public participation in the planning and development of transportation facilities. Members of such councils shall serve at the pleasure of the secretary and may receive per diem and necessary expenses, in accordance with RCW 43.03.050 and 43.03.060, as now or hereafter amended. [1977 ex.s. c 151 § 9.]

***Reviser's note:** For codification of "this 1977 amendatory act" [1977 ex.s. c 151], see Codification Tables, Volume 0.

47.01.101 Secretary—Authority and duties. The secretary shall have the authority and it shall be his or her duty, subject to policy guidance from the commission:

(1) To serve as chief executive officer of the department with full administrative authority to direct all its activities;

(2) To organize the department as he or she may deem necessary to carry out the work and responsibilities of the department effectively;

(3) To designate and establish such transportation district or branch offices as may be necessary or convenient, and to appoint assistants and delegate any powers, duties, and functions to them or any officer or employee of the department as deemed necessary to administer the department efficiently;

(4) To direct and coordinate the programs of the various divisions of the department to assure that they achieve the greatest possible mutual benefit, produce a balanced overall effort, and eliminate unnecessary duplication of activity;

(5) To adopt all department rules that are subject to the adoption procedures contained in the state administrative procedure act, except rules subject to adoption by the commission pursuant to statute;

(6) To maintain and safeguard the official records of the department, including the commission's recorded resolutions and orders;

(7) To provide full staff support to the commission to assist it in carrying out its functions, powers, and duties and

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to execute the policy established by the commission pursuant to its legislative authority;

(8) To execute and implement the biennial operating budget for the operation of the department in accordance with chapter 43.88 RCW and with legislative appropriation and, in such manner as prescribed therein, to make and report to the commission and the chairs of the transportation committees of the senate and house of representatives, including one copy to the staff of each of the committees, deviations from the planned biennial category A and H highway construction programs necessary to adjust to unexpected delays or other unanticipated circumstances.

(9) To exercise all other powers and perform all other duties as are now or hereafter provided by law. [1987 c 505 § 48; 1987 c 179 § 1; 1983 1st ex.s. c 53 § 30; 1977 ex.s. c 151 § 10.]

Reviser's note: This section was amended by 1987 c 179 § 1 and by 1987 c 505 § 48, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802. *Regulations governing parking facilities:* RCW 46.61.577.

47.01.131 Continuation of state services to department. All state officials required to maintain contact with or provide services for any of the departments or agencies whose functions are transferred by RCW 47.01.031 shall continue to perform such services for the department of transportation unless otherwise directed by this title. [1977 ex.s. c 151 § 18.]

47.01.141 Biennial report. The department shall submit a biennial report to the governor and chairs of the transportation committees of the senate and house of representatives with a copy to the staff of each of the committees, including but not limited to operational and construction activities of the preceding fiscal period as the department deems important and recommendations for future operations of the department. [1987 c 505 § 49; 1984 c 7 § 75; 1977 c 75 § 68; 1973 2nd ex.s. c 12 § 1.]

Severability—1984 c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 7 § 389.]

47.01.145 Study reports available to legislators upon request. Whenever a study report prepared by the department for the legislative transportation committee is made available to the committee or its members, the report shall, upon request, be made available to any member of the Washington state legislature. [1984 c 7 § 76; 1971 ex.s. c 195 § 6; 1967 ex.s. c 145 § 78.]

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

Severability—1971 ex.s. c 195: See note following RCW 44.40.010.

Budget, plan for highway development: Chapter 47.05 RCW.

47.01.170 Right of entry. The department or its duly authorized and acting assistants, agents, or appointees have the right to enter upon any land, real estate, or premises in this state, whether public or private, for purposes of making examinations, locations, surveys, and appraisals for highway

purposes. The making of any such entry for those purposes does not constitute any trespass by the department or by its duly authorized and acting assistants, agents, or appointees. [1984 c 7 § 77; 1961 c 13 § 47.01.170. Prior: 1945 c 176 § 1; Rem. Supp. 1945 § 6400-3f. Formerly RCW 43.27.030.]

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

47.01.180 Roads and bridges in state parks. The department is authorized at the request of, and upon plans approved by the state parks and recreation commission, to construct and maintain vehicular roads, highways, and bridges within the limits of the several state parks. [1984 c 7 § 78; 1961 c 13 § 47.01.180. Prior: 1943 c 253 § 1; Rem. Supp. 1943 § 6402-35. Formerly RCW 43.27.040.]

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

47.01.190 State aid engineer. The secretary shall appoint, with the approval of the governor, a qualified assistant to be designated as "state aid engineer" whose duties shall consist of the administration of the program of state aid in the matter of county roads and city streets. [1984 c 7 § 79; 1961 c 13 § 47.01.190. Prior: 1949 c 220 § 2; Rem. Supp. 1949 § 4600-3g. Formerly RCW 43.27.050.]

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

47.01.210 Contract without bid or bond with public utilities and municipal corporations. It is lawful for the department to contract without advertising or bid, or performance bond, with any public utility, whether publicly or privately operated, or with any municipal corporation or political subdivision of the state, for the performance of any work or the furnishing of any service of a type ordinarily performed or furnished by such utility, or by such municipal corporation or political subdivision, whenever, in the opinion of the department, the interest of the public will be best served. [1984 c 7 § 80; 1961 c 13 § 47.01.210. Prior: 1955 c 84 § 1; 1953 c 100 § 1. Formerly RCW 43.27.105.]

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

47.01.230 Powers relating to toll bridges and facilities and state ferries. See RCW 47.56.030.

47.01.240 Coordination of long-range needs studies. The department and the transportation improvement board shall coordinate their activities relative to long-range needs studies, in accordance with the provisions of chapter 47.05 RCW and RCW 47.26.170, respectively, in order that long-range needs data may be developed and maintained on an integrated and comparable basis. Needs data for county roads and city streets in nonurban areas shall be provided by the counties and cities to the department in such form and extent as requested by the department, after consultation with the county road administration board and the association of Washington cities, in order that needs data may be obtained on a comparable basis for all highways, roads, and streets in Washington. [1988 c 167 § 12; 1984 c 7 § 82; 1971 ex.s. c 195 § 10.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

Severability—1971 ex.s. c 195: See note following RCW 44.40.010.

47.01.250 Consultation with designated state officials. The chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing are designated as official consultants to the transportation commission so that the goals and activities of their respective agencies which relate to transportation are fully coordinated with other related responsibilities of the department of transportation. In this capacity, the chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing shall consult with the transportation commission and the secretary of transportation on the implications and impacts on the transportation related functions and duties of their respective agencies of any proposed comprehensive transportation plan, program, or policy.

In order to develop fully integrated, balanced, and coordinated transportation plans, programs, and budgets the chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing shall consult with the secretary of transportation on the matter of relative priorities during the development of their respective agencies' plans, programs, and budgets as they pertain to transportation activities. [1998 c 245 § 92; 1990 c 266 § 5; 1979 c 158 § 204; 1977 ex.s. c 151 § 26.]

Identification of environmental costs of transportation projects—Pilot project—1993 c 59: "Recognizing the importance of maintaining the quality of life in Washington state, the citizens of this state demand protection and preservation of our scarce natural resources. Citizens also demand an efficient and effective transportation system. The departments of transportation, ecology, fisheries, and wildlife and the Puget Sound water quality authority have worked jointly to develop cooperative approaches for mitigating environmental impacts resulting from transportation projects. Nevertheless, many transportation projects are costing more than was budgeted due to unanticipated and extensive environmental considerations. It is the intent of the legislature to find a process for accessing, budgeting, and accounting for environmental costs related to significant transportation projects in order to determine whether the environmental costs exceed the transportation benefits of a project.

Therefore, the department of transportation shall undertake a pilot program in at least one transportation district that will serve as a case study for the entire department. The department shall identify and cost out the discrete environmental elements of a representative sampling of transportation projects. The environmental elements should include, but not necessarily be limited to, wetlands, storm water, hazardous waste, noise, fish, and wildlife. The department shall also consider an assessment of the cost impacts resulting from delays associated with permitting requirements.

It is the intent of the legislature that the environmental cost estimates be developed during a detailed scoping process that will include preliminary engineering and design. After the detailed scoping process and design report is complete, the department shall submit project-specific recommendations and cost estimates to the transportation commission before approval is granted for the construction phase of the projects.

Based upon the findings of the pilot program the transportation commission shall recommend policies to the legislative transportation committee regarding: (1) The current practice of appropriating design and construction dollars simultaneously; (2) identification of reasonable thresholds for environmental costs; (3) budget and accounting modifications that may be warranted in order to accurately capture environmental costs associated with transportation projects; and (4) modification to the priority array statutes, chapter 47.05 RCW." [1993 c 59 § 1.]

47.01.260 Authority of department. (1) The department of transportation shall exercise all the powers and perform all the duties necessary, convenient, or incidental to the

planning, locating, designing, constructing, improving, repairing, operating, and maintaining state highways, including bridges and other structures, culverts, and drainage facilities and channel changes necessary for the protection of state highways, and shall examine and allow or disallow bills for any work or services performed or materials, equipment, or supplies furnished.

(2) Subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against specific loss or damages arising out of the performance of the contract.

(3) The department is authorized to acquire property as provided by law and to construct and maintain thereon any buildings or structures necessary or convenient for the planning, design, construction, operation, maintenance, and administration of the state highway system and to acquire property and to construct and maintain any buildings, structures, appurtenances, and facilities necessary or convenient to the health and safety and for the accommodation of persons traveling upon state highways.

(4) The department is authorized to engage in planning surveys and may collect, compile, and analyze statistics and other data relative to existing and future highways and highway needs throughout the state, and shall conduct research, investigations, and testing as it deems necessary to improve the methods of construction and maintenance of highways and bridges. [1983 c 29 § 1; 1979 ex.s. c 58 § 1.]

47.01.270 Radioactive or hazardous cargo, notice of prohibition. The department of transportation shall adopt regulations to establish procedures for giving notice to transporters of placarded radioactive or hazardous cargo of times when transportation of such cargo is prohibited. [1983 c 205 § 2.]

Transportation of radioactive or hazardous cargo, prohibited, when: RCW 47.48.050.

47.01.280 Application for improvements to existing highways. (1) Upon receiving an application for improvements to an existing state highway or highways pursuant to RCW 43.160.074 from the community economic revitalization board, the transportation commission shall, in a timely manner, determine whether or not the proposed state highway improvements:

- (a) Meet the safety and design criteria of the department of transportation;
- (b) Will impair the operational integrity of the existing highway system;
- (c) Will affect any other improvements planned by the department; and
- (d) Will be consistent with its policies developed pursuant to RCW 47.01.071.

(2) Upon completion of its determination of the factors contained in subsection (1) of this section and any other factors it deems pertinent, the transportation commission shall forward its approval, as submitted or amended or disapproval of the proposed improvements to the board, along with any recommendation it may wish to make concerning the desirability and feasibility of the proposed development. If the

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transportation commission disapproves any proposed improvements, it shall specify its reasons for disapproval.

(3) Upon notification from the board of an application's approval pursuant to RCW 43.160.074, the transportation commission shall direct the department of transportation to carry out the improvements in coordination with the applicant.

(4) The transportation commission shall notify the legislative transportation committee of all state highway improvements to be carried out pursuant to RCW 43.160.074 and this section. [1999 c 94 § 10; 1985 c 433 § 6.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Nonseverability—1985 c 433: See note following RCW 43.160.074.

47.01.290 Environmental review of transportation projects. The legislature recognizes that environmental review of transportation projects is a continuous process that should begin at the earliest stages of planning and continue through final project construction. Early and extensive involvement of the relevant environmental regulatory authorities is critical in order to avoid significant changes in substantially completed project design and engineering. It is the expectation of the legislature that if a comprehensive environmental approach is integrated throughout various transportation processes, onerous, duplicative, and time-consuming permit processes will be minimized. [1994 c 258 § 3; 1993 c 55 § 1.]

Captions not law—1994 c 258: See note following RCW 36.70A.420.
Statewide transportation planning: Chapter 47.06 RCW.

47.01.300 Environmental review of transportation projects—Cooperation with other environmental regulatory authorities. The department shall, in cooperation with environmental regulatory authorities:

(1) Identify and document environmental resources in the development of the statewide multimodal plan under RCW 47.06.040;

(2) Allow for public comment regarding changes to the criteria used for prioritizing projects under chapter 47.05 RCW before final adoption of the changes by the commission;

(3) Use an environmental review as part of the project prospectus identifying potential environmental impacts, mitigation, and costs during the early project identification and selection phase, submit the prospectus to the relevant environmental regulatory authorities, and maintain a record of comments and proposed revisions received from the authorities;

(4) Actively work with the relevant environmental regulatory authorities during the design alternative analysis process and seek written concurrence from the authorities that they agree with the preferred design alternative selected;

(5) Develop a uniform methodology, in consultation with relevant environmental regulatory authorities, for submitting plans and specifications detailing project elements that impact environmental resources, and proposed mitigation measures, to the relevant environmental regulatory authorities during the preliminary specifications and engineering phase of project development;

(6) Screen construction projects to determine which projects will require complex or multiple permits. The permitting authorities shall develop methods for initiating review of the permit applications for the projects before the final design of the projects;

(7) Conduct special prebid meetings for those projects that are environmentally complex; and

(8) Review environmental considerations related to particular projects during the preconstruction meeting held with the contractor who is awarded the bid. [1994 c 258 § 4.]

Captions not law—1994 c 258: See note following RCW 36.70A.420.

47.01.310 Washington fruit express account. The Washington fruit express account is created in the state treasury. All receipts from the operations of the Washington fruit express program must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the operations of the Washington fruit express program and for east-west passenger rail. [2001 2nd sp.s. c 14 § 606.]

Severability—Effective date—2001 2nd sp.s. c 14: See notes following RCW 47.04.210.

47.01.321 Skills bank—Report. The department of transportation shall work with local transportation jurisdictions and representatives of transportation labor groups to establish a human resources skills bank of transportation professionals. The skills bank must be designed to allow all transportation authorities to draw from it when needed. The department shall issue a report of findings and recommendations to the transportation committees of the legislature by December 1, 2003. The report must include, but not be limited to, identification of any statutory or administrative rule changes necessary to create the skills bank and allow it to function in the manner described. [2003 c 363 § 203.]

Findings—Intent—2003 c 363 §§ 201-206: See note following RCW 49.04.041.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Chapter 47.02 RCW DEPARTMENT BUILDINGS

Sections

47.02.010	Buildings on east capitol site authorized—Financing.
47.02.020	Issuance and sale of limited obligation bonds.
47.02.030	Bonds—Term—Terms and conditions.
47.02.040	Bonds—Signatures—Registration—Where payable—Negotiable instruments.
47.02.050	Bonds—Denominations—Manner and terms of sale—Legal investment for state funds.
47.02.060	Bonds—Bond proceeds—Deposit and use.
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47.02.090	Bonds—Repayment procedure—Highway bond retirement fund.
47.02.100	Bonds—Sums in excess of retirement requirements—Use.
47.02.110	Bonds—Appropriation from motor vehicle fund.
47.02.120	District 1 headquarters bonds—Issuance and sale.
47.02.130	District 1 headquarters bonds—Uses of proceeds.
47.02.140	District 1 headquarters bonds—Duties of state finance committee.
47.02.150	District 1 headquarters bonds—Proceeds, deposit and use.
47.02.160	District 1 headquarters bonds—Statement of general obligation—Pledge of excise taxes.

47.02.170 District 1 headquarters bonds—Repayment procedure—Designated funds.

47.02.190 District 1 headquarters bonds—Equal charges against certain revenues.

47.02.010 Buildings on east capitol site authorized—Financing. The department is authorized in accordance with the provisions of this chapter and RCW 79.24.500 through 79.24.600 to provide for the acquisition of land and the construction of buildings, laboratories, and facilities on the east capitol site for the use of the commission and the department and to finance payment thereof by bonds payable out of special funds from the proceeds of state excise taxes on motor vehicle fuels, or by gifts, bequests, or grants or by such additional funds as the legislature may provide. [1984 c 7 § 83; 1977 ex.s. c 235 § 14; 1965 ex.s. c 167 § 1.]

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

47.02.020 Issuance and sale of limited obligation bonds. In order to finance the immediate acquisition and construction of the buildings and facilities referred to in RCW 47.02.010 there shall be issued and sold limited obligation bonds of the state of Washington in the sum of four million dollars, or such amount thereof and at such times as determined to be necessary by the state highway commission. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary for the orderly progress of said project. [1965 ex.s. c 167 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.02.030 Bonds—Term—Terms and conditions. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of its issuance with such reserved rights of prior redemption, bearing such interest, and such terms and conditions as the state finance committee may prescribe, to be specified therein. [1965 ex.s. c 167 § 3.]

47.02.040 Bonds—Signatures—Registration—Where payable—Negotiable instruments. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bond shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1965 ex.s. c 167 § 4.]

47.02.050 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of this chapter shall be legal investment for any of the funds of the state, except the permanent school fund. [1965 ex.s. c 167 § 5.]

47.02.060 Bonds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the acquisition of the land and construction of the buildings and facilities referred to in RCW 47.02.010, and for payment of the expenses incurred in the drafting, printing, issuance and sale of any such bonds. [1965 ex.s. c 167 § 6.]

47.02.070 Bonds—Statement describing nature of obligation—Pledge of excise taxes. Bonds issued under the provisions of this chapter shall distinctly state that they are not a general obligation of the state but are payable in the manner provided in this chapter from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of this chapter and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of this chapter. [1965 ex.s. c 167 § 7.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment, see chapter 82.38 RCW.

47.02.080 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay such bonds, or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 84; 1965 ex.s. c 167 § 8.]

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

47.02.090 Bonds—Repayment procedure—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on

motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under the provisions of this chapter when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1965 ex.s. c 167 § 9.]

47.02.100 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels payable into the highway bond retirement fund shall prove more than is required for the payment of interest on bonds when due or current retirement of bonds, or in the event there is appropriated from time to time additional amounts to be placed in the said bond retirement fund, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1965 ex.s. c 167 § 10.]

47.02.110 Bonds—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1967, the sum of four million dollars, or so much thereof as may be necessary to carry out the provisions of this chapter, but no money shall be available under this appropriation from said fund unless a like amount of bonds provided for herein are sold and the money derived therefrom deposited to the credit of such fund. [1965 ex.s. c 167 § 11.]

47.02.120 District 1 headquarters bonds—Issuance and sale. For the purpose of providing funds for the acquisition of headquarters facilities for district 1 of the department of transportation and costs incidental thereto, together with all improvements and equipment required to make the facilities suitable for the department's use, there shall be issued and sold upon the request of the Washington transportation commission a total of fifteen million dollars of general obligation bonds of the state of Washington. [1990 c 293 § 1.]

Severability—1990 c 293: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 293 § 10.]

47.02.130 District 1 headquarters bonds—Uses of proceeds. Authorized uses of proceeds from the sale of bonds authorized in RCW 47.02.120 through 47.02.190 include but are not limited to repayment to the motor vehicle fund for the initial financing of the headquarters facilities. [1999 c 94 § 11; 1990 c 293 § 2.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.140 District 1 headquarters bonds—Duties of state finance committee. Upon the request of the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.02.120 through 47.02.190 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.02.120 through 47.02.190 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. Except for the purpose of repaying the loan from the motor vehicle fund, no such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [1990 c 293 § 3.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.150 District 1 headquarters bonds—Proceeds, deposit and use. The proceeds from the sale of bonds authorized by RCW 47.02.120 through 47.02.190 shall be available only for the purposes enumerated in RCW 47.02.120 and 47.02.130; for the payment of bond anticipation notes, if any; and for the payment of bond issuance costs, including the costs of underwriting. Proceeds shall be deposited in the motor vehicle fund. [1999 c 94 § 12; 1990 c 293 § 4.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.160 District 1 headquarters bonds—Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.02.120 through 47.02.190 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.02.120 through 47.02.190 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.02.120 through 47.02.190, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.02.120 through 47.02.190. [1995 c 274 § 5; 1990 c 293 § 5.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.170 District 1 headquarters bonds—Repayment procedure—Designated funds. Both principal and

interest on the bonds issued for the purposes of RCW 47.02.120 through 47.02.190 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.02.120 through 47.02.190 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state under RCW 46.68.130. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state under RCW 46.68.130 proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1990 c 293 § 6.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.190 District 1 headquarters bonds—Equal charges against certain revenues. Bonds issued under the authority of RCW 47.02.120 through *47.02.180 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [1990 c 293 § 8.]

***Reviser's note:** RCW 47.02.180 was repealed by 1999 c 94 § 33, effective July 1, 1999.

Severability—1990 c 293: See note following RCW 47.02.120.

Chapter 47.04 RCW GENERAL PROVISIONS

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47.04.010 Definitions. The following words and phrases, wherever used in this title, shall have the meaning as in this section ascribed to them, unless where used the context thereof shall clearly indicate to the contrary or unless otherwise defined in the chapter of which they are a part:

(1) "Alley." A highway within the ordinary meaning of alley not designated for general travel and primarily used as a means of access to the rear of residences and business establishments;

(2) "Arterial highway." Every highway, as herein defined, or portion thereof designated as such by proper authority;

(3) "Business district." The territory contiguous to and including a highway, as herein defined, when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway;

(4) "Center line." The line, marked or unmarked parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;

(5) "Center of intersection." The point of intersection of the center lines of the roadways of intersecting highways;

(6) "City street." Every highway as herein defined, or part thereof located within the limits of incorporated cities and towns, except alleys;

(7) "Combination of vehicles." Every combination of motor vehicle and motor vehicle, motor vehicle and trailer, or motor vehicle and semitrailer;

(8) "Commercial vehicle." Any vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire;

(9) "County road." Every highway as herein defined, or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway, or branch thereof;

(10) "Crosswalk." The portion of the roadway between the intersection area and a prolongation or connection of the farthest sidewalk line or in the event there are no sidewalks then between the intersection area and a line ten feet therefrom, except as modified by a marked crosswalk;

(11) "Highway." Every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(12) "Intersection area." (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict;

(b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection;

(c) The junction of an alley with a street or highway shall not constitute an intersection;

(13) "Intersection control area." The intersection area as herein defined, together with such modification of the adjacent roadway area as results from the arc or curb corners and together with any marked or unmarked crosswalks adjacent to the intersection;

(14) "Laned highway." A highway the roadway of which is divided into clearly marked lanes for vehicular traffic;

(15) "Local authorities." Every county, municipal, or other local public board or body having authority to adopt local police regulations under the Constitution and laws of this state;

(16) "Marked crosswalk." Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface thereof;

(17) "Metal tire." Every tire, the bearing surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material;

(18) "Motor truck." Any motor vehicle, as herein defined, designed or used for the transportation of commodities, merchandise, produce, freight, or animals;

(19) "Motor vehicle." Every vehicle, as herein defined, which is in itself a self-propelled unit;

(20) "Multiple lane highway." Any highway the roadway of which is of sufficient width to reasonably accommodate two or more separate lanes of vehicular traffic in the same direction, each lane of which shall be not less than the maximum legal vehicle width, and whether or not such lanes are marked;

(21) "Operator." Every person who drives or is in actual physical control of a vehicle as herein defined;

(22) "Peace officer." Any officer authorized by law to execute criminal process or to make arrests for the violation of the statutes generally or of any particular statute or statutes relative to the highways of this state;

(23) "Pedestrian." Any person afoot or who is using a wheelchair, power wheelchair as defined in RCW 46.04.415, or a means of conveyance propelled by human power other than a bicycle;

(24) "Person." Every natural person, firm, copartnership, corporation, association, or organization;

(25) "Personal wireless service." Any federally licensed personal wireless service;

(26) "Personal wireless service facilities." Unstaffed facilities that are used for the transmission or reception, or

both, of personal wireless services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures;

(27) "Pneumatic tires." Every tire of rubber or other resilient material designed to be inflated with compressed air to support the load thereon;

(28) "Private road or driveway." Every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

(29) "Railroad." A carrier of persons or property upon vehicles, other than street cars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

(30) "Railroad sign or signal." Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train;

(31) "Residence district." The territory contiguous to and including the highway, as herein defined, not comprising a business district, as herein defined, when the property on such highway for a continuous distance of three hundred feet or more on either side thereof is in the main improved with residences or residences and buildings in use for business;

(32) "Roadway." The paved, improved, or proper driving portion of a highway designed, or ordinarily used for vehicular travel;

(33) "Safety zone." The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by painted marks, signs, buttons, standards, or otherwise so as to be plainly discernible;

(34) "Sidewalk." That property between the curb lines or the lateral lines of a roadway, as herein defined, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a highway and dedicated to use by pedestrians;

(35) "Solid tire." Every tire of rubber or other resilient material which does not depend upon inflation with compressed air for the support of the load thereon;

(36) "State highway." Every highway as herein defined, or part thereof, which has been designated as a state highway, or branch thereof, by legislative enactment;

(37) "Street car." A vehicle other than a train, as herein defined, for the transporting of persons or property and operated upon stationary rails principally within incorporated cities and towns;

(38) "Traffic." Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly or together while using any highways for purposes of travel;

(39) "Traffic control signal." Any traffic device, as herein defined, whether manually, electrically, or mechanically operated, by which traffic alternately is directed to stop or proceed or otherwise controlled;

(40) "Traffic devices." All signs, signals, markings, and devices not inconsistent with this title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic;

(41) "Train." A vehicle propelled by steam, electricity, or other motive power with or without cars coupled thereto, operated upon stationary rails, except street cars;

(42) "Vehicle." Every device capable of being moved upon a highway and in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting power wheelchairs, as defined in RCW 46.04.415, or devices moved by human or animal power or used exclusively upon stationary rails or tracks.

Words and phrases used herein in the past, present, and future tense shall include the past, present, and future tenses; words and phrases used herein in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context thereof shall indicate to the contrary. [2003 c 244 § 2; 2003 c 141 § 8; 1975 c 62 § 50; 1967 ex.s. c 145 § 42; 1961 c 13 § 47.04.010. Prior: 1937 c 53 § 1; RRS § 6400-1.]

Reviser's note: This section was amended by 2003 c 141 § 8 and by 2003 c 244 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1975 c 62: See note following RCW 36.75.010.

Aeronautics, definitions relating to: RCW 47.68.020.

Canal, defined: RCW 47.72.060.

Department, commission, secretary—Defined: RCW 47.01.021.

Ferry workers, marine employees, definitions relating to: RCW 47.64.011.

Junkyards, definitions relating to: RCW 47.41.020.

Limited access facilities, definitions relating to: RCW 46.52.010.

Signs and scenic vistas, definitions relating to: RCW 47.42.020.

Toll bridges, roads, definitions relating to: RCW 47.56.010.

Urban arterials, definitions relating to: RCW 47.26.040, 47.26.090, 47.26.100, 47.26.110.

Urban public transportation systems—Defined: RCW 47.04.082.

47.04.015 Change of meaning, certain terms. Unless the language specifically indicates otherwise, or unless the context plainly requires a different interpretation:

Wherever in Title 47 RCW or in any provision in the Revised Code of Washington the term "Washington state highway commission", "the state highway commission", "the highway commission", "the commission" (when referring to the Washington state highway commission), "the department of highways", "Washington toll bridge authority", or "the authority" (when referring to the Washington toll bridge authority) is used, it shall mean the department of transportation created in RCW 47.01.031.

Wherever in Title 47 RCW or in any provision in the Revised Code of Washington the term "director of highways" is used, it shall mean the secretary of transportation, whose office is created in RCW 47.01.041. [1977 ex.s. c 151 § 23.]

47.04.020 Classification of highways. All public highways in the state of Washington, or portions thereof, outside incorporated cities and towns shall be divided and classified as state highways and county roads. All state highways and branches thereof shall be established by the legislature of the state of Washington by appropriate general location and termini. Any prior distinctions between highways as primary or secondary are hereby abolished. All powers granted to, or duties imposed upon, the department with regard to either primary or secondary state highways shall be construed to relate to all state highways. Whenever these terms are used,

either jointly or independently, each shall be construed to include all state highways. All public highways in the state of Washington, or portions thereof, outside incorporated cities and towns, not established as state highways, are hereby declared to be county roads. [1984 c 7 § 85; 1967 ex.s. c 145 § 41; 1963 c 24 § 3; 1961 c 13 § 47.04.020. Prior: 1937 c 207 § 1; RRS § 6402-1; 1937 c 53 § 5; RRS § 6400-5; 1913 c 65 § 1; RRS § 6790.]

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

Highway designation system—Signs: RCW 47.36.095.

47.04.040 Title to rights of way vested in state. Upon and after April 1, 1937, all rights of way of any primary state highways, together with all appurtenances thereto, the right or interest in or to which was, or is, in any county, road district, township, local improvement district, or other highway or road district or political subdivision of the state of Washington shall be and the same is hereby transferred to and vested in the state of Washington for use in conjunction with such primary state highways under the department of transportation.

All public highways in the state of Washington which have been designated to be primary state highways or secondary state highways or classified as primary roads and which have been constructed and improved and maintained for a period of seven years prior to April 1, 1937, at the expense of the state shall operate to vest in the state of Washington all right, title, and interest to the right of ways thereof, including the roadway and ditches and existing drainage facilities, together with all appurtenances thereto and no informalities in the records of title to such public highways shall be construed to invalidate or vacate such public highways or to divest the state of Washington of any right, title and interest in the right of way thereof. [1979 ex.s. c 30 § 7; 1961 c 13 § 47.04.040. Prior: 1937 c 53 § 29; RRS § 6400-29.]

47.04.045 Wireless service facilities—Right of way leases—Rules. (1) For the purposes of this section:

(a) "Right of way" means all state-owned land within a state highway corridor.

(b) "Service provider" means every corporation, company, association, joint stock association, firm, partnership, or person that owns, operates, or manages any personal wireless service facility. "Service provider" includes a service provider's contractors, subcontractors, and legal successors.

(2) The department shall establish a process for issuing a lease for the use of the right of way by a service provider and shall require that telecommunications equipment be co-located on the same structure whenever practicable. Consistent with federal highway administration approval, the lease must include the right of direct ingress and egress from the highway for construction and maintenance of the personal wireless service facility during nonpeak hours if public safety is not adversely affected. Direct ingress and egress may be allowed at any time for the construction of the facility if public safety is not adversely affected and if construction will not substantially interfere with traffic flow during peak traffic periods. The lease may specify an indirect ingress and egress

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to the facility if it is reasonable and available for the particular location.

(3) The cost of the lease must be limited to the fair market value of the portion of the right of way being used by the service provider and the direct administrative expenses incurred by the department in processing the lease application.

If the department and the service provider are unable to agree on the cost of the lease, the service provider may submit the cost of the lease to binding arbitration by serving written notice on the department. Within thirty days of receiving the notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or panel shall determine the cost of the lease based on comparable siting agreements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(4) The department shall act on an application for a lease within sixty days of receiving a completed application, unless a service provider consents to a different time period.

(5) The reasons for a denial of a lease application must be supported by substantial evidence contained in a written record.

(6) The department may adopt rules to implement this section.

(7) All lease money paid to the department under this section shall be deposited in the motor vehicle fund created in RCW 46.68.070. [2003 c 244 § 5.]

47.04.046 Wireless site leases—Pending applications. Applications for wireless site leases pending on July 27, 2003, must be treated as applications under RCW 47.04.045 with the consent of the applicant. [2003 c 244 § 8.]

47.04.047 Personal wireless service facilities. Personal wireless service is a critical part of the state's infrastructure. The rapid deployment of personal wireless service facilities is critical to ensure public safety, network access, quality of service, and rural economic development.

It is the declared policy of this state to assure that the use of rights of way of state highways accommodate the deployment of personal wireless service facilities consistent with highway safety and the preservation of the public investment in state highway facilities. [2004 c 131 § 2.]

47.04.050 Acceptance of federal acts. The state of Washington hereby assents to the purposes, provisions, terms and conditions of the grant of money provided in an act of congress entitled: "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," approved July 11, 1916, and all acts, grants and appropriations amendatory and supplementary thereto and affecting the state of Washington. [1961 c 13 § 47.04.050. Prior: 1937 c 53 § 43; RRS § 6400-43; 1917 c 76 § 1; RRS § 6844.]

47.04.060 Administration of federal grants. The department is authorized and directed to act for and on behalf of the state of Washington, and any political subdivision of the state, in all things pertaining to the selection, construction, and maintenance of highways and roads under the provisions of the act of congress approved July 11, 1916, and any and all acts amendatory thereto; and to enter into such agreement with the secretary of transportation or other duly authorized agent of the United States as may from time to time be desirable or necessary to secure the money or aid for any section of state highway, county road, or city or town street selected by law for construction or improvement through an appropriation for the period in which the construction or improvement is to be made. The money shall be added to and expended in connection with the appropriation aforesaid; and shall apply thereto, as may be required, cooperative expenditures from the motor vehicle fund, which may have been appropriated by the state legislature, and from any highway, road, or street fund of any political subdivision, and which are available for the construction and maintenance of any section of state highway, county road, or city or town street selected as aforesaid for such aid and improvement. [1984 c 7 § 86; 1961 c 13 § 47.04.060. Prior: 1937 c 53 § 47; RRS § 6400-47; 1917 c 76 § 5, part; RRS § 6848, part.]

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

47.04.070 Conformity with federal requirements. In all matters relating to the cooperative construction or improvement of any state highway, county road, or city or town street for which federal funds or aid is secured under any act of congress, the department shall act in the manner provided by state law relating to state highway construction from the motor vehicle fund, so far as the same may be consistent with the provisions of such act of congress and the rules and regulations made by the secretary of transportation or other authorized agent of the United States government pursuant to such act, to which the procedure shall be adapted by the department as may be necessary. [1984 c 7 § 87; 1961 c 13 § 47.04.070. Prior: 1937 c 53 § 44; RRS § 6400-44; 1917 c 76 § 5, part; RRS § 6848, part.]

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

47.04.080 Joint action with other governments and agencies. The department is empowered to join financially or otherwise with any other state or any county, city, or town of any other state, or with any foreign country, or any province or district of any foreign country, or with the federal government or any agency thereof, or with any or all thereof, for the erecting, constructing, operating, or maintaining of any bridge, trestle, or any other structure, for the continuation or connection of any state highway across any stream, body of water, gulch, navigable water, swamp, or other topographical formation requiring any such structure and forming a boundary between the state of Washington and any other state or foreign country, and for the purchase or condemnation of right of way therefor. [1984 c 7 § 88; 1973 1st ex.s. c 151 § 11; 1961 c 13 § 47.04.080. Prior: 1937 c 53 § 47 1/2; RRS § 6400-47 1/2.]

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

47.04.081 Urban public transportation systems—Participation in planning, development, and establishment. The department is empowered to join financially or otherwise with any public agency or any county, city, or town in the state of Washington or any other state, or with the federal government or any agency thereof, or with any or all thereof for the planning, development, and establishment of urban public transportation systems in conjunction with new or existing highway facilities. [1984 c 7 § 89; 1967 c 108 § 13; 1965 ex.s. c 170 § 63.]

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

Urban public transportation system defined: RCW 47.04.082.

47.04.082 Urban public transportation systems—Defined. As used in this act the term "urban public transportation system" shall mean a system for the public transportation of persons or property by buses, street cars, trains, electric trolley coaches, other public transit vehicles, or any combination thereof operating in or through predominantly urban areas and owned and operated by the state, any city or county or any municipal corporation of the state, including all structures, facilities, vehicles and other property rights and interest forming a part of such a system. [1967 c 108 § 1.]

Reviser's note: The term "this act" refers to 1967 c 108, codified as RCW 47.04.082, 47.04.083, 47.98.044, and the 1967 amendments to RCW 47.04.081, 47.08.070, 47.12.010, 47.12.250, 47.28.140, 47.44.010, 47.44.040, 47.48.010, 47.52.010, 47.52.090, and 47.56.256.

47.04.083 Urban public transportation systems—Declaration of public policy—Use of motor vehicle, city street, or county road funds. The separate and uncoordinated development of public highways and urban public transportation systems is wasteful of this state's natural and financial resources. It is the public policy of this state to encourage wherever feasible the joint planning, construction and maintenance of public highways and urban public transportation systems serving common geographical areas as joint use facilities. To this end the legislature declares it to be a highway purpose to use motor vehicle funds, city and town street funds or county road funds to pay the full proportionate highway, street or road share of the costs of design, right of way acquisition, construction and maintenance of any highway, street or road to be used jointly with an urban public transportation system. [1967 c 108 § 2.]

47.04.090 Penalty. It is a misdemeanor for any person to violate any of the provisions of this title unless specifically provided otherwise by this title or other law of this state.

Unless another penalty is provided in this title, every person convicted of a misdemeanor for violation of any provisions of this title shall be punished in accordance with chapter 9A.20 RCW. [1989 c 224 § 2; 1961 c 13 § 47.04.090. Prior: 1937 c 53 § 95; RRS § 6400-95.]

47.04.100 Temporary route pending construction of new highway—Streets, roads not to be maintained as. Unless otherwise provided, whenever by statute a new highway or extension is added to the state highway system, no existing city street or county road may be maintained or improved by the department as a temporary route of such new highway or extension pending the construction of the new

highway or extension on the location adopted by the department. [1984 c 7 § 90; 1973 1st ex.s. c 151 § 12; 1965 ex.s. c 170 § 34.]

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

47.04.140 Counties obtaining federal aid for construction, reconstruction, etc., of ferry boats or approaches. Whenever a county that operates or proposes to operate ferries obtains federal aid for the construction, reconstruction, or modification of any ferry boat or approaches thereto under Title 23, United States Code, the following provisions apply to the county's operation of its ferries:

(1) The county shall obtain from the department a franchise authorizing the ferry operations. The county's application for a franchise or amended franchise shall designate all ferry routes it proposes to operate. The department shall issue the franchise or amended franchise for the operation of each route that it finds is not otherwise served by adequate transportation facilities. A county may terminate any ferry route without approval of the department.

(2) At least ninety days before applying for federal aid for the construction, reconstruction, or modification of any of its ferries or approaches thereto, and thereafter whenever new tolls or charges are proposed for use of its ferries, the county shall file with the department, the current or proposed schedule of tolls and charges for use of its ferries. Such tolls and charges shall be deemed approved by the department unless it finds that the aggregate revenues to be derived from the county's ferry operations will exceed the amount required to pay the actual and necessary costs of operation, maintenance, administration, and repair of the county's ferries and their appurtenances. [1989 c 62 § 1; 1984 c 7 § 91; 1975-'76 2nd ex.s. c 65 § 1.]

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

47.04.150 Outstanding bonds—Savings. While any bonds, whether definitive, temporary, or interim, or warrants, certificates, or receipts of any denomination, with or without coupons attached heretofore issued by the state aeronautics commission, the toll bridge authority, the highway commission, or any of the other agencies whose functions are transferred to the department of transportation by RCW 47.01.031, remain outstanding, the powers and duties relating thereto of such agencies or of any official or employee thereof transferred by *RCW 47.01.111 to the department of transportation, or any powers and duties of any other state official or state agency with respect to such bonds, warrants, certificates, or receipts shall not be diminished or impaired in any manner that will adversely affect the interests and rights of the holders of such bonds, warrants, certificates, or receipts. The holder of any such bond, warrant, certificate, or receipt may by mandamus or other appropriate proceeding require the performance by the department of transportation, or other appropriate state official or agency, of any of the duties heretofore imposed upon any state department, official, or employee under the terms of any such prior bond, warrant, certificate, or receipt agreement or sale: PROVIDED, That the enumeration of such rights and remedies herein shall not be deemed to exclude the exercise or prosecution of any other rights or remedies by the holders of such

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bonds, warrants, certificates, or receipts. [1977 ex.s. c 151 § 19.]

***Reviser's note:** RCW 47.01.111 was decodified pursuant to 1985 c 6 § 26.

47.04.160 Lewis and Clark bridge. In commemoration of the 175th anniversary of captains Meriwether Lewis and William Clark's epic journey from Wood River, Illinois, to Cape Disappointment, Washington, and to fully honor the expedition's passing the present location of the city of Longview, Washington, in November, 1805, and to couple this commemoration with the dedication of the bridge from Longview, Washington, to Rainier, Oregon, on March 29, 1930, the official name of this bridge is changed from the Longview-Columbia bridge to the Lewis and Clark bridge. [1980 c 5 § 1.]

47.04.170 Federal agreements for public transportation, rail transportation. The department of transportation is authorized to enter into and perform agreements with federal agencies as may be necessary to secure federal grants, loans, or other assistance on its own behalf or on behalf of other public or private recipients for:

(1) Public transportation purposes, including but not limited to, bus transportation, specialized transportation services for the elderly and handicapped, and ride sharing activities; and

(2) Rail transportation. [1985 c 20 § 1.]

47.04.180 Twenty-four hour headlight policy. On the recommendation of their public works departments or designees, counties or cities can petition the department of transportation to create a "twenty-four hour headlight policy" on state highways in their respective jurisdictions. The department shall develop criteria for approval or disapproval, such as traffic volume, accident statistics, and costs of signs. The department shall notify all counties about this program.

A jurisdiction requesting such a policy shall periodically report to the department regarding its educational efforts. A jurisdiction may petition the department to remove such a policy.

The jurisdiction shall educate its citizens on the "twenty-four hour headlight policy." The department shall place and maintain appropriate signs along the designated highway. Participating jurisdictions shall share in the cost of signing in an amount as determined by the department. [1998 c 245 § 94; 1989 c 195 § 1.]

47.04.190 Bicycle transportation management program. (1) The department of transportation is responsible for the initiation, coordination, and operation of a bicycle transportation management program.

(2) To assist in the operation of the bicycle transportation management program, a full-time staff position of state bicycle program manager is established within the department of transportation. [1991 c 214 § 5.]

Bicycle awareness program: RCW 43.43.390.

Pavement marking standards: RCW 47.36.280.

47.04.200 Bicycle program manager. The state bicycle program manager shall:

- (1) Design programs that encourage the use of bicycling for transportation;
- (2) Coordinate bicycle safety related programs and bicycle tourism programs in all state agencies;
- (3) Assist the department of transportation and the cities and counties of the state in assigning priorities to, programming, and developing bicycle-related projects;
- (4) Serve as a clearinghouse for bicycle program information and resources;
- (5) Provide assistance in revising and updating bicycle material of the superintendent of public instruction and the state patrol;
- (6) Promote the use of bicycle helmets of a type certified to meet the requirements of standard Z-90.4 of the American National Standards Institute or such subsequent nationally recognized standard for bicycle helmet performance; and
- (7) Promote bicycle safety equipment. [1991 c 214 § 6.]

47.04.210 Reimbursable transportation expenditures—Processing and accounting. Federal funds that are administered by the department of transportation and are passed through to municipal corporations or political subdivisions of the state and moneys that are received as total reimbursement for goods, services, or projects constructed by the department of transportation are removed from the transportation budget. To process and account for these expenditures a new treasury trust account is created to be used for all department of transportation one hundred percent federal and local reimbursable transportation expenditures. This new account is nonbudgeted and nonappropriated. At the same time, federal and private local appropriations and full-time equivalents in subprograms R2, R3, T6, Y6, and Z2 processed through this new account are removed from the department of transportation's 1997-99 budget.

The department of transportation may make expenditures from the account before receiving federal and local reimbursements. However, at the end of each biennium, the account must maintain a zero or positive cash balance. In the twenty-fourth month of each biennium the department of transportation shall calculate and transfer sufficient cash from either the motor vehicle fund or the multimodal transportation account to cover any negative cash balances. The amount transferred is calculated based on expenditures from each fund. In addition, any interest charges accruing to the new account must be distributed to the motor vehicle fund and the multimodal transportation account.

The department of transportation shall provide an annual report to the legislative transportation committee and the office of financial management on expenditures and full-time equivalents processed through the new account. The report must also include recommendations for process changes, if needed. [2001 2nd sp.s. c 14 § 601; 1997 c 94 § 1.]

Severability—2001 2nd sp.s. c 14: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 2nd sp.s. c 14 § 612.]

Effective date—2001 2nd sp.s. c 14: "Except for section 608 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public

institutions, and takes effect immediately [June 26, 2001]." [2001 2nd sp.s. c 14 § 613.]

Effective date—1997 c 94: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 94 § 4.]

47.04.220 Miscellaneous transportation programs account. (1) The miscellaneous transportation programs account is created in the custody of the state treasurer.

(2) Moneys from the account may be used only for the costs of:

(a) Miscellaneous transportation services provided by the department that are reimbursed by other public and private entities;

(b) Local transportation projects for which the department is a conduit for federal reimbursement to a municipal corporation or political subdivision; or

(c) Other reimbursable activities as recommended by the legislative transportation committee and approved by the office of financial management.

(3) Moneys received as reimbursement for expenditures under subsection (2) of this section must be deposited into the account.

(4) No appropriation is required for expenditures from this account. This fund is not subject to allotment procedures provided under chapter 43.88 RCW.

(5) Only the secretary of transportation or the secretary's designee may authorize expenditures from the account.

(6) It is the intent of the legislature that this account maintain a zero or positive cash balance at the end of each biennium. Toward this purpose the department may make expenditures from the account before receiving reimbursements under subsection (2) of this section. Before the end of the biennium, the department shall transfer sufficient cash to cover any negative cash balances from the motor vehicle fund and the multimodal transportation account to the miscellaneous transportation programs account for unrecovered reimbursements. The department shall calculate the distribution of this transfer based on expenditures. In the ensuing biennium the department shall transfer the reimbursements received in the miscellaneous transportation programs account back to the motor vehicle fund and the multimodal transportation account to the extent of the cash transferred at biennium end. The department shall also distribute any interest charges accruing to the miscellaneous transportation programs account to the motor vehicle fund and the multimodal transportation account. Adjustments for any indirect cost recoveries may also be made at this time.

(7) The department shall provide an annual report to the legislative transportation committee and the office of financial management on the expenditures and full-time equivalents processed through the miscellaneous transportation programs account. The report must also include recommendations for changes to the process, if needed. [2001 2nd sp.s. c 14 § 602; 1997 c 94 § 2.]

Severability—Effective date—2001 2nd sp.s. c 14: See notes following RCW 47.04.210.

Effective date—1997 c 94: See note following RCW 47.04.210.

47.04.230 Dredge spoils—Cowlitz County. The legislature finds and declares that the December 19, 1991, Washington state conveyance of the Mt. St. Helens Recovery Program, LT-1 and Cook Ferry Road Sites, to Cowlitz County, should be amended to enable Cowlitz County to use dredge spoils revenues for recreational purposes throughout the county.

The legislature further declares that the department of transportation shall execute sufficient legal release to accomplish the following:

- (1) Dredge spoil revenues from either the LT-1 or Cook Ferry Road Site must be dedicated for recreational facilities and recreational administration costs throughout the county;
- (2) Any mining excavation must meet the requirements of the Shoreline Management Act of 1971 as identified in chapter 90.58 RCW;
- (3) Both the LT-1 and Cook Ferry Road Site must be preserved as a long-term dredging facility;
- (4) All other requirements in the December 19, 1991, conveyance between the state of Washington and Cowlitz County will remain in effect; and
- (5) The LT-1 and Cook Ferry Road Site remains subject to any agreements with the United States Army Corps of Engineers and other agencies of the federal government. [1999 c 63 § 1.]

47.04.235 Dredge spoils—Castle Rock. The legislature finds and declares that the December 20, 1993, Washington state conveyance of the Mt. St. Helens recovery program, CR601F site, to the city of Castle Rock, should be amended to enable the city to use dredge spoil revenues for recreational purposes adjacent to the Cowlitz river in the city limits of Castle Rock, and also those other properties owned by the city of Castle Rock that are adjacent to the Cowlitz river.

The legislature further declares that the department of transportation shall execute sufficient legal release to accomplish the following:

- (1) Dredge spoil revenues from the CR601F site must be dedicated for recreational facilities and recreational administration cost throughout the defined area listed above;
- (2) Any mining excavation must meet the requirements of the Shoreline Management Act of 1971 as identified in chapter 90.58 RCW;
- (3) All other requirements in the December 20, 1993, conveyance between the state of Washington and the city of Castle Rock will remain in effect; and
- (4) The CR601F site remains subject to any agreements with the United States Army Corps of Engineers and other agencies of the federal government. [2000 c 13 § 1.]

47.04.240 Public transportation information—Confidentiality. The department, a county, city, town, any other public entity, and any private entity under the public-private transportation initiatives authorized under chapter 47.46 RCW, that provides transit, high-speed ground transportation, high capacity transportation service, ferry service, toll facilities, or other public transportation service or facilities may only use personally identifiable information obtained from the use of electronic toll payments, transit passes, or other fare media such as magnetic strip cards or stored value cards for billing purposes. This information may not be used

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to track or monitor individual use of the public transportation facilities or service, except for billing purposes and to provide statistical compilations and reports that do not identify an individual. [1999 c 215 § 2.]

Personally identifying transit information exempt from disclosure: RCW 42.17.310.

47.04.250 Assaults by motorists on department employees. (1) For the purposes of this section only, "assault" means an act by a motorist that results in physical injury to an employee of the department while engaged in highway construction or maintenance activities along a roadway right of way (fence line to fence line, landscaped areas) or in the loading and unloading of passenger vehicles in service of the vessel as a maritime employee not covered under chapter 51.32 RCW or engaged in those work activities as a Washington State Ferries terminal employee covered under chapter 51.32 RCW.

(2) In recognition of the nature of employment in departmental highway construction or maintenance activities and by the Washington State Ferries, this section provides a supplementary program to reimburse employees of the department for some of their costs attributable to their being the victims of assault by motorists. This program is limited to the reimbursement provided in this section.

(3) An employee is entitled to receive the reimbursement provided in this section only if the secretary finds that each of the following has occurred:

(a) A motorist has assaulted the employee who is engaged in highway construction or maintenance along a roadway right of way (fence line to fence line, landscaped areas) or service of the vessel as a maritime employee or terminal employee engaged in the loading or unloading of passenger vehicles and as a result the employee has sustained demonstrated physical injuries that have required the employee to miss one or more days of work;

(b) The assault is not attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application under chapter 51.32 RCW, or for maritime employees the department of transportation risk management office has approved maintenance and cure benefits under 46 U.S.C. Sec. 688 et seq.

(4) The reimbursement authorized under this section is as follows:

(a) The employee's accumulated sick leave days will not be reduced for the workdays missed. The injured worker who qualifies for and receives assault benefits will also receive full standard benefits (vacation leave, sick leave, health insurance, etc.) as if uninjured;

(b) For an employee covered by chapter 51.32 RCW, for each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee will receive the full amount of the injured worker's net pay at the time of injury; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, or under federal maritime law benefits, including the Jones Act, for an employee deemed a maritime

employee assigned to work in service of the vessel or a non-maritime terminal employee covered under chapter 51.32 RCW, the employee will be reimbursed in an amount that, when added to that compensation, will result in the employee receiving no more than full net pay (gross pay less mandatory and voluntary deductions) for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury. No application for assault benefits is valid nor may a claim be enforced unless it was made within one year after the day upon which the injury occurred.

(6) The employee is not entitled to the reimbursement provided in subsection (4) of this section for a workday for which the secretary or an applicable designee finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW or federal maritime law, including the Jones Act.

(7) The reimbursement may be made only for absences that the secretary or an applicable designee believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she will continue to be classified as a state employee, and the reimbursement amount is considered as salary or wages.

(9) The department shall make all reimbursement payments required to be made to employees under this section. The payments are considered as a salary or wage expense and must be paid by the department in the same manner and from the same appropriations as other salary and wage expenses for the department.

(10) Nothing in this section precludes the department from recovering the supplemental payments authorized by this section from the assaulting motorist, and that recovery is considered exclusive of recovery under chapter 51.24 RCW.

(11) If the legislature revokes the reimbursement authorized under this section or repeals this section, no affected employee is entitled after that to receive the reimbursement as a matter of contractual right. [2002 c 355 § 1.]

Chapter 47.05 RCW

PRIORITY PROGRAMMING FOR HIGHWAY DEVELOPMENT

Sections

47.05.010	Declaration of purpose.
47.05.021	Functional classification of highways.
47.05.022	Highways of statewide significance.
47.05.025	Highways of regional significance.
47.05.030	Six-year programs—Investments, improvements, preservation.
47.05.035	Allocation of funds, factors.
47.05.051	Six-year comprehensive investment program—Priority selection criteria—Improvement program criteria—Departure from criteria.
47.05.090	Application of 1993 c 490—Deviations.

47.05.010 Declaration of purpose. The legislature finds that solutions to state highway deficiencies have become increasingly complex and diverse and that anticipated transportation revenues will fall substantially short of the amount required to satisfy all transportation needs. Difficult investment trade-offs will be required.

It is the intent of the legislature that investment of state transportation funds to address deficiencies on the state highway system be based on a policy of priority programming having as its basis the rational selection of projects and services according to factual need and an evaluation of life cycle costs and benefits that are systematically scheduled to carry out defined objectives within available revenue. The state must develop analytic tools to use a common methodology to measure benefits and costs for all modes.

The priority programming system must ensure preservation of the existing state highway system, relieve congestion, provide mobility for people and goods, support the state's economy, and promote environmental protection and energy conservation.

The priority programming system must implement the state-owned highway component of the statewide transportation plan, consistent with local and regional transportation plans, by targeting state transportation investment to appropriate multimodal solutions that address identified state highway system deficiencies.

The priority programming system for improvements must incorporate a broad range of solutions that are identified in the statewide transportation plan as appropriate to address state highway system deficiencies, including but not limited to highway expansion, efficiency improvements, nonmotorized transportation facilities, high occupancy vehicle facilities, transit facilities and services, rail facilities and services, and transportation demand management programs. [2002 c 5 § 401; 1993 c 490 § 1; 1969 ex.s. c 39 § 1; 1963 c 173 § 1.]

Effective date—2002 c 5 §§ 401-404: "Sections 401 through 404 of this act take effect July 1, 2002." [2002 c 5 § 417.]

Captions not law—Severability—2002 c 5: See notes following RCW 47.01.012.

47.05.021 Functional classification of highways. (1)

The transportation commission is hereby directed to conduct periodic analyses of the entire state highway system, report thereon to the chairs of the transportation committees of the senate and house of representatives, including one copy to the staff of each of the committees, biennially and based thereon, to subdivide, classify, and subclassify according to their function and importance all designated state highways and those added from time to time and periodically review and revise the classifications into the following three functional classes:

(a) The "principal arterial system" shall consist of a connected network of rural arterial routes with appropriate extensions into and through urban areas, including all routes designated as part of the interstate system, which serve corridor movements having travel characteristics indicative of substantial statewide and interstate travel;

(b) The "minor arterial system" shall, in conjunction with the principal arterial system, form a rural network of arterial routes linking cities and other activity centers which generate long distance travel, and, with appropriate extensions into and through urban areas, form an integrated network providing interstate and interregional service; and

(c) The "collector system" shall consist of routes which primarily serve the more important intercounty, intracounty, and intraurban travel corridors, collect traffic from the system of local access roads and convey it to the arterial system, and

on which, regardless of traffic volume, the predominant travel distances are shorter than on arterial routes.

(2) In making the functional classification the transportation commission shall adopt and give consideration to criteria consistent with this section and federal regulations relating to the functional classification of highways, including but not limited to the following:

(a) Urban population centers within and without the state stratified and ranked according to size;

(b) Important traffic generating economic activities, including but not limited to recreation, agriculture, government, business, and industry;

(c) Feasibility of the route, including availability of alternate routes within and without the state;

(d) Directness of travel and distance between points of economic importance;

(e) Length of trips;

(f) Character and volume of traffic;

(g) Preferential consideration for multiple service which shall include public transportation;

(h) Reasonable spacing depending upon population density; and

(i) System continuity.

(3) The transportation commission or the legislature shall designate state highways of statewide significance under RCW 47.06.140. If the commission designates a state highway of statewide significance, it shall submit a list of such facilities for adoption by the legislature. This statewide system shall include at a minimum interstate highways and other statewide principal arterials that are needed to connect major communities across the state and support the state's economy.

(4) The transportation commission shall designate a freight and goods transportation system. This statewide system shall include state highways, county roads, and city streets. The commission, in cooperation with cities and counties, shall review and make recommendations to the legislature regarding policies governing weight restrictions and road closures which affect the transportation of freight and goods. [2002 c 56 § 301. Prior: 1998 c 245 § 95; 1998 c 171 § 5; 1993 c 490 § 2; 1987 c 505 § 50; 1979 ex.s. c 122 § 1; 1977 ex.s. c 130 § 1.]

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Severability—1979 ex.s. c 122: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 122 § 10.]

Effective dates—1977 ex.s. c 130: "Section 1 of this 1977 act modifying the functional classification of state highways shall apply to the long range plan for highway improvements and to the six year program for highway construction commencing July 1, 1979 and to the preparation thereof and shall take effect July 1, 1977. Section 2 of this 1977 act shall take effect July 1, 1979." [1977 ex.s. c 130 § 3.]

47.05.022 Highways of statewide significance. The legislature designates as highways of statewide significance those highways so designated by transportation commission resolution number 660 as adopted on January 21, 2004. [2004 c 232 § 1; 2002 c 56 § 302.]

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

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47.05.025 Highways of regional significance. Highways of regional significance may receive funding under the conditions of RCW 36.120.020(8)(c). The following highways are of regional significance:

(1) That portion of state route number 9 that runs from state route number 522 in the south to state route number 531 in the north;

(2) That portion of state route number 524 that runs from state route number 5 easterly to state route number 522;

(3) That portion of state route number 704 from state route number 5 to state route number 7. [2002 c 56 § 303.]

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

47.05.030 Six-year programs—Investments, improvements, preservation. The transportation commission shall adopt a comprehensive six-year investment program specifying program objectives and performance measures for the preservation and improvement programs defined in this section. In the specification of investment program objectives and performance measures, the transportation commission, in consultation with the Washington state department of transportation, shall define and adopt standards for effective programming and prioritization practices including a needs analysis process. The analysis process must ensure the identification of problems and deficiencies, the evaluation of alternative solutions and trade-offs, and estimations of the costs and benefits of prospective projects. The investment program must be revised biennially, effective on July 1st of odd-numbered years. The investment program must be based upon the needs identified in the state-owned highway component of the statewide transportation plan as defined in RCW 47.01.071(3).

(1) The preservation program consists of those investments necessary to preserve the existing state highway system and to restore existing safety features, giving consideration to lowest life cycle costing. The preservation program must require use of the most cost-effective pavement surfaces, considering:

(a) Life-cycle cost analysis;

(b) Traffic volume;

(c) Subgrade soil conditions;

(d) Environmental and weather conditions;

(e) Materials available; and

(f) Construction factors.

The comprehensive six-year investment program for preservation must identify projects for two years and an investment plan for the remaining four years.

(2) The improvement program consists of investments needed to address identified deficiencies on the state highway system to increase mobility, address congestion, and improve safety, support for the economy, and protection of the environment. The six-year investment program for improvements must identify projects for two years and major deficiencies proposed to be addressed in the six-year period giving consideration to relative benefits and life cycle costing. The transportation commission shall give higher priority for correcting identified deficiencies on those facilities classified as facilities of statewide significance as defined in RCW 47.06.140. Project prioritization must be based primarily upon cost-benefit analysis, where appropriate.

The transportation commission shall approve and present the comprehensive six-year investment program to the legislature in support of the biennial budget request under RCW 44.40.070 and 44.40.080. [2002 c 5 § 402; 1998 c 171 § 6; 1993 c 490 § 3; 1987 c 179 § 2; 1979 ex.s. c 122 § 2; 1977 ex.s. c 151 § 44; 1975 1st ex.s. c 143 § 1; 1973 2nd ex.s. c 12 § 4; 1969 ex.s. c 39 § 3; 1965 ex.s. c 170 § 33; 1963 c 173 § 3.]

Effective date—2002 c 5 §§ 401-404: See note following RCW 47.05.010.

Captions not law—Severability—2002 c 5: See notes following RCW 47.01.012.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.035 Allocation of funds, factors. (1) The department and the commission shall use the transportation demand modeling tools developed under subsection (2) of this section to evaluate investments based on the best mode or improvement, or mix of modes and improvements, to meet current and future long-term demand within a corridor or system for the lowest cost. The end result of these demand modeling tools is to provide a cost-benefit analysis by which the department and the commission can determine the relative mobility improvement and congestion relief each mode or improvement under consideration will provide and the relative investment each mode or improvement under consideration will need to achieve that relief.

(2) The department will participate in the refinement, enhancement, and application of existing transportation demand modeling tools to be used to evaluate investments. This participation and use of transportation demand modeling tools will be phased in.

(3) In developing program objectives and performance measures, the transportation commission shall evaluate investment trade-offs between the preservation and improvement programs. In making these investment trade-offs, the commission shall evaluate, using cost-benefit techniques, roadway and bridge maintenance activities as compared to roadway and bridge preservation program activities and adjust those programs accordingly.

(4) The commission shall allocate the estimated revenue between preservation and improvement programs giving primary consideration to the following factors:

(a) The relative needs in each of the programs and the system performance levels that can be achieved by meeting these needs;

(b) The need to provide adequate funding for preservation to protect the state's investment in its existing highway system;

(c) The continuity of future transportation development with those improvements previously programmed; and

(d) The availability of dedicated funds for a specific type of work. [2002 c 5 § 403; 1993 c 490 § 4; 1987 c 179 § 3; 1979 ex.s. c 122 § 3; 1975 1st ex.s. c 143 § 2.]

Effective date—2002 c 5 §§ 401-404: See note following RCW 47.05.010.

Captions not law—Severability—2002 c 5: See notes following RCW 47.01.012.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.051 Six-year comprehensive investment program—Priority selection criteria—Improvement program criteria—Departure from criteria. (1) The comprehensive six-year investment program shall be based upon the needs identified in the state-owned highway component of the statewide multimodal transportation plan as defined in RCW 47.01.071(3) and priority selection systems that incorporate the following criteria:

(a) Priority programming for the preservation program shall take into account the following, not necessarily in order of importance:

(i) Extending the service life of the existing highway system, including using the most cost-effective pavement surfaces, considering:

- (A) Life-cycle cost analysis;
- (B) Traffic volume;
- (C) Subgrade soil conditions;
- (D) Environmental and weather conditions;
- (E) Materials available; and
- (F) Construction factors;

(ii) Ensuring the structural ability to carry loads imposed upon highways and bridges; and

(iii) Minimizing life cycle costs. The transportation commission in carrying out the provisions of this section may delegate to the department of transportation the authority to select preservation projects to be included in the six-year program.

(b) Priority programming for the improvement program must be based primarily upon the following, not necessarily in order of importance:

(i) Traffic congestion, delay, and accidents;

(ii) Location within a heavily traveled transportation corridor;

(iii) Except for projects in cities having a population of less than five thousand persons, synchronization with other potential transportation projects, including transit and multimodal projects, within the heavily traveled corridor; and

(iv) Use of benefit/cost analysis wherever feasible to determine the value of the proposed project.

(c) Priority programming for the improvement program may also take into account:

(i) Support for the state's economy, including job creation and job preservation;

(ii) The cost-effective movement of people and goods;

(iii) Accident and accident risk reduction;

(iv) Protection of the state's natural environment;

(v) Continuity and systematic development of the highway transportation network;

(vi) Consistency with local comprehensive plans developed under chapter 36.70A RCW including the following if they have been included in the comprehensive plan:

(A) Support for development in and revitalization of existing downtowns;

(B) Extent that development implements local comprehensive plans for rural and urban residential and nonresidential densities;

(C) Extent of compact, transit-oriented development for rural and urban residential and nonresidential densities;

(D) Opportunities for multimodal transportation; and

(E) Extent to which the project accommodates planned growth and economic development;

- (vii) Consistency with regional transportation plans developed under chapter 47.80 RCW;
- (viii) Public views concerning proposed improvements;
- (ix) The conservation of energy resources;
- (x) Feasibility of financing the full proposed improvement;
- (xi) Commitments established in previous legislative sessions;
- (xii) Relative costs and benefits of candidate programs.

(d) Major projects addressing capacity deficiencies which prioritize allowing for preliminary engineering shall be reprioritized during the succeeding biennium, based upon updated project data. Reprioritized projects may be delayed or canceled by the transportation commission if higher priority projects are awaiting funding.

(e) Major project approvals which significantly increase a project's scope or cost from original prioritization estimates shall include a review of the project's estimated revised priority rank and the level of funding provided. Projects may be delayed or canceled by the transportation commission if higher priority projects are awaiting funding.

(2) The commission may depart from the priority programming established under subsection (1) of this section:

(a) To the extent that otherwise funds cannot be utilized feasibly within the program; (b) as may be required by a court judgment, legally binding agreement, or state and federal laws and regulations; (c) as may be required to coordinate with federal, local, or other state agency construction projects; (d) to take advantage of some substantial financial benefit that may be available; (e) for continuity of route development; or (f) because of changed financial or physical conditions of an unforeseen or emergent nature. The commission or secretary of transportation shall maintain in its files information sufficient to show the extent to which the commission has departed from the established priority.

(3) The commission shall identify those projects that yield freight mobility benefits or that alleviate the impacts of freight mobility upon affected communities. [2002 c 189 § 3; 2002 c 5 § 406; 1998 c 175 § 12; 1993 c 490 § 5; 1987 c 179 § 5; 1979 ex.s. c 122 § 5; 1975 1st ex.s. c 143 § 4.]

Intent—2002 c 5: "The legislature intends that funding for transportation mobility improvements be allocated to the worst traffic chokepoints in the state. Furthermore, the legislature intends to fund projects that provide systemic relief throughout a transportation corridor, rather than spot improvements that fail to improve overall mobility within a corridor." [2002 c 5 § 405.]

Reports: "The department of transportation shall report the results of its priority programming under RCW 47.05.051 to the transportation committees of the senate and house of representatives by December 1, 2003, and December 1, 2005." [2002 c 5 § 407.]

Captions not law—Severability—2002 c 5: See notes following RCW 47.01.012.

Severability—1998 c 175: See RCW 47.06A.900.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.090 Application of 1993 c 490—Deviations. The provisions of chapter 490, Laws of 1993 modifying procedures for priority programming for highway development as set forth in chapter 47.05 RCW, first apply to the comprehensive six-year state highway investment program for the periods 1995 to 2001. For the transition biennium ending June 30, 1995, the commission may deviate from the modi-

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fied procedures prescribed by chapter 490, Laws of 1993. [1993 c 490 § 6.]

Chapter 47.06 RCW

STATEWIDE TRANSPORTATION PLANNING

Sections

47.06.010	Findings.
47.06.020	Role of department.
47.06.030	Transportation policy plan.
47.06.040	Statewide multimodal transportation plan.
47.06.043	Technical workers—Skill enhancement.
47.06.045	Freight mobility plan.
47.06.050	State-owned facilities component.
47.06.060	Aviation plan.
47.06.070	Marine ports and navigation plan.
47.06.080	Freight rail plan.
47.06.090	Intercity passenger rail plan.
47.06.100	Bicycle transportation and pedestrian walkways plan.
47.06.110	Public transportation plan.
47.06.120	High-capacity transportation planning and regional transportation planning—Role of department.
47.06.130	Special planning studies—Cost-benefit analysis.
47.06.140	Transportation facilities and services of statewide significance—Level of service standards.
47.06.900	Captions not part of law—1993 c 446.

Environmental review of transportation projects: RCW 47.01.290.

47.06.010 Findings. The legislature recognizes that the ownership and operation of Washington's transportation system is spread among federal, state, and local government agencies, regional transit agencies, port districts, and the private sector. The legislature also recognizes that transportation planning authority is shared on the local, regional, and state levels, and that this planning must be a comprehensive and coordinated effort. While significant authority for transportation planning is vested with local agencies and regional transportation planning organizations under the growth management act, the legislature recognizes that certain transportation issues and facilities cross local and regional boundaries and are vital to the statewide economy and the cross-state mobility of people and goods. Therefore, the state has an appropriate role in developing statewide transportation plans that address state jurisdiction facilities and services as well as transportation facilities and services of state interest. These plans shall serve as a guide for short-term investment needs and provide a long-range vision for transportation system development. [1993 c 446 § 1.]

47.06.020 Role of department. The specific role of the department in transportation planning shall be (1) ongoing coordination and development of statewide transportation policies that guide all Washington transportation providers; (2) ongoing development of a statewide multimodal transportation plan that includes both state-owned and state-interest facilities and services; (3) coordinating the state high-capacity transportation planning and regional transportation planning programs; and (4) conducting special transportation planning studies that impact state transportation facilities or relate to transportation facilities and services of statewide significance. Specific requirements for each of these state transportation planning components are described in this chapter. [1993 c 446 § 2.]

47.06.030 Transportation policy plan. The commission shall develop a state transportation policy plan that (1) establishes a vision and goals for the development of the statewide transportation system consistent with the state's growth management goals, (2) identifies significant statewide transportation policy issues, and (3) recommends statewide transportation policies and strategies to the legislature to fulfill the requirements of RCW 47.01.071(1). The state transportation policy plan shall be the product of an ongoing process that involves representatives of significant transportation interests and the general public from across the state. The plan shall address how the department of transportation will meet the transportation needs and expedite the completion of industrial projects of statewide significance. [1997 c 369 § 8; 1993 c 446 § 3.]

Industrial project of statewide significance—Defined: RCW 43.157.010.

47.06.040 Statewide multimodal transportation plan. The department shall develop a statewide multimodal transportation plan under RCW 47.01.071(3) and in conformance with federal requirements, to ensure the continued mobility of people and goods within regions and across the state in a safe, cost-effective manner. The statewide multimodal transportation plan shall consist of:

(1) A state-owned facilities component, which shall guide state investment for state highways including bicycle and pedestrian facilities, and state ferries; and

(2) A state-interest component, which shall define the state interest in aviation, marine ports and navigation, freight rail, intercity passenger rail, bicycle transportation and pedestrian walkways, and public transportation, and recommend actions in coordination with appropriate public and private transportation providers to ensure that the state interest in these transportation modes is met.

The plans developed under each component must be consistent with the state transportation policy plan and with each other, reflect public involvement, be consistent with regional transportation planning, high-capacity transportation planning, and local comprehensive plans prepared under chapter 36.70A RCW, and include analysis of intermodal connections and choices. A primary emphasis for these plans shall be the relief of congestion, the preservation of existing investments and downtowns, ability to attract or accommodate planned population, and employment growth, the improvement of traveler safety, the efficient movement of freight and goods, and the improvement and integration of all transportation modes to create a seamless intermodal transportation system for people and goods.

In the development of the statewide multimodal transportation plan, the department shall identify and document potential affected environmental resources, including, but not limited to, wetlands, storm water runoff, flooding, air quality, fish passage, and wildlife habitat. The department shall conduct its environmental identification and documentation in coordination with all relevant environmental regulatory authorities, including, but not limited to, local governments. The department shall give the relevant environmental regulatory authorities an opportunity to review the department's environmental plans. The relevant environmental regulatory authorities shall provide comments on the department's environmental plans in a timely manner. Environmental identifi-

cation and documentation as provided for in RCW 47.01.300 and this section is not intended to create a private right of action or require an environmental impact statement as provided in chapter 43.21C RCW. [2002 c 189 § 4; 1998 c 199 § 1; 1994 c 258 § 5; 1993 c 446 § 4.]

Captions not law—1994 c 258: See note following RCW 36.70A.420.

47.06.043 Technical workers—Skill enhancement. The state interest component of the statewide multimodal transportation plan must include a plan for enhancing the skills of the existing technical transportation work force. [2003 c 363 § 204.]

Findings—Intent—2003 c 363 §§ 201-206: See note following RCW 49.04.041.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

47.06.045 Freight mobility plan. The state-interest component of the statewide multimodal transportation plan shall include a freight mobility plan which shall assess the transportation needs to ensure the safe, reliable, and efficient movement of goods within and through the state and to ensure the state's economic vitality. [1998 c 175 § 10.]

Severability—1998 c 175: See RCW 47.06A.900.

47.06.050 State-owned facilities component. The state-owned facilities component of the statewide transportation plan shall consist of:

(1) The state highway system plan, which identifies program and financing needs and recommends specific and financially realistic improvements to preserve the structural integrity of the state highway system, ensure acceptable operating conditions, and provide for enhanced access to scenic, recreational, and cultural resources. The state highway system plan shall contain the following elements:

(a) A system preservation element, which shall establish structural preservation objectives for the state highway system including bridges, identify current and future structural deficiencies based upon analysis of current conditions and projected future deterioration, and recommend program funding levels and specific actions necessary to preserve the structural integrity of the state highway system consistent with adopted objectives. Lowest life cycle cost methodologies must be used in developing a pavement management system. This element shall serve as the basis for the preservation component of the six-year highway program and the two-year biennial budget request to the legislature;

(b) A highway maintenance element, establishing service levels for highway maintenance on state-owned highways that meet benchmarks established by the transportation commission. The highway maintenance element must include an estimate of costs for achieving those service levels over twenty years. This element will serve as the basis for the maintenance component of the six-year highway program and the two-year biennial budget request to the legislature;

(c) A capacity and operational improvement element, which shall establish operational objectives, including safety considerations, for moving people and goods on the state highway system, identify current and future capacity, operational, and safety deficiencies, and recommend program

funding levels and specific improvements and strategies necessary to achieve the operational objectives. In developing capacity and operational improvement plans the department shall first assess strategies to enhance the operational efficiency of the existing system before recommending system expansion. Strategies to enhance the operational efficiencies include but are not limited to access management, transportation system management, demand management, and high-occupancy vehicle facilities. The capacity and operational improvement element must conform to the state implementation plan for air quality and be consistent with regional transportation plans adopted under chapter 47.80 RCW, and shall serve as the basis for the capacity and operational improvement portions of the six-year highway program and the two-year biennial budget request to the legislature;

(d) A scenic and recreational highways element, which shall identify and recommend designation of scenic and recreational highways, provide for enhanced access to scenic, recreational, and cultural resources associated with designated routes, and recommend a variety of management strategies to protect, preserve, and enhance these resources. The department, affected counties, cities, and towns, regional transportation planning organizations, and other state or federal agencies shall jointly develop this element;

(e) A paths and trails element, which shall identify the needs of nonmotorized transportation modes on the state transportation systems and provide the basis for the investment of state transportation funds in paths and trails, including funding provided under chapter 47.30 RCW.

(2) The state ferry system plan, which shall guide capital and operating investments in the state ferry system. The plan shall establish service objectives for state ferry routes, forecast travel demand for the various markets served in the system, develop strategies for ferry system investment that consider regional and statewide vehicle and passenger needs, support local land use plans, and assure that ferry services are fully integrated with other transportation services. The plan must provide for maintenance of capital assets. The plan must also provide for preservation of capital assets based on lowest life cycle cost methodologies. The plan shall assess the role of private ferries operating under the authority of the utilities and transportation commission and shall coordinate ferry system capital and operational plans with these private operations. The ferry system plan must be consistent with the regional transportation plans for areas served by the state ferry system, and shall be developed in conjunction with the ferry advisory committees. [2002 c 5 § 413; 1993 c 446 § 5.]

Finding—Intent—2002 c 5: "The legislature finds that roads, streets, bridges, and highways in the state represent public assets worth over one hundred billion dollars. These investments require regular maintenance and preservation, or rehabilitation, to provide cost-effective transportation services. Many of these facilities are in poor condition. Given the magnitude of public investment and the importance of safe, reliable roadways to the motoring public, the legislature intends to create stronger accountability to ensure that cost-effective maintenance and preservation is provided for these transportation facilities." [2002 c 5 § 408.]

Captions not law—Severability—2002 c 5: See notes following RCW 47.01.012.

47.06.060 Aviation plan. The state-interest component of the statewide multimodal transportation plan shall include an aviation plan, which shall fulfill the statewide aviation

planning requirements of the federal government, coordinate statewide aviation planning, and identify the program needs for public use and state airports. [1993 c 446 § 6.]

47.06.070 Marine ports and navigation plan. The state-interest component of the statewide multimodal transportation plan shall include a state marine ports and navigation plan, which shall assess the transportation needs of Washington's marine ports, including navigation, and identify transportation system improvements needed to support the international trade and economic development role of Washington's marine ports. [1993 c 446 § 7.]

47.06.080 Freight rail plan. The state-interest component of the statewide multimodal transportation plan shall include a state freight rail plan, which shall fulfill the statewide freight rail planning requirements of the federal government, identify freight rail mainline issues, identify light-density freight rail lines threatened with abandonment, establish criteria for determining the importance of preserving the service or line, and recommend priorities for the use of state rail assistance and state rail banking program funds, as well as other available sources of funds. The plan shall also identify existing intercity rail rights of way that should be preserved for future transportation use. [1993 c 446 § 8.]

47.06.090 Intercity passenger rail plan. The state-interest component of the statewide multimodal transportation plan shall include an intercity passenger rail plan, which shall analyze existing intercity passenger rail service and recommend improvements to that service under the state passenger rail service program including depot improvements, potential service extensions, and ways to achieve higher train speeds.

For purposes of maintaining and preserving any state-owned component of the state's passenger rail program, the statewide multimodal transportation plan must identify all such assets and provide a preservation plan based on lowest life cycle cost methodologies. [2002 c 5 § 414; 1993 c 446 § 9.]

Finding—Intent—2002 c 5: See note following RCW 47.06.050.

Captions not law—Severability—2002 c 5: See notes following RCW 47.01.012.

47.06.100 Bicycle transportation and pedestrian walkways plan. The state-interest component of the statewide multimodal transportation plan shall include a bicycle transportation and pedestrian walkways plan, which shall propose a statewide strategy for addressing bicycle and pedestrian transportation, including the integration of bicycle and pedestrian pathways with other transportation modes; the coordination between local governments, regional agencies, and the state in the provision of such facilities; the role of such facilities in reducing traffic congestion; and an assessment of statewide bicycle and pedestrian transportation needs. This plan shall satisfy the federal requirement for a long-range bicycle transportation and pedestrian walkways plan. [1993 c 446 § 10.]

47.06.110 Public transportation plan. The state-interest component of the statewide multimodal transportation plan shall include a state public transportation plan that:

(1) Articulates the state vision of an interest in public transportation and provides quantifiable objectives, including benefits indicators;

(2) Identifies the goals for public transit and the roles of federal, state, regional, and local entities in achieving those goals;

(3) Recommends mechanisms for coordinating state, regional, and local planning for public transportation;

(4) Recommends mechanisms for coordinating public transportation with other transportation services and modes;

(5) Recommends criteria, consistent with the goals identified in subsection (2) of this section and with RCW 82.44.180 (2) and (3), for existing federal authorizations administered by the department to transit agencies; and

(6) Recommends a statewide public transportation facilities and equipment management system as required by federal law.

In developing the state public transportation plan, the department shall involve local jurisdictions, public and private providers of transportation services, nonmotorized interests, and state agencies with an interest in public transportation, including but not limited to the departments of community, trade, and economic development, social and health services, and ecology, the office of the superintendent of public instruction, the office of the governor, and the office of financial management.

The department shall submit an initial report to the legislative transportation committee by December 1, 1993, and shall provide annual reports summarizing the plan's progress each year thereafter. [1996 c 186 § 512; 1995 c 399 § 120; 1993 c 446 § 11.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Environmental review of transportation projects: RCW 47.01.290.

47.06.120 High-capacity transportation planning and regional transportation planning—Role of department. The department's role in high-capacity transportation planning and regional transportation planning is to administer state planning grants for these purposes, represent the interests of the state in these regional planning processes, and coordinate other department planning with these regional efforts, including those under RCW 81.104.060. [1993 c 446 § 12.]

47.06.130 Special planning studies—Cost-benefit analysis. (1) The department may carry out special transportation planning studies to resolve specific issues with the development of the state transportation system or other statewide transportation issues.

(2) The department shall conduct multimodal corridor analyses on major congested corridors where needed improvements are likely to cost in excess of one hundred million dollars. Analysis will include the cost-effectiveness of all feasible strategies in addressing congestion or improving mobility within the corridor, and must recommend the most effective strategy or mix of strategies to address identified deficiencies. A long-term view of corridors must be

employed to determine whether an existing corridor should be expanded, a city or county road should become a state route, and whether a new corridor is needed to alleviate congestion and enhance mobility based on travel demand. To the extent practicable, full costs of all strategies must be reflected in the analysis. At a minimum, this analysis must include:

(a) The current and projected future demand for total person trips on that corridor;

(b) The impact of making no improvements to that corridor;

(c) The daily cost per added person served for each mode or improvement proposed to meet demand;

(d) The cost per hour of travel time saved per day for each mode or improvement proposed to meet demand; and

(e) How much of the current and anticipated future demand will be met and left unmet for each mode or improvement proposed to meet demand.

The end result of this analysis will be to provide a cost-benefit analysis by which policymakers can determine the most cost-effective improvement or mode, or mix of improvements and modes, for increasing mobility and reducing congestion. [2002 c 5 § 404; 1993 c 446 § 13.]

Effective date—2002 c 5 §§ 401-404: See note following RCW 47.05.010.

Captions not law—Severability—2002 c 5: See notes following RCW 47.01.012.

47.06.140 Transportation facilities and services of statewide significance—Level of service standards. The legislature declares the following transportation facilities and services to be of statewide significance: The interstate highway system, interregional state principal arterials including ferry connections that serve statewide travel, intercity passenger rail services, intercity high-speed ground transportation, major passenger intermodal terminals excluding all airport facilities and services, the freight railroad system, the Columbia/Snake navigable river system, marine port facilities and services that are related solely to marine activities affecting international and interstate trade, and high-capacity transportation systems serving regions as defined in RCW 81.104.015. The department, in cooperation with regional transportation planning organizations, counties, cities, transit agencies, public ports, private railroad operators, and private transportation providers, as appropriate, shall plan for improvements to transportation facilities and services of statewide significance in the statewide multimodal plan. Improvements to facilities and services of statewide significance identified in the statewide multimodal plan are essential state public facilities under RCW 36.70A.200.

The department of transportation, in consultation with local governments, shall set level of service standards for state highways and state ferry routes of statewide significance. Although the department shall consult with local governments when setting level of service standards, the department retains authority to make final decisions regarding level of service standards for state highways and state ferry routes of statewide significance. In establishing level of service standards for state highways and state ferry routes of statewide significance, the department shall consider the necessary balance between providing for the free interjurisdic-

tional movement of people and goods and the needs of local communities using these facilities. [1998 c 171 § 7.]

Highways of statewide significance: RCW 47.05.022.

47.06.900 Captions not part of law—1993 c 446. Captions used in this chapter do not constitute any part of the law. [1993 c 446 § 16.]

Chapter 47.06A RCW FREIGHT MOBILITY

Sections

47.06A.001	Findings.
47.06A.010	Definitions.
47.06A.020	Board—Duties.
47.06A.030	Board—Creation—Membership.
47.06A.040	Board—Administration and staffing.
47.06A.050	Allocation of funds.
47.06A.060	Grants and loans.
47.06A.070	Records.
47.06A.080	Port district development plans.
47.06A.900	Severability—1998 c 175.

47.06A.001 Findings. The legislature finds that:

(1) Washington state is uniquely positioned as a gateway to the global economy. As the most trade-dependent state in the nation, per capita, Washington's economy is highly dependent on an efficient multimodal transportation network in order to remain competitive.

(2) The vitality of the state's economy is placed at risk by growing traffic congestion that impedes the safe and efficient movement of goods. The absence of a comprehensive and coordinated state policy that facilitates freight movements to local, national, and international markets limits trade opportunities.

(3) Freight corridors that serve international and domestic interstate and intrastate trade, and those freight corridors that enhance the state's competitive position through regional and global gateways are strategically important. In many instances, movement of freight on these corridors is diminished by: Barriers that block or delay access to intermodal facilities where freight is transferred from one mode of transport to another; conflicts between rail and road traffic; constraints on rail capacity; highway capacity constraints, congestion, and condition; waterway system depths that affect capacity; and institutional, regulatory, and operational barriers.

(4) Rapidly escalating population growth is placing an added burden on streets, roads, and highways that serve as freight corridors. Community benefits from economic activity associated with freight movement often conflict with community concerns over safety, mobility, [and] environmental quality. Efforts to minimize community impacts in areas of high freight movements that encourage the active participation of communities in the early stages of proposed public and private infrastructure investments will facilitate needed freight mobility improvements.

(5) Ownership of the freight mobility network is fragmented and spread across various public jurisdictions, private companies, and state and national borders. Transportation projects have grown in complexity and size, requiring more resources and longer implementation time frames. Currently, there is no comprehensive and integrated framework for

planning the freight mobility needs of public and private stakeholders in the freight transportation system. A coordinated planning process should identify new infrastructure investments that are integrated by public and private planning bodies into a multimodal and multijurisdictional network in all areas of the state, urban and rural, east and west. The state should integrate freight mobility goals with state policy on related issues such as economic development, growth management, and environmental management.

(6) State investment in projects that enhance or mitigate freight movements, should pay special attention to solutions that utilize a corridor solution to address freight mobility issues with important transportation and economic impacts beyond any local area. The corridor approach builds partnerships and fosters coordinated planning among jurisdictions and the public and private sectors.

(7) It is the policy of the state of Washington that limited public transportation funding and competition between freight and general mobility improvements for the same fund sources require strategic, prioritized freight investments that reduce barriers to freight movement, maximize cost-effectiveness, yield a return on the state's investment, require complementary investments by public and private interests, and solve regional freight mobility problems. State financial assistance for freight mobility projects must leverage other funds from all potential partners and sources, including federal, county, city, port district, and private capital. [1998 c 175 § 1.]

47.06A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the freight mobility strategic investment board created in RCW 47.06A.030.

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

(3) "Freight mobility" means the safe, reliable, and efficient movement of goods within and through the state to ensure the state's economic vitality.

(4) "Local governments" means cities, towns, counties, special purpose districts, port districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts.

(5) "Public entity" means a state agency, city, town, county, port district, or municipal or regional planning organization.

(6) "Strategic freight corridor" means a transportation corridor of great economic importance within an integrated freight system that:

(a) Serves international and domestic interstate and intrastate trade;

(b) Enhances the state's competitive position through regional and global gateways;

(c) Carries freight tonnages of at least:

(i) Four million gross tons annually on state highways, city streets, and county roads;

(ii) Five million gross tons annually on railroads; or

(iii) Two and one-half million net tons on waterways; and

(d) Has been designated a strategic corridor by the board under RCW 47.06A.020(3). However, new alignments to,

realignments of, and new links to strategic corridors that enhance freight movement may qualify, even though no tonnage data exists for facilities to be built in the future. [1998 c 175 § 2.]

47.06A.020 Board—Duties. (1) The board shall:

(a) Adopt rules and procedures necessary to implement the freight mobility strategic investment program;

(b) Solicit from public entities proposed projects that meet eligibility criteria established in accordance with subsection (4) of this section; and

(c) Review and evaluate project applications based on criteria established under this section, and prioritize and select projects comprising a portfolio to be funded in part with grants from state funds appropriated for the freight mobility strategic investment program. In determining the appropriate level of state funding for a project, the board shall ensure that state funds are allocated to leverage the greatest amount of partnership funding possible. After selecting projects comprising the portfolio, the board shall submit them as part of its budget request to the office of financial management and the legislature. The board shall ensure that projects submitted as part of the portfolio are not more appropriately funded with other federal, state, or local government funding mechanisms or programs. The board shall reject those projects that appear to improve overall general mobility with limited enhancement for freight mobility.

The board shall provide periodic progress reports on its activities to the office of financial management and the legislative transportation committee.

(2) The board may:

(a) Accept from any state or federal agency, loans or grants for the financing of any transportation project and enter into agreements with any such agency concerning the loans or grants;

(b) Provide technical assistance to project applicants;

(c) Accept any gifts, grants, or loans of funds, property, or financial, or other aid in any form from any other source on any terms and conditions which are not in conflict with this chapter;

(d) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and

(e) Do all things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

(3) The board shall designate strategic freight corridors within the state. The board shall update the list of designated strategic corridors not less than every two years, and shall establish a method of collecting and verifying data, including information on city and county-owned roadways.

(4) From June 11, 1998, through the biennium ending June 30, 2001, the board shall utilize threshold project eligibility criteria that, at a minimum, includes the following:

(a) The project must be on a strategic freight corridor;

(b) The project must meet one of the following conditions:

(i) It is primarily aimed at reducing identified barriers to freight movement with only incidental benefits to general or personal mobility; or

(ii) It is primarily aimed at increasing capacity for the movement of freight with only incidental benefits to general or personal mobility; or

(iii) It is primarily aimed at mitigating the impact on communities of increasing freight movement, including roadway/railway conflicts; and

(c) The project must have a total public benefit/total public cost ratio of equal to or greater than one.

(5) From June 11, 1998, through the biennium ending June 30, 2001, the board shall use the multicriteria analysis and scoring framework for evaluating and ranking eligible freight mobility and freight mitigation projects developed by the freight mobility project prioritization committee and contained in the January 16, 1998, report entitled "Project Eligibility, Priority and Selection Process for a Strategic Freight Investment Program." The prioritization process shall measure the degree to which projects address important program objectives and shall generate a project score that reflects a project's priority compared to other projects. The board shall assign scoring points to each criterion that indicate the relative importance of the criterion in the overall determination of project priority. After June 30, 2001, the board may supplement and refine the initial project priority criteria and scoring framework developed by the freight mobility project prioritization committee as expertise and experience is gained in administering the freight mobility program.

(6) It is the intent of the legislature that each freight mobility project contained in the project portfolio submitted by the board utilize the greatest amount of nonstate funding possible. The board shall adopt rules that give preference to projects that contain the greatest levels of financial participation from nonprogram fund sources. The board shall consider twenty percent as the minimum partnership contribution, but shall also ensure that there are provisions allowing exceptions for projects that are located in areas where minimal local funding capacity exists or where the magnitude of the project makes the adopted partnership contribution financially unfeasible.

(7) The board shall develop and recommend policies that address operational improvements that primarily benefit and enhance freight movement, including, but not limited to, policies that reduce congestion in truck lanes at border crossings and weigh stations and provide for access to ports during nonpeak hours. [1999 c 216 § 1; 1998 c 175 § 3.]

47.06A.030 Board—Creation—Membership. (1)

The freight mobility strategic investment board is created. The board shall convene by July 1, 1998.

(2) The board is composed of twelve members. The following members are appointed by the governor for terms of four years, except that five members initially are appointed for terms of two years: (a) Two members, one of whom is from a city located within or along a strategic freight corridor, appointed from a list of at least four persons nominated by the association of Washington cities or its successor; (b) two members, one of whom is from a county having a strategic freight corridor within its boundaries, appointed from a list of at least four persons nominated by the Washington state association of counties or its successor; (c) two members, one of whom is from a port district located within or along a strategic freight corridor, appointed from a list of at least four persons nominated by the Washington public ports association or its successor; (d) one member representing the office of financial management; (e) one member appointed as

a representative of the trucking industry; (f) one member appointed as a representative of the railroads; (g) the secretary of the department of transportation; (h) one member representing the steamship industry; and (i) one member of the general public. In appointing the general public member, the governor shall endeavor to appoint a member with special expertise in relevant fields such as public finance, freight transportation, or public works construction. The governor shall appoint the general public member as chair of the board. In making appointments to the board, the governor shall ensure that each geographic region of the state is represented.

(3) Members of the board shall be reimbursed for reasonable and customary travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) If a vacancy on the board occurs by death, resignation, or otherwise, the governor shall fill the vacant position for the unexpired term. Each vacancy in a position appointed from lists provided by the associations and departments under subsection (2) of this section must be filled from a list of at least four persons nominated by the relevant association or associations.

(5) The appointments made in subsection (2) of this section are not subject to confirmation. [1999 c 216 § 2; 1998 c 175 § 4.]

47.06A.040 Board—Administration and staffing.

The board, at its option, may either appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board or make provisions ensuring the responsibilities of the executive director are carried out by an existing transportation-related state agency or by private contract. Staff support to the board shall be provided by the department of transportation, the transportation improvement board, and the county road administration board, or their successor agencies. [1999 c 216 § 3; 1998 c 175 § 5.]

47.06A.050 Allocation of funds. (1) For the purpose of allocating funds for the freight mobility strategic investment program, the board shall allocate the first fifty-five percent of funds to the highest priority projects, without regard to location.

(2) The remaining funds shall be allocated equally among three regions of the state, defined as follows:

(a) The Puget Sound region includes King, Pierce, and Snohomish counties;

(b) The western Washington region includes Clallum, Jefferson, Island, Kitsap, San Juan, Skagit, Whatcom, Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston, and Wahkiakum counties; and

(c) The eastern Washington region includes Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Whitman, Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, and Yakima counties.

(3) If a region does not have enough qualifying projects to utilize its allocation of funds, the funds will be made available to the next highest priority project, without regard to location.

(4) In the event that a proposal contains projects in more than one region, for purposes of assuring that equitable geo-

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graphic distributions are made under subsection (2) of this section, the board shall evaluate the proposal and proportionally assign the benefits that are attributable to each region.

(5) If the board identifies a project for funding, but later determines that the project is not ready to proceed at the time the legislature's funding decision is pending, the board shall recommend removing the project from consideration and the next highest priority project shall be substituted in the project portfolio. Any project removed from funding consideration because it is not ready to proceed shall retain its position on the priority project list and is eligible to be recommended for funding in the next project portfolio submitted by the board. [1998 c 175 § 6.]

47.06A.060 Grants and loans. In order to aid the financing of eligible freight mobility projects, the board may:

(1) Make grants or loans from funds appropriated for the freight mobility strategic investment program for the purpose of financing freight mobility projects. The board may require terms and conditions as it deems necessary or convenient to carry out the purposes of this chapter.

(2) The state shall not bear the financial burden for project costs unrelated to the movement of freight. Project amenities unrelated to the movement of freight may not be submitted to the board as part of a project proposal under the freight mobility strategic investment program.

(3) All freight mobility projects aided in whole or in part under this chapter must have a public entity designated as the lead project proponent. [1998 c 175 § 7.]

47.06A.070 Records. The board shall keep proper records and shall be subject to audit by the state auditor. [1998 c 175 § 8.]

47.06A.080 Port district development plans. Port districts in the state shall submit their development plans to the relevant regional transportation planning organization or metropolitan planning organization, the department, and affected cities and counties to better coordinate the development and funding of freight mobility projects. [1998 c 175 § 9.]

47.06A.900 Severability—1998 c 175. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 175 § 15.]

Chapter 47.06B RCW

COORDINATING SPECIAL NEEDS TRANSPORTATION

Sections

47.06B.010	Finding—Intent.
47.06B.012	Definitions.
47.06B.015	Program for Agency Coordinated Transportation.
47.06B.020	Agency council on coordinated transportation—Creation, membership, staff.
47.06B.030	Council—Duties (<i>as amended by 1999 c 372</i>).
47.06B.030	Council—Duties (<i>as amended by 1999 c 385</i>).
47.06B.040	Local planning forums.
47.06B.900	Council—Termination.

47.06B.901 Repealer.

47.06B.010 Finding—Intent. (*Effective until June 30, 2008.*) The legislature finds that transportation systems for persons with special needs are not operated as efficiently as possible. In some cases, programs established by the legislature to assist persons with special needs can not be accessed due to these inefficiencies and coordination barriers.

It is the intent of the legislature that public transportation agencies, pupil transportation programs, private nonprofit transportation providers, and other public agencies sponsoring programs that require transportation services coordinate those transportation services. Through coordination of transportation services, programs will achieve increased efficiencies and will be able to provide more rides to a greater number of persons with special needs. [1999 c 385 § 1; 1998 c 173 § 1.]

47.06B.012 Definitions. (*Effective until June 30, 2008.*) The definitions in this section apply throughout this chapter.

(1) "Persons with special transportation needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation.

(2) "Special needs coordinated transportation" is transportation for persons with special transportation needs that is developed through a collaborative community process involving transportation providers; human service programs and agencies; consumers; social, educational, and health service providers; employer and business representatives; employees and employee representatives; and other affected parties. [1999 c 385 § 2.]

47.06B.015 Program for Agency Coordinated Transportation. (*Effective until June 30, 2008.*) In order to increase efficiency, to reduce waste and duplication, to enable people to access social and health services, to provide a basic level of mobility, and to extend and improve transportation services to people with special transportation needs, the state shall implement the Program for Agency Coordinated Transportation. The program will improve transportation efficiency and effectiveness to maximize the use of community resources so that more people can be served within available funding levels.

The Program for Agency Coordinated Transportation will facilitate a statewide approach to coordination and will support the development of community-based coordinated transportation systems that exhibit the following characteristics:

(1) Organizations serving persons with special transportation needs share responsibility for ensuring that customers can access services.

(2) There is a single entry process for customers to use to have trips arranged and scheduled, so the customer does not have to contact different locations based on which sponsoring agency or program is paying for the trip.

(3) A process is in place so that when decisions are made by service organizations on facility siting or program policy implementation, the costs of client transportation and the

potential effects on the client transportation costs of other agencies or programs are considered. Affected agencies are given an opportunity to influence the decision if the potential impact is negative.

(4) Open local market mechanisms give all providers who meet minimum standards an opportunity to participate in the program, and, in addition, allow for cost comparisons so that purchasers can select the least expensive trip most appropriate to the customer's needs.

(5) There is flexibility in using the available vehicles in a community so that the ability to transport people is not restricted by categorical claims to vehicles.

(6) There is maximum sharing of operating facilities and administrative services, to avoid duplication of costly program elements.

(7) Trip sponsors and service providers have agreed on a process for allocating costs and billing when they share use of vehicles.

(8) Minimum standards exist for at least safety, driver training, maintenance, vehicles, and technology to eliminate barriers that may prevent sponsors from using each other's vehicles or serving each other's clients.

(9) The system is user friendly. The fact that the system is supported by a multitude of programs and agencies with different eligibility, contracting, service delivery, payment, and funding structures does not negatively affect the customer's ability to access service.

(10) Support is provided for research, technology improvements, and sharing of best practices from other communities, so that the system can be continually improved.

(11) There are performance goals and an evaluation process that leads to continuous system improvement. [1999 c 385 § 3.]

47.06B.020 Agency council on coordinated transportation—Creation, membership, staff. (*Effective until June 30, 2008.*) (1) The agency council on coordinated transportation is created. The council is composed of nine voting members and eight nonvoting, legislative members.

(2) The nine voting members are the superintendent of public instruction or a designee, the secretary of transportation or a designee, the secretary of the department of social and health services or a designee, and six members appointed by the governor as follows:

(a) One representative from the office of the governor;

(b) Two persons who are consumers of special needs transportation services;

(c) One representative from the Washington association of pupil transportation;

(d) One representative from the Washington state transit association; and

(e) One of the following:

(i) A representative from the community transportation association of the Northwest; or

(ii) A representative from the community action council association.

(3) The eight nonvoting members are legislators as follows:

(a) Four members from the house of representatives, two from each of the two largest caucuses, appointed by the speaker of the house of representatives, two who are mem-

bers of the house transportation policy and budget committee and two who are members of the house appropriations committee; and

(b) Four members from the senate, two from each of the two largest caucuses, appointed by the president of the senate, two members of the transportation committee and two members of the ways and means committee.

(4) Gubernatorial appointees of the council will serve two-year terms. Members may not receive compensation for their service on the council, but will be reimbursed for actual and necessary expenses incurred in performing their duties as members as set forth in RCW 43.03.220.

(5) The secretary of transportation or a designee shall serve as the chair.

(6) The department of transportation shall provide necessary staff support for the council.

(7) The council may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the council and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710. [1998 c 173 § 2.]

47.06B.030 Council—Duties (as amended by 1999 c 372). (Effective until June 30, 2008.) The council shall:

- (1) Develop standards and strategies for coordinating special needs transportation;
- (2) Identify and develop, fund as resources are made available, and monitor coordinated transportation pilot projects;
- (3) Disseminate and encourage the widespread implementation of successful demonstration projects;
- (4) Identify and address barriers to transportation coordination;
- (5) Recommend to the legislature changes in law to assist coordination of transportation services;
- (6) Act as an information clearinghouse and advocate for coordinated transportation;
- (7) Petition the office of financial management to make whatever changes are deemed necessary to identify transportation costs in all executive agency budgets;
- (8) Report to the legislature by December 1, 1998, on council activities including, but not limited to, what demonstration projects have been undertaken, how coordination affected service levels, and whether these efforts produced savings that allowed expansion of services. Reports must be made once every two years thereafter, and other times as the council deems necessary. [1999 c 372 § 13; 1998 c 173 § 3.]

47.06B.030 Council—Duties (as amended by 1999 c 385). (Effective until June 30, 2008.) To assure implementation of the Program for Agency Coordinated Transportation, the council, in coordination with stakeholders, shall:

- (1) Develop standards and strategies for coordinating special needs transportation;
- (2) Identify and develop, fund as resources are made available, and monitor coordinated transportation pilot projects;
- (3) Disseminate and encourage the widespread implementation of successful demonstration projects;
- (4) Identify and address barriers to transportation coordination;
- (5) Recommend to the legislature changes in law to assist coordination of transportation services;
- (6) Act as an information clearinghouse and advocate for coordinated transportation;
- (7) guidelines for local planning of coordinated transportation in accordance with this chapter;
- (2) Initiate local planning processes by contacting the board of commissioners and county councils in each county and encouraging them to convene local planning forums for the purpose of implementing special needs coordinated transportation programs at the community level;

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(3) Work with local community forums to designate a local lead organization that shall cooperate and coordinate with private and nonprofit transportation brokers and providers, local public transportation agencies, local governments, and user groups;

(4) Provide a forum at the state level in which state agencies will discuss and resolve coordination issues and program policy issues that may impact transportation coordination and costs;

(5) Provide guidelines for state agencies to use in creating policies, rules, or procedures to encourage the participation of their constituents in community-based planning and coordination, in accordance with this chapter;

(6) Facilitate state-level discussion and action on problems and barriers identified by the local forums that can only be resolved at either the state or federal level;

(7) Develop and test models for determining the impacts of facility siting and program policy decisions on transportation costs;

(8) Develop methodologies and provide support to local and state agencies in identifying transportation costs;

(9) Develop guidelines for setting performance measures and evaluating performance;

(10) Develop monitoring reporting criteria and processes to assess state and local level of participation with this chapter;

(11) Administer and manage grant funds to develop, test, and facilitate the implementation of coordinated systems;

(12) Develop minimum standards for safety, driver training, and vehicles, and provide models for processes and technology to support coordinated service delivery systems;

(13) Provide a clearinghouse for sharing information about transportation coordination best practices and experiences;

(14) Promote research and development of methods and tools to improve the performance of transportation coordination in the state;

(15) Provide technical assistance and support to communities;

(16) Facilitate, monitor, provide funding as available, and give technical support to local planning processes;

(17) Form, convene, and give staff support to stakeholder work groups as needed to continue work on removing barriers to coordinated transportation;

(18) Advocate for the coordination of transportation for people with special transportation needs at the federal, state, and local levels;

(19) Recommend to the legislature changes in laws to assist coordination of transportation services;

(20) Petition the office of financial management to make whatever changes are deemed necessary to identify transportation costs in all executive agency budgets;

((8)) (21) Report to the legislature by December 1, ((1998)) 2000, on council activities including, but not limited to, the progress of community planning processes, what demonstration projects have been undertaken, how coordination affected service levels, and whether these efforts produced savings that allowed expansion of services. Reports must be made once every two years thereafter, and other times as the council deems necessary. [1999 c 385 § 5; 1998 c 173 § 3.]

Reviser's note: RCW 47.06B.030 was amended twice during the 1999 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

47.06B.040 Local planning forums. (Effective until June 30, 2008.) The council may request, and may require as

a condition of receiving coordination grants, selected county governments to convene local planning forums and invite participation of all entities, including tribal governments, that serve or transport persons with special transportation needs. Counties are encouraged to coordinate and combine their forums and planning processes with other counties, as they find it appropriate. The local community forums must:

- (1) Designate a lead organization to facilitate the community planning process on an ongoing basis;
- (2) Identify functional boundaries for the local coordinated transportation system;
- (3) Clarify roles and responsibilities of the various participants;

- (4) Identify community resources and needs;
- (5) Prepare a plan for developing a coordinated transportation system that meets the intent of this chapter, addresses community needs, and efficiently uses community resources to address unmet needs;
- (6) Implement the community coordinated transportation plan;
- (7) Develop performance measures consistent with council guidelines;
- (8) Develop a reporting process consistent with council guidelines;
- (9) Raise issues and barriers to the council when resolution is needed at either the state or federal level;
- (10) Develop a process for open discussion and input on local policy and facility siting decisions that may have an impact on the special needs transportation costs and service delivery of other programs and agencies in the community. [1999 c 385 § 6.]

47.06B.900 Council—Termination. The agency council on coordinated transportation is terminated on June 30, 2007, as provided in RCW 47.06B.901. [1999 c 385 § 7; 1998 c 173 § 6.]

47.06B.901 Repealer. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2008:

- (1) RCW 47.06B.010 and 1999 c 385 § 1 & 1998 c 173 § 1;
- (2) RCW 47.06B.012 and 1999 c 385 § 2;
- (3) RCW 47.06B.015 and 1999 c 385 § 3;
- (4) RCW 47.06B.020 and *1999 c 385 § 4 & 1998 c 173 § 2;
- (5) RCW 47.06B.030 and 1999 c 385 § 5 & 1998 c 173 § 3; and
- (6) RCW 47.06B.040 and 1999 c 385 § 6. [1999 c 385 § 8; 1998 c 173 § 7.]

*Reviser's note: 1999 c 385 § 4 was vetoed.

Chapter 47.06C RCW

PERMIT EFFICIENCY AND ACCOUNTABILITY

Sections

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47.06C.900	Captions not law—2001 1st sp.s. c 2.
47.06C.901	Expiration date—2001 1st sp.s. c 2.
47.06C.902	Effective date—2001 1st sp.s. c 2.
47.06C.903	Severability—2001 1st sp.s. c 2.

47.06C.010 Findings—Intent. (*Expires March 31, 2006.*) The legislature finds that the public health and safety of its citizens, the natural resources, and the environment are vital interests of the state that need to be protected and preserved. The legislature further finds that the safety of the

traveling public and the state's economic well-being are vital interests that depend upon the development of cost-effective and efficient transportation systems planned, designed, constructed, and maintained through expedited permit decision-making processes.

It is the intent of the legislature to achieve transportation permit reform that expedites the delivery of transportation projects through a streamlined approach to environmental permit decision making. To optimize the limited resources available for transportation system improvements and environmental protection, state regulatory and natural resource agencies, public and private sector interests, Indian tribes, local and regional governments, applicable federal agencies, and the department of transportation must work cooperatively to establish common goals, minimize project delays, develop consistency in the application of environmental standards, maximize environmental benefits through coordinated investment strategies, and eliminate duplicative processes through assigned responsibilities of selected permit drafting and compliance activities between state and federal agencies.

Therefore, the transportation permit efficiency and accountability committee is created. The committee shall integrate current environmental standards, but may not create new environmental standards. The committee shall conduct three environmental permit streamlining pilot projects and create a process to develop general permits. Additionally, the committee shall seek federal delegation to the state where appropriate to streamline transportation projects. [2003 c 8 § 1; 2001 1st sp.s. c 2 § 1.]

Effective date—2003 c 8: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2003]." [2003 c 8 § 4.]

47.06C.020 Definitions. (*Expires March 31, 2006.*)

The definitions in this section apply throughout this chapter unless the context indicates otherwise.

(1) "Assigned responsibilities" means those components of developing and implementing environmental permits, including but not limited to, environmental review and assessment, selected permit drafting, and selected on-site compliance activities that may be conducted by the department.

(2) "Best available information" means the existing sources of data, including limiting factors analyses required under chapter 77.85 RCW that can be used to make informed decisions regarding environmental conditions within a watershed.

(3) "Best management practices" means currently available and generally accepted techniques, including new technologies or strategies that seek to reduce the negative impacts of transportation facilities, projects, and services on communities and the environment, and promote more efficient and effective use of transportation facilities.

(4) "Committee" means the transportation permit efficiency and accountability committee created in RCW 47.06C.030.

(5) "Least cost planning" means the use of best available information within a watershed basin applied to transportation decision making in the planning, permit decision making, and mitigation phases of a project.

(6) "Low-impact development project" means an activity or series of actions that conform to a comprehensive land use planning and engineering design approach with a goal of maintaining or restoring existing natural habitat functions and hydrologic regime of urban and developing watersheds. These projects incorporate strategic watershed planning with site-specific management techniques to reduce development impacts to better replicate natural watershed hydrology and water quality, while allowing for development or infrastructure rehabilitation to occur.

(7) "One-stop permit decision making" means a coordinated permit decision-making process that streamlines environmental review and permit decision making for transportation projects by providing concurrent, consolidated review by each agency required to review the project.

(8) "Programmatic approach" means a permit or other action that covers a geographic or statewide area and applies to a variety of projects, activities, or locales. A programmatic approach may allow actions to proceed without individual approval by each permit decision-making agency.

(9) "Transportation project of statewide significance" means a surface transportation project or combination of surface transportation projects, that crosses multiple city or county jurisdictional boundaries or connects major state destinations in support of the state's economy and is so designated by the department of transportation and approved by the transportation committees of the senate and house of representatives. The transportation committees of the senate and house of representatives may also jointly designate these projects. The pilot projects established in this chapter are examples of transportation projects of statewide significance, but transportation projects of statewide significance are not limited to the pilot projects.

(10) "Watershed" means a water resource inventory area. [2001 1st sp.s. c 2 § 2.]

47.06C.030 Transportation permit efficiency and accountability committee. (Expires March 31, 2006.) The transportation permit efficiency and accountability committee is created.

(1) The committee consists of nine voting members, including two members from the house of representatives, one from each of the two largest caucuses; two senators, one from each of the two largest caucuses; one member designated by the secretary of transportation; one member designated by the director of fish and wildlife; one member designated by the director of ecology; one member designated by the Association of Washington Cities; and one member designated by the Washington State Association of Counties. The committee shall elect a chair from the four legislators appointed to the committee.

(2) The committee also includes eight nonvoting members, including one member designated by the Northwest Indian Fisheries Commission; one member designated by the Columbia River Intertribal Fisheries Commission; one member designated by the Consulting Engineers Council of Washington; one member designated by the Associated General Contractors of Washington; one member designated by the Association of Washington Business; one member designated by the Washington State Building and Construction Trades Council; one member designated by statewide envi-

ronmental organizations; and one member designated by the State Fish and Wildlife Commission, to represent the interests of citizens engaged in fish and wildlife recovery.

(3) A representative from the department of natural resources and representatives from federal regulatory and transportation agencies, including the Environmental Protection Agency, National Marine Fisheries Service, United States Army Corps of Engineers, Federal Highways Administration, and United States Fish and Wildlife Service must be invited to participate in committee deliberations as nonvoting members.

(4) The committee may create technical subcommittees as needed. Technical subcommittees created for a specific pilot project or pilot projects must include, but are not limited to, representatives of local governments from jurisdictions affected by those projects. Recommendations made by a technical subcommittee must be approved by a majority of the voting members of the committee.

(5) Nonvoting members will not be compensated but will receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(6) The department of transportation office of environmental affairs shall provide administrative and clerical assistance to the committee.

(7) No vote of the committee may overrule existing statutes, regulations, or local ordinances. [2001 1st sp.s. c 2 § 3.]

47.06C.040 Committee responsibilities. (Expires March 31, 2006.) (1)(a) The committee and its authorized technical subcommittees shall develop a one-stop permit decision-making process that uses interdisciplinary review of transportation projects of statewide significance to streamline and expedite permit decision making. The committee shall collaborate with appropriate agencies and parties to identify existing environmental standards, to assess the application of those standards, and develop an integrated permitting process based upon environmental standards and best management practices, which may use prescriptive or performance standards, for transportation projects of statewide significance that can be applied with certainty, consistency, and assurance of swift permit action, while taking into account the varying environmental conditions throughout the state.

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

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

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

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

(a) Within six months from the first meeting of the committee, the subcommittee shall create a process to develop a programmatic approach for transportation projects. The committee shall review the department's construction project list to determine which projects or activities may be included in the programmatic approach and develop agreements with a goal of covering seventy percent of those projects or activities with programmatic agreements. At a minimum, this process must require that decisions on minor variations to the requirements of a programmatic approach must be provided by the permit decision-making agencies within twenty-one days of submittal.

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

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

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

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

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

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

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

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

(6) The committee shall appoint a task force of representatives from cities and counties, the department of transportation, and other agencies as appropriate to identify one or more city or county permits for activities for which uniform standards can be developed for application by local governments. It is the goal of the task force to develop uniform standards and best practices for these identified permits that may be used by local governments in issuing their permits. The task force shall identify strategies for local governments to adapt these standards and best practices to local conditions. The committee shall encourage local governments to use these standards and best practices in local ordinances. The task force shall submit a progress report to the committee and the legislature by December 31, 2003, and shall conclude its

work and report its final recommendations for review to the committee and the legislature no later than December 31, 2004.

(7) The committee shall develop and prioritize a list of permit streamlining opportunities, specifically identifying substantive and procedural duplications and recommendations for resolving those duplications. The committee shall evaluate current laws and regulations and develop recommendations on ways to minimize the lapsing of permits. The committee shall evaluate flexible approaches that maximize transportation and environmental interests and make recommendations regarding where those approaches should be implemented.

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

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

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

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

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

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

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

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

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

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

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

(i) How to delegate consistent with federal permit streamlining efforts contained in new federal transportation authorizations and under Presidential Executive Order number 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews, September 18, 2002;

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

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

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

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

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

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

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

(13) The committee shall provide a summary report to the legislature on December 31, 2003, and every six months thereafter that details the committee's status and performance and its progress in implementing its master work plan. [2003 c 8 § 2; 2001 1st sp.s. c 2 § 4.]

Effective date—2003 c 8: See note following RCW 47.06C.010.

47.06C.050 Pilot projects. (Expires March 31, 2006.)

(1) The committee shall select and conduct permit reform pilot projects in three locales: (a) Urban near built-out conditions; (b) urban centers serving as crucial rural connectors;

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and (c) rural corridors critical to statewide economic productivity. The pilot projects must test the assignment of responsibilities such as selected permit drafting and selected compliance activities to the department.

(2) The committee shall commence efforts to apply streamlining lessons learned from the streamlined permit process for the pilot projects to as many other transportation projects of statewide significance as quickly as possible. In reporting to the legislature, the committee may recommend statutory or regulatory changes that would result in streamlining for future projects.

(3) The department and permitting agencies shall apply an interim interdisciplinary permit review process for the pilot projects as set forth in this section. This process must provide coordinated review and approval of permit applications; provide coordinated and consolidated public hearings where required by one or more regulatory agencies under state law; and coordinate timelines for permit decision making.

(4) The committee shall give notice to the legislative authority of each affected county and city of the projects the committee has designated as pilot projects. Each county and city notified must be offered the opportunity to participate in the pilot projects as provided for in this chapter. The department shall provide funding assistance for participation.

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

(6) The streamlined process for the pilot projects must be based on the following model:

(a) Step 1: The department and permitting agencies will agree on coordination for environmental review under the state and national environmental policy acts, including document preparation, public comment opportunities, and timelines.

(b) Step 2: For each project, the department will convene a meeting of all entities with permitting authority to review:

(i) The proposed conceptual design for the project and alternative routes, construction approaches, or mitigation approaches;

(ii) All known reviewing entities, permit application and approval requirements, and timelines; and

(iii) A coordinated timeline that allows all statutory requirements to be met.

(c) Step 3: The department will draft all necessary permits to proceed with the preferred alternative using relevant agreements with permitting agencies.

(d) Step 4: The department will provide public notice in conformity with all applicable statutes and regulations and allow the required time for public hearings and written comments.

(e) Step 5: The department may revise the draft permits after consideration of public comments and applying all relevant agreed upon standards.

(f) Step 6: All permits will be disseminated to permitting agencies for final review. All reviews will be completed within forty-five days, at which time the permitting agencies will act upon the permit and either approve the permit or return it without approval.

(g) Step 7: If the permit is returned to the department without approval, the permitting agencies will have one opportunity to identify errors or omissions and any remaining specific deficiencies or circumstances not previously addressed by agreements between the department and agencies that must be met or addressed to be compliant with applicable law. The department may revise the permit as warranted and resubmit the permit to the permitting agency, which will have fifteen days from receipt of the revised permit to take final action.

(h) Step 8: Disputes related to permit decisions will be addressed by the dispute resolution process established by the committee. [2001 1st sp.s. c 2 § 5.]

47.06C.060 Local government participation. (Expires March 31, 2006.) (1) This section establishes procedures for city, town, and county governments to participate in the processes identified in this chapter to provide for coordinated, multijurisdictional environmental review and permitting decisions for pilot projects and transportation projects of statewide significance.

(2) Each city, town, and county within whose boundaries is located or partially located one or more projects identified in subsection (1) of this section, shall elect whether or not to participate in coordinated processes for environmental review and permitting of those projects as required in this chapter. If the city, town, or county elects to participate, it may do so as either a participating entity or as an assigning entity.

(a) If a city, town, or county elects to be considered as a participating entity, the committee must then include a representative designated by the city, town, or county in the coordinated review of the project. The department shall compensate the jurisdiction for technical support required for participation in the process. The jurisdiction will also be eligible for reimbursement for permit fees set by local ordinances and other agreed upon costs associated with the issuance of project permits.

(b) For the purposes of expediting the permit process, a city, town, or county may elect to assign its permit responsibilities under chapter 39.34 RCW to the department simultaneously with its notification to the department as specified in this section. The city, town, or county electing to assign its responsibilities shall enter into an agreement with the department to define the local permit requirements that must be met. Permits issued under the negotiated agreement are presumed to at least meet local environmental permit requirements. A city, town, or county choosing to use this option is eligible for a permit fee set by local ordinances associated with the issuance of the project permits.

(3) If the city, town, or county elects not to participate in the coordinated processes for the pilot projects designated in this chapter or transportation projects of statewide significance

the department will issue the locally required permits, when allowable. The department shall comply with all provisions of city, town, and county ordinances, and the department permit approval is presumed to at least meet the local environmental review and permit requirements.

(4) Any city, town, or county shall notify the department within sixty days of receipt of the committee's notification of project designation, as to whether it elects to be considered as a participating entity or an assigning entity, or elects not to participate in the coordinated process provided in this chapter.

(5) The committee shall review and evaluate the process by which local governments review and approve pilot projects and transportation projects of statewide significance, and shall provide recommendations to the legislature to improve the coordination of the local process with state and federal reviews as part of the reports required by this chapter.

(6) A city, town, or county is not liable for decisions made by the department that result in a failure to comply with city, town, or county ordinances except as provided in the interlocal agreements, and the department shall defend and answer to any actions or complaints challenging the validity of permits issued under this section. [2001 1st sp.s. c 2 § 6.]

47.06C.070 Interim permit process. (Expires March 31, 2006.) Until integrated standards and best management practices have been adopted by the committee, the department may use the following process for transportation projects of statewide significance, including projects requested by a project sponsor.

(1) Step 1: Conceptual description. The department will identify project purposes, the approximate location or alternative locations, and the federal, state, and local agencies that might have authority to review and approve the project or portions of it at any such locations, and a preliminary inter-agency communication list identifying agencies that may be interested in the proposed project and, where known, contact persons in such agencies. If the department is going to proceed with step 2 or to abandon the project, it may complete step 1 by: (a) Providing a summary of the outcome to all agencies on the list; and (b) making the summary available to the public.

(2) Step 2: Early involvement of other agencies. (a) At any time after completing step 1, the department will provide notice to all agencies on the interagency communication list and the public. Within thirty days, or a longer time if specified by the department, each state, local, and federal agency will be encouraged to identify:

(i) A primary contact person to coordinate future communications with the department and other interested agencies regarding the project, or indicate that it has no interest in the project and need not remain on the project information list;

(ii) Its role with respect to the proposed project;

(iii) Additional alternative locations the department should consider and the roles it would expect to have with the project at those locations;

(iv) Other agencies it believes should be added to the list for the project; and

(v) Other information the agency requests the department to consider.

(b) After all state and local agencies on the list have responded, or at least ten days after expiration of the specified response time, the department may complete step 2 by: (i) Proposing one or more conceptual designs for the project at a proposed location and any alternative locations then being considered; (ii) providing a summary of the results of step 2, including a statement that the department considers step 2 to be complete or complete except for specified issues remaining to be resolved with specified agencies, to all agencies on the interagency communication list; and (iii) making the summary available to the public.

(3) Step 3: Identify environmental reviews, permits, and other approvals, application procedures, and decision standards. (a) At any time after completing step 2, the department may initiate step 3 by notice to all agencies on the list and the public. This notice may include a threshold determination on whether an environmental impact statement (EIS) or supplemental EIS will be prepared or an environmental checklist and request for comments on what steps should be taken to comply with chapter 43.21C RCW, the State Environmental Policy Act (SEPA). Within thirty days, or a longer time if specified by the department, each state, local, and federal agency will be encouraged to identify:

- (i) The procedures under which it expects environmental reviews of the project to occur;
- (ii) All permits and other approvals it might require for the project at each alternative location and conceptual design;
- (iii) What is needed for the department to file a complete application for each permit or other approval;
- (iv) The laws, regulations, ordinances, and policies it would administer with respect to the project at each alternative location and conceptual design; and
- (v) Other information the agency requests the department to consider in deciding whether, when, where, or how to proceed with the project.

(b) After all state and local agencies on the list have responded, or at least ten days after expiration of the specified response time, the department may complete step 3 by:

- (i) Adopting a list of all environmental reviews, permits, and other approvals it believes are needed for the project under each alternative being considered;
- (ii) Providing all agencies on the list a copy of that list and a summary of the other results of step 3, including a statement that the department considers step 3 to be complete or complete except for specified issues remaining to be resolved with specified agencies; and
- (iii) Making the list and summary available to the public.

(c) The list and summary will be presumed to accurately identify all environmental reviews, permits, and other approvals needed for each alternative described, what is required for applications to be considered complete, and the standards under which applications will be reviewed and approved, unless an aggrieved agency or person files objections within thirty days after the list and summary are distributed.

(4) Step 4: Tentative selection of preferred alternative.

(a) At any time after completing step 3, the department may initiate step 4 by notice to all agencies on the list and the public. This notice may be accompanied by a scoping notice for an EIS or supplemental EIS or, if available, be accompanied by a draft EIS or supplemental EIS. It also may be accompa-

nied by the department's preliminary analysis of the advantages and disadvantages of each identified alternative, or other information that may be helpful to other interested agencies and the public in identifying advantages and disadvantages. Within fourteen days, or a longer time if specified by the department, each state, local, and federal agency will be encouraged to identify:

(i) For each identified alternative, the specific features it considers significant with respect to its role in environmental reviews, permits, or other approvals for the project; the reasons these features are significant, and any concerns it may have about the alternative because of potential adverse impacts of these features on resources or social policies within its jurisdiction;

(ii) For each feature for which it raises concerns, recommendations on how the potential adverse impacts could be avoided, minimized, and mitigated;

(iii) For each feature for which it raises concerns, an assessment of the relative ranking of each alternative with respect to whether and to what extent these concerns apply;

(iv) Recommendations the agency may have as to which alternatives should be retained or dropped from further consideration, and ways in which alternatives might be modified or combined to address its concerns, recognizing that final decisions can be made only through the applicable environmental review, permit, and other approval processes and the agency making them is not bound with respect to any future decisions it may make regarding the project;

(v) Other information the agency requests the department to consider in deciding whether, when, where, or how to proceed with the project.

(b) After all state and local agencies on the list have responded, or at least ten days after expiration of the specified response time, the department may complete step 4 by:

(i) Selecting a preferred alternative for purposes of all environmental reviews, permits, and other approvals needed for the project;

(ii) Providing all agencies on the list a description of the preferred alternative and summary of the other results of step 4, including a statement that the department considers step 4 to be complete or complete except for specified issues remaining to be resolved with specified agencies; and

(iii) Making the preferred alternative and summary available to the public. The preferred alternative will be identified in all environmental reviews, permits, and other approvals needed for the project.

(5) Step 5: Completing environmental reviews and applications for permits and other approvals. (a) At any time after completing step 4, the department may initiate step 5 by notice to all agencies on the list and the public. A draft EIS or supplemental EIS, the department's draft plans and specifications for the project, and draft applications for some or all permits and other approvals may be provided with the notice or when they subsequently become available. Within thirty days, or a longer time if specified by the department, each state, local, and federal agency will be encouraged to identify:

(i) All concerns it previously raised regarding the alternative, and other alternatives still under consideration, that have not been resolved to its satisfaction;

(ii) Additional concerns it may have, particularly concerns resulting from additional information about the project location and design, and other new information received since the completion of step 4;

(iii) Additional environmental reviews, permits, or other approvals needed for the preferred alternative because of changes in laws, regulations, or policies or changes in the project location or design since these issues were last reviewed in step 3 or 4;

(iv) Changes in applicable requirements for complete applications for permits or other approvals under its jurisdiction since these issues were last reviewed in step 3 or 4;

(v) Other changes in applicable laws, regulations, ordinances, or policies administered by the agency since these issues were last reviewed in step 3 or 4;

(vi) Whether a draft application proposed by the department for a permit or other approval from the agency is complete, and if not, what additional information or other changes are needed for it to be complete.

(b) When all state and local agencies on the list have responded, or at least ten days after expiration of the specified response time, the department may complete step 5 by:

(i) Completing some or all environmental review processes and draft application forms for permits and other approvals that it reasonably believes to be complete;

(ii) Providing all agencies on the interagency communication list with environmental review and application documents and a summary of the other results of step 5, including a statement that the department considers step 5 to be complete or complete except for specified issues remaining to be resolved with specified agencies; and

(iii) Making the completed environmental review documents and summary available to the public. The preferred alternative will be identified in all environmental reviews, permits, and other approvals needed for the project.

(c) However, if an interested agency or aggrieved person files objections within fourteen days after the preferred alternative and summary are distributed, the objections will be addressed in subsequent environmental reviews and agency decisions regarding the project.

(6) Step 6: Completing the environmental review, permit, and other approval processes. (a) At any time after completing step 5, the department may initiate step 6 by notice to all agencies on the list and the public and filing applications for some or all permits and other approvals needed for the project. Within thirty days, or a longer time if specified by the department, each state, local, and federal agency will be encouraged to:

(i) Acknowledge receipt of draft environmental review documents provided to them and provide comments on them;

(ii) Acknowledge receipt of final environmental review documents and determine that they are adequate for purposes of their roles regarding the project or specify what additional information or changes are needed for them to be considered adequate;

(iii) Acknowledge receipt of each application filed with them and determine that the application is complete or specify what additional information or changes are needed for it to be considered complete;

(iv) Acknowledge that the applications submitted to them will be processed under the laws, regulations, ordi-

nances, and policies previously identified under steps 3, 4, and 5 or specify what changes have occurred in the governing standards that were in effect on the date a complete application was filed and thus apply to the project;

(v) Identify the significant steps necessary for the agency to reach a final decision on applications and the estimated time needed for each step;

(vi) Identify ways its decision-making process might be made more efficient and effective through additional coordination with other agencies, with any recommendations for such methods as joint solicitation and review of public comments and jointly conducting public hearings.

(b) It is recognized that step 6 may require an iterative process with several drafts of various environmental review documents and applications being considered and revised, and that changes in project location or design resulting from the permit decisions of one agency may require revising applications or even reopening permit decisions of other agencies. All state and local agencies are expected, and federal agencies are encouraged, to communicate and cooperate to minimize the number of iterations required and make the process as efficient and effective as possible. Unless significant new information is obtained, decisions made under step 6 should not be reopened except at the request of the department, and the most recent information available under steps 3, 4, and 5 should be presumed accurate until significant new information becomes available.

(c) If all environmental reviews have not been completed and all permits and other approvals obtained within forty-five days after step 6 is initiated, the department, by notice to all agencies on the list and the public, may set a deadline for completing reviews and decisions. At any time after the deadline, the department may terminate the coordination process of this section as to some or all of the reviews and decisions that are still not completed. [2001 1st sp.s. c 2 § 7.]

47.06C.080 Department organization and administrative actions. (Expires March 31, 2006.) The legislature finds that an essential component of streamlined permit decision making is the ability of the department to demonstrate the capacity to meet environmental responsibilities. Therefore, the legislature directs that:

(1) The department may amend its operating practices applicable to obtaining project permits when:

(a) Agreements on standards or best management practices as appropriate, are reached under RCW 47.06C.040;

(b) The committee determines that streamlining procedures and methodologies implemented for pilot projects consistent with RCW 47.06C.050 warrant broader application;

(c) The committee determines that the assignment of responsibilities between regulating agencies and the department is appropriate for broader use.

(2) The department may develop permits for review by permitting agencies when agreement on the standards and best management practices covered by such permits have been reached under RCW 47.06C.040. Regulating agencies shall review permits based upon the agreed upon standards and timelines developed in RCW 47.06C.040, as well as any other applicable existing standards.

(3) Qualified environmental staff within the department shall lead the development of all environmental documenta-

tion associated with department projects and permit activities in accordance with the department's project delivery tools.

(4) The department shall conduct special prebid meetings for projects that are environmentally complex. In addition, the department shall review environmental considerations related to these projects during the preconstruction meeting held with the contractor who is awarded the bid.

(5) Environmental staff at the department shall conduct field inspections to ensure that project activities are performed under permit conditions. These inspectors:

(a) May issue stop work orders when compliance with permit standards are not being met; and

(b) For this portion of their job duties, are accountable to the director of environmental affairs of the department.

(6) Failure to comply with a stop work order may result in civil penalties being assessed against the department and individuals involved. Willful violation of a stop work notice issued by the department is subject to civil penalties assessed on the agency as well as the individuals involved. Persistent violations by the department may result in loss of permit drafting and program management responsibilities. [2001 1st sp.s. c 2 § 8.]

47.06C.090 Training and compliance. (*Expires March 31, 2006.*) The legislature expects the department to continue its efforts to improve training and compliance. The department shall:

(1) Provide training in environmental procedures and permit requirements for those responsible for project delivery activities;

(2) Require wetland mitigation sites to be designed by a qualified interdisciplinary team that meets training requirements developed by the department's environmental affairs office in consultation with the department of ecology. Environmental mitigation site improvements must have oversight by environmental staff;

(3) Develop an environmental compliance data system to track all permit conditions;

(4) Report all noncompliance activities to applicable agencies of jurisdiction along with a remedy plan;

(5) Fund the departments of ecology, natural resources, and fish and wildlife, operating under their permit-granting authority to conduct audits of the department's permit drafting and compliance activities. The department of ecology must collate the audits in an annual report to the legislature;

(6) Seek federal funding for dedicated technical staff at federal permit decision-making agencies and for state costs associated with implementation of this chapter;

(7) Fund dedicated technical staff at federal permit decision-making entities, as appropriate, and the state departments of ecology, natural resources, community, trade, and economic development, and fish and wildlife to implement the requirements of this chapter;

(8) Fund a technical specialist at the Northwest Indian Fisheries Commission and the Columbia River Intertribal Fisheries Commission for the purpose of implementing this chapter;

(9) Reimburse local jurisdictions for costs associated with local participation on the committee and technical subcommittees. [2001 1st sp.s. c 2 § 9.]

(2004 Ed.)

47.06C.100 Cost reimbursement. (*Expires March 31, 2006.*) The committee shall negotiate a method of cost reimbursement for the costs associated with carrying out the purposes of this chapter, including prior departmental agreements with permitting agencies to cover their costs for transportation projects of statewide significance. [2001 1st sp.s. c 2 § 10.]

47.06C.900 Captions not law—2001 1st sp.s. c 2. (*Expires March 31, 2006.*) Captions used in this chapter are not any part of the law. [2001 1st sp.s. c 2 § 11.]

47.06C.901 Expiration date—2001 1st sp.s. c 2. This act expires March 31, 2006. [2003 c 8 § 3; 2001 1st sp.s. c 2 § 13.]

Effective date—2003 c 8: See note following RCW 47.06C.010.

47.06C.902 Effective date—2001 1st sp.s. c 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 29, 2001]. [2001 1st sp.s. c 2 § 14.]

47.06C.903 Severability—2001 1st sp.s. c 2. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 1st sp.s. c 2 § 15.]

Chapter 47.08 RCW HIGHWAY FUNDS

Sections

47.08.010	Control of allocated funds.
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47.08.040	Contracts with United States as to state highway property.
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47.08.130	Custody of federal funds—Disbursement.

Highway funds, constitutional limitations: State Constitution Art. 2 § 40 (Amendment 18).

47.08.010 Control of allocated funds. Whenever there is provided an allocation for the construction or improvement of state highways, the allocation shall be under the sole charge and direct control of the department. [1984 c 7 § 92; 1961 c 13 § 47.08.010. Prior: 1937 c 53 § 32, part; RRS § 6400-32, part.]

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

47.08.020 State to match federal funds. For the construction, alteration, repair and improvement of state high-

ways, county roads, or city and town streets in the state of Washington which are part of the public highway system, the good faith of the state of Washington is hereby pledged to make available funds sufficient to equal the sums appropriated to the state by or under the United States government during succeeding fiscal years and to use and expend the same within one year after the fiscal year for which appropriated, and in the manner and under the rules and regulations imposed by the secretary of commerce and to maintain, or cause to be maintained, the highways or roads constructed or improved with the aid of funds so appropriated, and to make adequate provisions for carrying out such maintenance. [1961 c 13 § 47.08.020. Prior: 1937 c 53 § 46; RRS § 6400-46; 1917 c 76 § 3; RRS § 6846.]

47.08.040 Contracts with United States as to state highway property. Whenever it is necessary or desirable for the federal government or any agency thereof to acquire an interest in or in any way damage any property or interest therein owned by the state of Washington and used in connection with any highway in the state of Washington in connection with any federal project for the development of any river within or partially within the state of Washington, the department is authorized, empowered, and directed to negotiate and enter into an agreement with the proper agency of the federal government as to the rights which shall be acquired, the compensation which shall be made therefor and the character of instruments by which the rights shall be conveyed, and as to any other matters which may be necessary in order to satisfy the requirements of the federal government. If the agreement is required to be reduced to writing, the writing shall be approved as to form by the attorney general of the state of Washington. [1984 c 7 § 93; 1961 c 13 § 47.08.040. Prior: 1937 c 113 § 1; RRS § 6450-91.]

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

47.08.050 Contracts with United States—Governor to execute instrument to the United States. Whenever the department has entered into an agreement under RCW 47.08.040 with the federal government or any agency thereof requiring the execution of any deed, flowage easement, or instrument of any nature, to the federal government or agency, and the instrument is approved as to form by the attorney general of the state of Washington, the governor of the state of Washington is authorized and directed without further authority and in the name of the state of Washington to execute and deliver to the proper agency of the federal government any such instrument or instruments which shall be, when attested by the secretary of state, binding upon the state of Washington. [1984 c 7 § 94; 1961 c 13 § 47.08.050. Prior: 1937 c 113 § 2; RRS § 6450-92.]

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

47.08.060 Contracts with United States—Disposal of funds from the United States. Whenever any moneys shall be realized by the state of Washington as a result of any agreement authorized by RCW 47.08.040, the same shall be deposited in the treasury of the state of Washington to the credit of the motor vehicle fund, and shall be available for

highway purposes only. [1967 ex.s. c 145 § 45; 1961 c 13 § 47.08.060. Prior: 1937 c 113 § 3; RRS § 6450-93.]

47.08.070 Cooperation in public works projects, urban public transportation systems. When it appears to the department that any state highway will be benefited or improved by the construction of any public works project, including any urban public transportation system, within the state of Washington by any of the departments of the state of Washington, by the federal government, or by any agency, instrumentality, or municipal corporation of either the state of Washington or the United States, the department is authorized to enter into cooperative agreements with any such state department, with the United States, or with any agency, instrumentality, or municipal corporation of either the state of Washington or the United States, wherein the state of Washington, acting through the department, will participate in the cost of the public works project in such amount as may be determined by the department to be the value of the benefits or improvements to the particular state highway derived from the construction of the public works project. Under any such agreement the department may contribute to the cost of the public works project by making direct payment to the particular state department, federal government, or to any agency, instrumentality, or municipal corporation of either the state or the United States, or any combination thereof, which may be involved in the project, from any funds appropriated to the department and available for highway purposes, or by doing a portion of the project either by day labor or by contract, or in any other manner as may be deemed advisable and necessary by the department. [1984 c 7 § 95; 1967 c 108 § 3; 1961 c 13 § 47.08.070. Prior: 1945 c 127 § 2; Rem. Supp. 1945 § 6400-121.]

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

Urban public transportation system defined: RCW 47.04.082.

47.08.080 Funds when department is in charge of county road improvements. If any funds become available from the federal government or otherwise for expenditure in conjunction with county funds for the construction, alteration, repair, or improvement of any county road and the work is to be performed by the department, the state treasurer shall, upon notice from the department, set aside from any moneys in the motor vehicle fund credited to any such county, the cost thereof, together with the cost of engineering, supervision, and other proper items, or so much of the money in the state treasury to the credit of the county as may be necessary for use in conjunction with funds from the federal government to accomplish the work. The work shall then be performed by the department and paid from the money so set aside upon vouchers approved and submitted by the department in the same manner as payment is made for such work on state highways: PROVIDED, That the legislative authority of any such county shall have, by proper resolution, filed in duplicate in the office of the department and approved by it, determined the county road construction, alteration, repair, or improvement to be performed in such county and the same is found to conform in all respects to the requirements necessary for the use of such funds of the federal gov-

ernment. [1984 c 7 § 96; 1973 c 106 § 22; 1961 c 13 § 47.08.080. Prior: 1937 c 187 § 59; RRS § 6450-59.]

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

47.08.090 Funds when department is in charge of city street improvements. If any funds become available from the federal government or otherwise for expenditure in conjunction with funds accruing to any incorporated city or town for the construction, alteration, repair, or improvement of its city streets designated as forming a part of the route of any state highway through the incorporated city or town and the work is to be performed by the department, the state treasurer shall, upon notice from the department, set aside from any moneys in the motor vehicle fund credited to the incorporated city or town, the cost thereof or so much money in the state treasury to the credit of the incorporated city or town as may be necessary in conjunction with the funds from the federal government or otherwise to accomplish the work, the cost to be paid by the state treasurer from the money so set aside upon vouchers approved and submitted by the department in the same manner as payment is made for work on state highways. If any such incorporated city or town has agreed with the state of Washington or the federal government as a condition precedent to the acquiring of federal funds for construction on any city street of the incorporated city or town designated as forming a part of the route of any state highways, that the street will be maintained to a standard and the incorporated city or town fails to so maintain the city street, then the department may perform the maintenance, and the state treasurer is authorized to deduct the cost thereof from any funds credited or to be credited to the incorporated city or town and pay the same on vouchers approved and submitted by the department in the same manner as payment is made for work performed on state highways. [1984 c 7 § 97; 1973 c 106 § 23; 1961 c 13 § 47.08.090. Prior: 1937 c 187 § 65; RRS § 6450-65.]

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

47.08.100 Illegal use of county or city road funds—Procedure to correct. The department is authorized from time to time to investigate expenditures from the county road fund and the city street fund; and if it determines that unauthorized, illegal, or wrongful expenditures are being or have been made from the fund it is authorized to proceed as follows: If the county road fund is involved it shall notify in writing the county legislative authority and the county treasurer of its determination; and if the city street fund is involved it shall notify the city council or commission and the mayor and city treasurer of the city or town of its determination. In its determination the department is authorized to demand of those officials that the wrongful or illegal expenditures shall be stopped, adjusted, or remedied and that restitution of any wrongful or illegal diversion or use shall be made; and it may notify the officials that if the wrong is not stopped, remedied, or adjusted, or restitution made to its satisfaction within a specified period fixed by it, it will direct the withholding of further payments to the county or city from the motor vehicle fund. The county or city shall have ten days after the notice is given within which to correct or remedy the

wrong, or wrongful and illegal practices, to make restitution, or to adjust the matter to the satisfaction of the department.

If no correction, remedy, adjustment, or restitution is made within ten days to the satisfaction of the department, it has power to request in writing that the state treasurer withhold further payments from the motor vehicle fund to the county or city; and it is the duty of the state treasurer upon being so notified to withhold further payments from the motor vehicle fund to the county or city involved until the officials are notified in writing by the department that payments may be resumed.

The department is also authorized to notify in writing the prosecuting attorney of the county in which the violation occurs of the facts, and it is the duty of the prosecuting attorney to file charges and to criminally prosecute any and all persons guilty of any such violation. [1984 c 7 § 98; 1973 c 106 § 24; 1961 c 13 § 47.08.100. Prior: 1943 c 82 § 13, part; 1937 c 187 § 66, part; Rem. Supp. 1943 § 6450-66, part.]

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

47.08.110 Misuse of county or city road funds—General penalty. It shall be unlawful and a misdemeanor, unless the same is by this title or other law of this state declared to be a felony or gross misdemeanor, to divert or use, or authorize, permit or participate in the diversion or use of any moneys in the county road fund or in the city street fund for any other purpose or in any other manner than that authorized by law. [1961 c 13 § 47.08.110. Prior: 1943 c 82 § 13, part; 1937 c 187 § 66, part; Rem. Supp. 1943 § 6450-66, part.]

47.08.120 Transportation equipment fund. There is hereby created in the state treasury a state fund to be known as the "transportation equipment fund," the same to be used by the department of transportation as a revolving fund to be expended for salaries, wages and operations required for the repair, replacement, purchase and operation of equipment and for purchase of equipment, materials and supplies to be used as follows: (1) In the administration and operation of this fund; and (2) in the administration, maintenance and construction of highways and transportation facilities.

The transportation equipment fund shall be credited, in the case of equipment, with a reasonable rental assessed upon the use of such equipment by the various state departments, and in the case of materials and supplies, with a reasonable charge for such materials and supplies. Such credit for rental and charges for materials and supplies shall be charged against the proper appropriation therefor.

Equipment may be rented and materials and supplies may be sold out of this fund to any federal, state, county or city political subdivision or governmental agency. The terms and charges for such rental and the prices for such sale shall be solely within the discretion of the department of transportation and its determination of the charge for rental or sale price shall be considered a reasonable rental charge or a reasonable sale price. Any political subdivision or governmental agency shall make payment for such rental or for purchase of such materials or supplies directly to the transportation equipment fund at the office of the department of transportation at Olympia. [1979 c 39 § 1; 1961 c 13 § 47.08.120.]

Prior: 1943 c 135 § 1; 1935 c 144 § 10; Rem. Supp. 1943 § 6600-1c.]

47.08.121 Transportation equipment fund declared revolving fund of proprietary nature—Use. The "highway equipment fund" as established by RCW 47.08.120 is declared to be a revolving fund of a proprietary nature and moneys that are or will be deposited in this fund are hereby authorized for expenditures for the purposes provided by law. [1961 c 13 § 47.08.121. Prior: 1959 c 326 § 3.]

47.08.130 Custody of federal funds—Disbursement. The state treasurer is hereby authorized and directed to receive and have custody of such funds and warrants drawn by the secretary of transportation or other authorized agent of the United States as are made available for payment by the secretary of the treasury of the United States under the provisions of the federal aid road act approved July 11, 1916, and all acts amendatory or supplementary thereto, disbursing the same under such terms and conditions as may be prescribed by the secretary of transportation or by the secretary of the treasury or other authorized agent of the United States. The state treasurer is further authorized and directed to pay from the motor vehicle fund for the use of the department such funds as may be necessary upon any project in anticipation of reimbursement by the government of the United States. [1984 c 7 § 99; 1961 c 13 § 47.08.130. Prior: 1937 c 53 § 45; RRS § 6400-45; 1931 c 129 § 1; 1929 c 146 § 1; 1927 c 214 § 1; 1925 c 4 § 1; 1923 c 41 § 1; 1921 c 89 § 1; 1919 c 56 § 1; RRS § 6850.]

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

Chapter 47.10 RCW

HIGHWAY CONSTRUCTION BONDS

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- 47.10.020 Bond issue authorized—Use of motor vehicle fund.
- 47.10.030 Form and term of bonds.
- 47.10.040 Bonds not general obligations—Taxes pledged.
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- 47.10.080 Highway bond retirement fund.
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- 47.10.290 Construction in Grant, Franklin, Adams counties authorized—Issuance and sale of bonds.
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- 47.10.380 Construction in Grant, Franklin, Adams counties authorized—Excess sums in bond retirement fund—Use.
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- 47.10.410 Echo Lake route—Declaration of necessity.
- 47.10.420 Echo Lake route—Additional bond issue authorized—Use of motor vehicle fund.
- 47.10.430 Echo Lake route—Form and term of bonds.
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- 47.10.700 Tacoma-Seattle-Everett facility—Declaration of necessity.
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- 47.10.726 Construction in Grant, Franklin, Adams counties authorized—Declaration of public interest.
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47.10.754 Additional funds—Sale of bonds—Legal investment for state
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47.10.755 Additional funds—Bond proceeds—Deposit and use.

47.10.756 Additional funds—Bonds not general obligations—Taxes
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47.10.757 Additional funds—Source of funds for payment of bond prin-
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47.10.758 Additional funds—Highway bond retirement fund.

47.10.759 Additional funds—Sums in excess of retirement require-
ments—Use.

47.10.760 Additional funds—Appropriation from motor vehicle fund.

RESERVE FUNDS FOR HIGHWAY, STREET,
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investment for state funds.

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47.10.766 Bonds—Statement describing nature of obligation—Pledge of
excise taxes.

47.10.767 Bonds—Designation of funds to repay bonds and interest.

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STATE HIGHWAYS IN URBAN AREAS

47.10.775 Issuance and sale of limited obligation bonds, terms, condi-
tions, retirement, use of proceeds, etc.

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47.10.777 Issuance and sale of limited obligation bonds, terms, condi-
tions, retirement, use of proceeds, etc.

INTERSTATE 90 COMPLETION—1979 ACT

47.10.790 Issuance and sale of general obligation bonds—State route 90
improvements—Category C improvements.

47.10.791 Administration and amount of bond sales.

47.10.792 Bond proceeds—Deposit and use.

47.10.793 Statement of general obligation—Pledge of excise taxes.

47.10.794 Designation of funds to repay bonds and interest.

47.10.795 Repayment procedure—Bond retirement fund.

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47.10.797 Bonds legal investment for state funds.

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INTERSTATE HIGHWAY, CATEGORY A,
CATEGORY C IMPROVEMENTS—1981 ACT

47.10.801 Issuance and sale of general obligation bonds.

47.10.802 Administration and amount of bond sales.

47.10.803 Bond proceeds—Deposit and use.

47.10.804 Statement of general obligation—Pledge of excise taxes.

47.10.805 Designation of funds to repay bonds and interest.

47.10.806 Repayment procedure—Bond retirement fund.

47.10.807 Sums in excess of retirement requirements—Use.

47.10.808 Bonds legal investment for state funds.

47.10.809 Bonds equal charge against fuel tax revenues.

47.10.811 Severability—1981 c 316.

CATEGORY C IMPROVEMENTS—1993 ACT

47.10.812 Issuance and sale of general obligation bonds.

47.10.813 Administration and amount of sale.

47.10.814 Proceeds—Deposit and use.

47.10.815 Statement of general obligation—Pledge of excise taxes.

47.10.816 Designation of funds to repay bonds and interest.

47.10.817 Equal charge against fuel tax revenues.

47.10.818 Severability—1993 c 431.

INTERSTATE, OTHER HIGHWAY IMPROVEMENTS—1993 ACT

47.10.819 Issuance and sale of general obligation bonds.

47.10.820 Administration and amount of sale.

47.10.821 Proceeds—Deposit and use.

47.10.822 Statement of general obligation—Pledge of excise taxes.

47.10.823 Designation of funds to repay bonds and interest.

47.10.824 Equal charge against fuel tax revenues.

47.10.825 Severability—1993 c 432.

PUBLIC-PRIVATE TRANSPORTATION INITIATIVES—1994 ACT

47.10.834 Issuance and sale of general obligation bonds.

47.10.835 Administration and amount of sale.

47.10.836 Proceeds—Deposit and use.

47.10.837 Designation of funds to repay bonds and interest.

47.10.838 Statement of general obligation—Pledge of excise taxes.

47.10.839 Repayment procedure—Bond retirement fund.

47.10.841 Equal charge against motor vehicle excise tax revenues.

47.10.842 Severability—1994 c 183.

STATE AND LOCAL HIGHWAY IMPROVEMENTS—1998 ACT

47.10.843 Bond issue authorized.

47.10.844 Administration and amount of sale.

47.10.845 Proceeds—Deposit and use.

47.10.846 Statement of general obligation—Pledge of excise taxes.

47.10.847 Repayment procedure—Bond retirement fund.

47.10.848 Equal charge against motor vehicle and special fuels tax reve-
nues.

2003 TRANSPORTATION PROJECTS—NICKEL ACCOUNT

47.10.861 Bond issue authorized.

47.10.862 Administration and amount of sale.

47.10.863 Proceeds—Deposit and use.

47.10.864 Statement of general obligation—Pledge of excise taxes.

47.10.865 Repayment procedure—Bond retirement fund.

47.10.866 Equal charge against motor vehicle and special fuels tax reve-
nues.

MULTIMODAL TRANSPORTATION PROJECTS—2003 ACT

47.10.867 Bond issue authorized—Appropriation of proceeds.

47.10.868 Proceeds—Deposit and use.

47.10.869 Repayment procedure.

47.10.870 Statement of general obligation—Transfer and payment of
funds.

47.10.871 Additional repayment means.

47.10.872 Legal investment.

FIRST PRIORITY PROJECT—1951 ACT

**47.10.010 First priority highway projects—Declara-
tion of.** Reconstruction of primary state highway No. 1 from
Oregon to British Columbia, construction of four traffic lanes
at Snoqualmie Pass, construction of an adequate highway
bridge from Pasco to Kennewick and construction of county
arterial highways and farm to market roads in Grant, Franklin
and Adams counties to coincide with the opening of lands for

settlement in the Columbia Basin irrigation project, are declared to be highway projects of the first priority. The construction of such projects is required in the interest of the public safety and for the orderly development of the state. The reimbursement of the motor vehicle fund for money used to purchase Agate Pass Bridge bonds will also make possible other war emergency or high priority highway construction. The threat of war makes acceleration of construction a vital necessity at this time. [1961 c 13 § 47.10.010. Prior: 1951 c 121 § 1.]

47.10.020 Bond issue authorized—Use of motor vehicle fund. To provide funds for accelerating construction of these first priority projects, and to reimburse the motor vehicle fund for money expended for Agate Pass Bridge construction there shall be issued and sold limited obligation bonds of the state of Washington in the sum of sixty-six million seven hundred three thousand, six hundred and twenty-five dollars. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the Washington state highway commission, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of the first priority projects: PROVIDED, That if funds are available in the motor vehicle fund in an amount greater than is necessary to pay current demands such funds may be used to finance these first priority projects until such time as bonds are sold, as provided by law, at which time the motor vehicle fund shall be reimbursed. [1961 c 13 § 47.10.020. Prior: 1955 c 117 § 1; 1951 c 121 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.10.030 Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.010 through 47.10.140 shall be fully negotiable instruments. [1961 c 13 § 47.10.030. Prior: 1951 c 121 § 3.]

47.10.040 Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.010 through 47.10.140 shall distinctly state that they are not a general obligation of the state, but are payable in the

manner provided in RCW 47.10.010 through 47.10.140 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949; and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.010 through 47.10.140, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.010 through 47.10.140 when due. [1961 c 13 § 47.10.040. Prior: 1951 c 121 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020 were repealed by 1971 ex.s. c 175 § 33; for later enactment see chapter 82.38 RCW.

47.10.050 Sale of bonds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.010 through 47.10.140 shall be legal investment for any of the funds of the state, except the permanent school fund: PROVIDED, That bonds authorized herein to reimburse the motor vehicle fund for the cost of the Agate Pass Bridge construction shall be sold at the earliest date which the committee finds feasible. [1961 c 13 § 47.10.050. Prior: 1951 c 121 § 5.]

47.10.060 Proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of such first priority projects, reimbursement of the motor vehicle fund for money expended for construction of the Agate Pass Bridge in order to make such money available for war emergency highway projects or other high priority highway uses, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.060. Prior: 1951 c 121 § 6.]

47.10.070 Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or

the interest on any bonds: PROVIDED, That money required hereunder to pay interest on or to retire any bonds issued for Columbia Basin county arterial highways or farm to market roads shall be repaid by any such county or counties wherein such highways or roads are constructed in the manner set forth in RCW 47.10.110. [1984 c 7 § 100; 1961 c 13 § 47.10.070. Prior: 1951 c 121 § 7.]

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

47.10.080 Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.070, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which is hereby established, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.080. Prior: 1951 c 121 § 8.]

47.10.090 Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.090. Prior: 1951 c 121 § 11.]

47.10.100 Allocation of bonds. The bonds authorized herein are allocated to the first priority projects as follows:

(1) Forty-nine million two hundred fifty thousand dollars of the total issue for the acceleration of the reconstruction of primary state highway No. 1, said amount to be expended on said primary state highway No. 1 as follows: Thirty-three million five hundred thousand dollars between Everett, Seattle, Tacoma, Olympia, Chehalis, Centralia, Kelso, Vancouver, and the Oregon boundary line, and fifteen million seven hundred fifty thousand dollars between Everett and the Canadian boundary line;

(2) Six million five hundred thousand dollars of the total issue for the construction of the highway bridge from Pasco to Kennewick;

(3) Four million two hundred fifty thousand dollars of the total issue for the construction of a four lane highway at Snoqualmie Pass;

(4) Five million dollars of the total issue for the construction of Columbia Basin county arterial highways and farm to market roads in Grant, Franklin and Adams counties, for which the state must be reimbursed as provided in RCW 47.10.110; and

(5) One million seven hundred three thousand six hundred twenty-five dollars of the total issue for reimbursement of the motor vehicle fund for money spent for Washington toll bridge authority bonds purchased in connection with the construction of the Agate Pass Bridge, said sum of one million seven hundred three thousand six hundred twenty-five dollars to be used when it becomes available in the motor vehicle fund, under allotments to be made by the director of highways, for war emergency or other high priority highway projects: PROVIDED, That no bonds shall be issued for Columbia Basin county arterial highway and road purposes unless expenditures are actually required for the settlement of lands ready for irrigation in the Columbia Basin project and all construction of arterial highways and roads in such counties shall be accomplished by the engineering forces of the various counties under the supervision of the director of highways. [1961 c 13 § 47.10.100. Prior: 1951 c 121 § 12.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.110 Columbia Basin highway projects—Reimbursement by counties. The secretary shall report separately to the state finance committee all sums expended from funds resulting from the sale of bonds for Columbia Basin county arterial highways and farm to market roads in Grant, Franklin, and Adams counties under the provisions of RCW 47.10.010 through 47.10.140. Those counties shall repay to the state all the cost of any Columbia Basin highway or road facilities actually constructed under the provisions of RCW 47.10.010 through 47.10.140 within each of such counties as follows: The state finance committee, at least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, shall ascertain the percentage of the motor vehicle funds arising from the excise taxes on motor vehicle fuels, which is to be transferred to such counties under the provisions of law which will be necessary to pay all of the interest upon or retire when due all of the portion of said bonds chargeable to expenditures incurred under the provisions of RCW 47.10.010 through 47.10.140 in each of said counties. The state finance committee shall notify the state treasurer of this estimate and the treasurer shall thereafter, when distributions are made from the motor vehicle fund to counties, retain such percentage of the total sums credited to such counties as aforesaid in the motor vehicle fund arising from the excise taxes on motor vehicle fuels until such fund is fully reimbursed for all expenditures under RCW 47.10.010 through 47.10.140 in Grant, Adams, and Franklin counties. Any money so retained shall be available for state highway purposes. [1984 c 7 § 101; 1961 c 13 § 47.10.110. Prior: 1951 c 121 § 9.]

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

47.10.120 Columbia Basin highway projects—Limit as to amounts currently retained. The sums retained from motor vehicle funds arising from the excise taxes on motor vehicle fuel, of any such counties shall not exceed in any distribution period fifty percent of the total amount to be credited to such county. If there shall be a deficit in the amount available for reimbursement of the motor vehicle fund, due to this provision, then such deficit shall continue to be a charge against any sums due any such county from the motor vehicle fund from such excise taxes until the full cost of such Columbia Basin highway facilities is paid. [1961 c 13 § 47.10.120. Prior: 1951 c 121 § 10.]

47.10.130 Agate Pass Bridge to become toll free—Cancellation of Agate Pass bonds. When the state finance committee has made arrangements for the sale of sufficient bonds to reimburse the motor vehicle fund in the sum of one million seven hundred three thousand six hundred twenty-five dollars as aforesaid, the committee shall notify the Washington toll bridge authority and the authority is thereafter directed to transfer the Agate Pass Bridge to the highway department for operation as a toll free part of the state highway system. The bonds of the authority issued to construct the Agate Pass Bridge shall then be canceled. [1961 c 13 § 47.10.130. Prior: 1951 c 121 § 13.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "Washington state toll bridge authority" and "authority" mean department of transportation; see RCW 47.04.015.

47.10.140 Appropriation from motor vehicle fund. There is appropriated from the motor vehicle fund for the biennium ending March 31, 1953 the sum of sixty-six million seven hundred three thousand six hundred and twenty-five dollars, or so much thereof as may be necessary, to carry out the provisions of RCW 47.10.010 through 47.10.140, but no money shall be available under this appropriation from said fund unless a like amount of the bonds provided for herein are sold and the money derived deposited to the credit of such fund. [1961 c 13 § 47.10.140. Prior: 1951 c 121 § 15.]

ADDITIONAL BONDS—1953 ACT

47.10.150 Declaration of necessity for additional funds. Increased construction costs for highway and bridge construction since the enactment of a highway bond issue by the 1951 legislature makes necessary additional money with which to complete the sections of primary state highway No. 1 planned from funds allocated under RCW 47.10.010 through 47.10.140 and it is vital to the economy of the state and the safety of the traffic that these sections shall be completed to relieve traffic congestions, to add capacity in event of war, and to presently insure greater safety to highway users; the rapid increase of traffic across Snoqualmie Pass necessitates continued improvement of primary state highway No. 2 to provide four-lane paving contiguous to Snoqualmie Pass as the funds will permit; the rapid increase of traffic and the facilitation of movement of military forces and equipment from the military centers of the state makes imperative the construction of a highway from primary state highway No. 2 beginning approximately four miles west of North

Bend thence southwesterly by the most feasible route by the way of Auburn to a junction with primary state highway No. 1 in the vicinity of Milton; said highway to follow approximately the route surveyed by the director of highways and covered in the report filed by him with the 1951 legislature commonly known as the "Echo Lake Route," as the funds provided for herein will permit; the construction of secondary state highways in to the Columbia Basin area is immediately necessary to provide needed state arterial highways for the irrigated lands of the Columbia Basin areas to market centers and thereby encourage the full development of the basin project. The construction of such projects is required in the interest of the public safety and for the orderly development of the state. The threat of war makes acceleration of construction a vital necessity at this time. [1961 c 13 § 47.10.150. Prior: 1953 c 154 § 1.]

Reviser's note: Powers, duties, and functions of director of highways transferred to department of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.160 Additional bonds—Issuance and sale authorized—Use of motor vehicle fund. To provide funds for accelerating construction of these priority projects there shall be issued and sold limited obligation bonds of the state of Washington in the sum of eighteen million dollars. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the Washington state highway commission, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of the first priority projects: PROVIDED, That if funds are available in the motor vehicle fund in an amount greater than is necessary to pay current demands such funds may be used to finance these first priority projects until such time as bonds are sold, as provided by law, at which time the motor vehicle fund shall be reimbursed. [1961 c 13 § 47.10.160. Prior: 1955 c 117 § 2; 1953 c 154 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.10.170 Additional bonds—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under

authority of RCW 47.10.150 through 47.10.270 shall be fully negotiable instruments. [1961 c 13 § 47.10.170. Prior: 1953 c 154 § 3.]

47.10.180 Additional bonds—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.150 through 47.10.270 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949; and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.150 through 47.10.270 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.150 through 47.10.270 when due. [1961 c 13 § 47.10.180. Prior: 1953 c 154 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.190 Additional bonds—Sale of bonds. The bonds issued under RCW 47.10.150 through 47.10.270 shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.190. Prior: 1953 c 154 § 5.]

47.10.200 Additional bonds—Proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of such priority projects, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.200. Prior: 1953 c 154 § 6.]

47.10.210 Additional bonds—Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels

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and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds. [1984 c 7 § 102; 1961 c 13 § 47.10.210. Prior: 1953 c 154 § 7.]

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

47.10.220 Additional bonds—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under RCW 47.10.150 through 47.10.270 when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimate so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.220. Prior: 1953 c 154 § 8.]

47.10.230 Additional bonds—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.230. Prior: 1953 c 154 § 9.]

47.10.240 Additional bonds—Allocation—Primary state highway No. 1. Seven million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270 are allocated for accelerating the completion of four-lane construction of primary state highway No. 1. [1961 c 13 § 47.10.240. Prior: 1953 c 154 § 10.]

47.10.250 Additional bonds—Allocation—Primary state highway No. 2, Snoqualmie Pass. Five million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270 are allocated for accelerating four-lane construction of primary state highway No. 2 contiguous to Snoqualmie Pass. [1961 c 13 § 47.10.250. Prior: 1953 c 154 § 11.]

47.10.260 Additional bonds—Allocation—Columbia Basin highways. Three million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270

are allocated for accelerating the construction of secondary state highways in the Columbia Basin area. [1961 c 13 § 47.10.260. Prior: 1953 c 154 § 12.]

47.10.270 Additional bonds—Allocation—Echo Lake route. Three million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270 are allocated insofar as said funds will permit to the construction of a highway from primary state highway No. 2 beginning approximately four miles west of North Bend thence southwesterly by the most feasible route by the way of Auburn to a junction with primary state highway No. 1 in the vicinity of Milton. [1961 c 13 § 47.10.270. Prior: 1953 c 154 § 13.]

ADDITIONAL BONDS—1955 ACT

47.10.280 Construction in Grant, Franklin, Adams counties authorized—Declaration of priority. Construction of county arterial highways and farm to market roads in Grant, Franklin and Adams counties to coincide with the opening of lands for settlement in the Columbia Basin irrigation project, is declared to be a project of the first priority. The construction of said project is required in the interest of the public safety and for the orderly development of the state. [1961 c 13 § 47.10.280. Prior: 1955 c 311 § 1.]

47.10.290 Construction in Grant, Franklin, Adams counties authorized—Issuance and sale of bonds. To provide funds for construction of this first priority project, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of four million three hundred thousand dollars.

The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the director of highways, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of this first priority project. [1961 c 13 § 47.10.290. Prior: 1955 c 311 § 2.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.300 Construction in Grant, Franklin, Adams counties authorized—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signatures may be printed facsimile. Any bonds may be registered in the name of the holder by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide.

All bonds issued under authority of RCW 47.10.280 through 47.10.400 shall be fully negotiable instruments. [1961 c 13 § 47.10.300. Prior: 1955 c 311 § 3.]

47.10.310 Construction in Grant, Franklin, Adams counties authorized—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.280 through 47.10.400 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.280 through 47.10.400 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW, and RCW 82.36.020, 82.36.230, 82.36.250 and 82.36.400; and *chapter 82.40 RCW and RCW 82.40.020. The proceeds of such excise taxes are pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.280 through 47.10.400. The legislature agrees to continue to impose the same excise taxes on motor fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.280 through 47.10.400 when due. [1961 c 13 § 47.10.310. Prior: 1955 c 311 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.320 Construction in Grant, Franklin, Adams counties authorized—Sale of bonds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee. They may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If such bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale. It shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.280 through 47.10.400 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.320. Prior: 1955 c 311 § 5.]

47.10.330 Construction in Grant, Franklin, Adams counties authorized—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of this first priority project, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.330. Prior: 1955 c 311 § 6.]

47.10.340 Construction in Grant, Franklin, Adams counties authorized—Source of funds for payment of bond principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes. They shall never constitute a charge against any allocation of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway

purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds: PROVIDED, That money required hereunder to pay interest on or to retire any bonds issued for Columbia Basin county arterial highways or farm to market roads shall be repaid by any such county or counties wherein such highways or roads are constructed in the manner set forth in RCW 47.10.360. [1984 c 7 § 103; 1961 c 13 § 47.10.340. Prior: 1955 c 311 § 7.]

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

47.10.350 Construction in Grant, Franklin, Adams counties authorized—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.340, the percentage of receipts in money of the motor vehicle fuels, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which is hereby established, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.350. Prior: 1955 c 311 § 8.]

47.10.360 Construction in Grant, Franklin, Adams counties authorized—Reimbursement by counties. The secretary shall report to the state finance committee all sums expended from funds resulting from the sale of bonds for Columbia Basin county arterial highways and farm to market roads in Grant, Franklin, and Adams counties under the provisions of RCW 47.10.280 through 47.10.400. Those counties shall repay to the state all the cost of any Columbia Basin highway or road facilities actually constructed under the provisions of RCW 47.10.280 through 47.10.400 within each of those counties as follows: The state finance committee, at least one year prior to the date any such interest is due and payable on such bonds or before the maturity date of any such bonds, shall ascertain the percentage of the motor vehicle funds arising from the excise taxes on motor vehicle fuels, which is to be transferred to such counties under the provisions of law which will be necessary to pay all of the interest upon or retire when due all of the portion of said bonds chargeable to expenditures incurred under the provisions of RCW 47.10.280 through 47.10.400 in each of said counties. The state finance committee shall notify the state treasurer of this estimate and the treasurer shall thereafter, when distributions are made from the motor vehicle fund to counties, retain such percentage of the total sums credited to such counties as aforesaid in the motor vehicle fund arising from such excise

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taxes on motor vehicle fuels until such fund is fully reimbursed for all expenditures under RCW 47.10.280 through 47.10.400 in Grant, Adams, and Franklin counties. Any money so retained shall be available for state highway purposes. [1984 c 7 § 104; 1961 c 13 § 47.10.360. Prior: 1955 c 311 § 9.]

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

47.10.370 Construction in Grant, Franklin, Adams counties authorized—Limit as to amounts currently retained from excise taxes. The sums retained from motor vehicle funds, arising from the excise taxes on motor vehicle fuel, of any such counties shall not exceed in any distribution period fifty percent of the total amount to be credited to such county. If there shall be a deficit in the amount available for reimbursement of the motor vehicle fund, due to this provision, then such deficit shall continue to be a charge against any sums due any such county from the motor vehicle fund from such excise taxes until the full cost of such Columbia Basin highway facilities is paid. [1961 c 13 § 47.10.370. Prior: 1955 c 311 § 10.]

47.10.380 Construction in Grant, Franklin, Adams counties authorized—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.380. Prior: 1955 c 311 § 11.]

47.10.390 Construction in Grant, Franklin, Adams counties authorized—Allocation of funds to each county. The bonds authorized herein are allocated to the counties as follows:

- (1) For Adams county—six hundred thousand dollars.
- (2) For Franklin county—one million five hundred thousand dollars.
- (3) For Grant county—two million two hundred thousand dollars:

PROVIDED, That no bonds shall be issued for Columbia Basin county arterial highway and road purposes unless expenditures are actually required for the settlement of lands ready for irrigation in the Columbia Basin project and all construction of arterial highways and roads in such counties shall be accomplished by the engineering forces of the various counties under the supervision of the director of highways. [1961 c 13 § 47.10.390. Prior: 1955 c 311 § 12.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.400 Construction in Grant, Franklin, Adams counties authorized—Appropriation from motor vehicle fund. There is appropriated from the motor vehicle fund for the biennium ending June 30, 1957 the sum of four million three hundred thousand dollars, or so much thereof as may be

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necessary, to carry out the provisions of RCW 47.10.280 through 47.10.400, but no money shall be available under this appropriation from said fund unless a like amount of the bonds provided for herein are sold and the money derived deposited to the credit of such fund. [1961 c 13 § 47.10.400. Prior: 1955 c 311 § 13.]

ADDITIONAL BONDS—1957 ACT

47.10.410 Echo Lake route—Declaration of necessity. Increased costs for highway and bridge construction since the enactment of the highway bond issues authorized by the 1951, 1953 and 1955 legislatures makes necessary additional money with which to complete that portion of primary state highway No. 2, beginning approximately four miles west of North Bend thence southwesterly by the most feasible route by way of Auburn to a junction with primary state highway No. 1 in the vicinity of Milton, commonly known as the "Echo Lake Route." It is vital to the economy of the state and traffic safety that this project be constructed as soon as the funds provided herein will permit. [1961 c 13 § 47.10.410. Prior: 1957 c 206 § 1.]

47.10.420 Echo Lake route—Additional bond issue authorized—Use of motor vehicle fund. To provide additional funds for the construction of the "Echo Lake Route," in addition to bonds authorized to be sold by RCW 47.10.160 and as allocated by RCW 47.10.270, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of three million dollars. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall when notified by the Washington state highway commission, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of this project: PROVIDED, That if funds are available in the motor vehicle fund in an amount greater than is necessary to pay current demands, moneys appropriated to the state highway commission for highway purposes may be used to finance this project until such time as bonds are sold, as provided by law, at which time the motor vehicle fund shall be reimbursed. [1961 c 13 § 47.10.420. Prior: 1957 c 206 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Terms "Washington state highway commission" and "state highway commission" mean department of transportation; see RCW 47.04.015.

47.10.430 Echo Lake route—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption bearing such interest, and such terms and conditions as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the

holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.410 through 47.10.500 shall be fully negotiable instruments. [1961 c 13 § 47.10.430. Prior: 1957 c 206 § 3.]

47.10.440 Echo Lake route—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.410 through 47.10.500 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.410 through 47.10.500 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949, and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.410 through 47.10.500 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.410 through 47.10.500. [1961 c 13 § 47.10.440. Prior: 1957 c 206 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.450 Echo Lake route—Sale of bonds. The bonds issued under the terms of RCW 47.10.410 through 47.10.500 shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.450. Prior: 1957 c 206 § 5.]

47.10.460 Echo Lake route—Proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of the project referred to in RCW 47.10.410, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.460. Prior: 1957 c 206 § 6.]

47.10.470 Echo Lake route—Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due shall be taken

from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds. [1984 c 7 § 105; 1961 c 13 § 47.10.470. Prior: 1957 c 206 § 7.]

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

47.10.480 Echo Lake route—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under RCW 47.10.410 through 47.10.500 when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.480. Prior: 1957 c 206 § 8.]

47.10.490 Echo Lake route—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.490. Prior: 1957 c 206 § 9.]

47.10.500 Echo Lake route—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1959 the sum of three million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.410 through 47.10.500, but no money shall be available under this appropriation from said fund unless a like amount of bonds provided for herein are sold and the moneys derived therefrom are deposited to the credit of such fund. [1961 c 13 § 47.10.500. Prior: 1957 c 206 § 10.]

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TACOMA-SEATTLE-EVERETT FACILITY—1957 ACT

47.10.700 Tacoma-Seattle-Everett facility—Declaration of necessity. Increased traffic and increased costs of highway and bridge construction make necessary additional moneys with which to complete the sections of primary state highway No. 1 through and between the cities of Tacoma, Seattle, and Everett and as an additional alternate route bypassing Seattle east of Lake Washington. It is vital to the economy of the state and the safety of traffic that these sections shall be completed to relieve traffic congestions, to insure greater safety to highway users, and to assure an adequate through highway to accommodate traffic from bridges across Lake Washington as soon as possible. [1961 c 13 § 47.10.700. Prior: 1957 c 189 § 1.]

47.10.702 Tacoma-Seattle-Everett facility—To be part of federal system as limited access—Federal standards and conditions to be met. This highway project shall be constructed as a part of the federal interstate highway system as a fully controlled limited access facility and shall meet the standards and specifications required by the state of Washington and the secretary of commerce of the United States in order to qualify for federal grants in aid as provided for in the federal-aid highway act of 1956. The state shall perform all conditions precedent to payment in advance of apportionment as provided by section 108(h) of the federal-aid highway act of 1956 so as to be entitled to federal aid funds for the project covered by RCW 47.10.700 through 47.10.724 when such funds are apportioned. [1961 c 13 § 47.10.702. Prior: 1957 c 189 § 2.]

47.10.704 Tacoma-Seattle-Everett facility—Powers and duties of highway commission—Route of project. In order to facilitate vehicular traffic through and between the cities of Tacoma, Seattle and Everett and to remove the present handicaps and hazards over and along primary state highway No. 1 as presently established, the state highway commission is authorized to realign, redesign and reconstruct primary state highway No. 1 upon a newly located right of way or upon portions of existing right of way through and between the cities of Tacoma, Seattle and Everett and as an additional alternate route bypassing Seattle east of Lake Washington. The route of the proposed project is established as follows: Beginning in the vicinity of Ponders Corner, thence in a general northeasterly and northerly direction through the cities of Tacoma and Seattle to a point in the vicinity of the city of Everett and as an additional alternate route bypassing Seattle east of Lake Washington. [1961 c 13 § 47.10.704. Prior: 1957 c 189 § 3.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "state highway commission" means department of transportation; see RCW 47.04.015.

47.10.706 Tacoma-Seattle-Everett facility—Issuance and sale of bonds authorized. In order to finance the immediate construction of the project referred to in RCW 47.10.700 pending receipt of federal grants in aid and in accordance with the federal-aid highway act of 1956, there shall be issued and sold limited obligation bonds of the state

of Washington in the sum of forty-five million dollars or such amount thereof and at such times as determined to be necessary by the state highway commission. No bonds shall be issued under the provisions of RCW 47.10.700 through 47.10.724 until the congress of the United States shall approve the estimated cost of completing the federal interstate system to be submitted to it within ten days subsequent to January 2, 1958, as provided by section 108(d), federal-aid highway act of 1956. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as may be necessary for the orderly progress of said project. [1967 ex.s. c 7 § 1; 1961 c 13 § 47.10.706. Prior: 1957 c 189 § 4.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Terms "state highway commission" and "Washington state highway commission" mean department of transportation; see RCW 47.04.015.

47.10.708 Tacoma-Seattle-Everett facility—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1961 c 13 § 47.10.708. Prior: 1957 c 189 § 5.]

47.10.710 Tacoma-Seattle-Everett facility—Sale of bonds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.700 through 47.10.724 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.710. Prior: 1957 c 189 § 6.]

47.10.712 Tacoma-Seattle-Everett facility—Proceeds from bonds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be

available only for the construction of the project referred to in RCW 47.10.700, 47.10.702 and 47.10.704, and for payment of the expense incurred in the drafting, printing, issuance, and sale of any such bonds. [1961 c 13 § 47.10.712. Prior: 1957 c 189 § 7.]

47.10.714 Tacoma-Seattle-Everett facility—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.700 through 47.10.724 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.700 through 47.10.724 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250 and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949; and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.700 through 47.10.724, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.700 through 47.10.724. [1961 c 13 § 47.10.714. Prior: 1957 c 189 § 8.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.716 Tacoma-Seattle-Everett facility—Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 106; 1961 c 13 § 47.10.716. Prior: 1957 c 189 § 9.]

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

47.10.718 Tacoma-Seattle-Everett facility—Additional security for payment of bonds—Pledge of federal funds. As additional security for payment of the principal amount of any or all of the bonds to be issued hereunder, the state finance committee, with the consent of the department, may pledge all or any portion of the federal aid funds received or from time to time to be received by the state from the United States under the provisions of the federal-aid highway act of 1956 for the construction of all or any part of the project referred to in RCW 47.10.700, 47.10.702, and 47.10.704. [1984 c 7 § 107; 1961 c 13 § 47.10.718. Prior: 1957 c 189 § 10.]

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

47.10.720 Tacoma-Seattle-Everett facility—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.716, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which, together with federal funds which may be pledged as provided in RCW 47.10.718, shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.720. Prior: 1957 c 189 § 11.]

47.10.722 Tacoma-Seattle-Everett facility—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels and the federal funds which may be pledged as provided in RCW 47.10.718, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.722. Prior: 1957 c 189 § 12.]

47.10.724 Tacoma-Seattle-Everett facility—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1959 the sum of forty-five million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.700 through 47.10.724, but no money shall be available under this appropriation from said fund unless a like amount of bonds provided for herein are sold and the money derived therefrom deposited to the credit of such fund. [1967 ex.s. c 7 § 2; 1961 c 13 § 47.10.724. Prior: 1957 c 189 § 13.]

ADDITIONAL BONDS—1965 ACT

47.10.726 Construction in Grant, Franklin, Adams counties authorized—Declaration of public interest. Construction of county arterial highways and farm to market roads in Grant, Franklin and Adams counties to coincide with the opening of additional lands for settlement in the Columbia Basin irrigation project, is declared to be a project required in the interest of the public safety and for the orderly development of the state. [1965 c 121 § 1.]

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47.10.727 Construction in Grant, Franklin, Adams counties authorized—Issuance and sale of limited obligation bonds. To provide funds for construction of this project, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of one million eight hundred and fifty thousand dollars.

The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the director of highways, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of this project. [1965 c 121 § 2.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.728 Construction in Grant, Franklin, Adams counties authorized—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signatures may be printed facsimile. The coupons attached to the bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.726 through 47.10.738 shall be fully negotiable instruments. [1965 c 121 § 3.]

47.10.729 Construction in Grant, Franklin, Adams counties authorized—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.726 through 47.10.738 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.726 through 47.10.738 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.726 through 47.10.738. The legislature agrees to continue to impose the same excise taxes on motor fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.726 through 47.10.738 when due. [1965 c 121 § 4.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment, see chapter 82.38 RCW.

47.10.730 Construction in Grant, Franklin, Adams counties authorized—Sale of bonds—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee. They may be sold in such manner and in such amounts

and at such times and on such terms and conditions as the committee may prescribe. The bonds shall be sold at public sale. It shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.726 through 47.10.738 shall be legal investment for any of the funds of the state, except the permanent school fund. [1965 c 121 § 5.]

47.10.731 Construction in Grant, Franklin, Adams counties authorized—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of the project authorized by RCW 47.10.726 through 47.10.738, and payment of the expense incurred in the printing, issuance and sale of any such bonds, in which expense shall be included the sum of one eighth of one percent of the amount of the issue to cover the cost of servicing said issue, such sum to be deposited in the general fund. [1965 c 121 § 6.]

47.10.732 Construction in Grant, Franklin, Adams counties authorized—Source of funds for payment of bond principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes. They shall never constitute a charge against any allocation of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds: PROVIDED, That money required hereunder to pay interest on or to retire any bonds issued as authorized by RCW 47.10.726 through 47.10.738 shall be repaid by the county or counties wherein the highways or roads are constructed in the manner set forth in RCW 47.10.734. [1984 c 7 § 108; 1965 c 121 § 7.]

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

47.10.733 Construction in Grant, Franklin, Adams counties authorized—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of receipts in money of the motor vehicle *fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which is hereby established, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated

percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1965 c 121 § 8.]

***Reviser's note:** The word "fuels" appearing in the session law version of the above section has been corrected to read "fund"; see comparable provisions in RCW 47.10.080, 47.10.220, 47.10.480, and 47.10.720.

47.10.734 Construction in Grant, Franklin, Adams counties authorized—Repayment to state by Grant, Franklin and Adams counties by retention of funds. The secretary shall report to the state finance committee all sums expended from funds resulting from the sale of bonds authorized by RCW 47.10.726 through 47.10.738. Grant, Franklin, and Adams counties shall repay to the state all the cost of highway or road facilities actually constructed under the provisions of RCW 47.10.726 through 47.10.738 within each of said counties as follows: The state finance committee, at least one year prior to the date any such interest is due and payable on such bonds or before the maturity date of any such bonds, shall ascertain the percentage of the motor vehicle funds arising from the excise taxes on motor vehicle fuels, which is to be transferred to such counties under the provisions of law which will be necessary to pay all of the interest upon or retire when due all of the portion of said bonds sold under the provisions of RCW 47.10.726 through 47.10.738 in each of said counties. The state finance committee shall notify the state treasurer of this estimate and the treasurer shall thereafter, when distributions are made from the motor vehicle fund to counties, retain such percentage of the total sums credited to such counties as aforesaid in the motor vehicle fund arising from such excise taxes on motor vehicle fuels until such fund is fully reimbursed for all expenditures under RCW 47.10.726 through 47.10.738 in Grant, Adams, and Franklin counties. Any money so retained shall be available for state highway purposes. [1984 c 7 § 109; 1965 c 121 § 9.]

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

47.10.735 Construction in Grant, Franklin, Adams counties authorized—Repayment, limitation as to amount of funds retained—Deficits. The sums retained from motor vehicle funds, arising from the excise taxes on motor vehicle fuel, of any such counties as provided in RCW 47.10.734, together with the sums similarly retained under the provisions of RCW 47.10.010 through 47.10.140 and RCW 47.10.280 through 47.10.400 shall not exceed in any distribution period fifty percent of the total amount to be credited to such county. If there shall be a deficit in the amount available for reimbursement of the motor vehicle fund, due to this provision, then such deficit shall continue to be a charge against any sums due any such county from the motor vehicle fund from such excise taxes until the full cost of such highway facilities is paid. [1965 c 121 § 10.]

47.10.736 Construction in Grant, Franklin, Adams counties authorized—Sums in excess of retirement requirements—Use. Whenever the percentages of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove

more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1965 c 121 § 11.]

47.10.737 Construction in Grant, Franklin, Adams counties authorized—Allocation of bonds to counties—Conditions upon issuance—Use of county engineering forces. The bonds authorized herein are allocated to the counties as follows:

- (1) For Adams county—one hundred thousand dollars.
- (2) For Franklin county—four hundred fifty thousand dollars.
- (3) For Grant county—one million three hundred thousand dollars:

PROVIDED, That no bonds shall be issued for Columbia Basin county arterial highway and road purposes unless expenditures are actually required for the settlement of lands ready for irrigation in the Columbia Basin project and all construction of arterial highways and roads in such counties shall be accomplished by the engineering forces of the various counties under the supervision of the director of highways. [1965 c 121 § 12.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.738 Construction in Grant, Franklin, Adams counties authorized—Appropriation from motor vehicle fund. There is appropriated from the motor vehicle fund for the biennium ending June 30, 1967 the sum of one million eight hundred fifty thousand dollars, or so much thereof as may be necessary, to carry out the provisions of RCW 47.10.726 through 47.10.738. [1965 c 121 § 13.]

ADDITIONAL BONDS—CONSTRUCTION AND IMPROVEMENT—1967 ACT

47.10.751 Additional funds—Declaration of necessity. Increased costs of construction combined with an unprecedented increase in motor vehicle use in this state have created an urgent demand for additional highway construction funds. It is vital to the economy of this state and the safety of the public that additional funds be provided for the construction of state highways. [1967 ex.s. c 7 § 3.]

47.10.752 Additional funds—Issuance and sale of limited obligation bonds. In order to provide funds for the construction and improvement of state highways, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of thirty million dollars or such amount thereof and at such times as determined to be necessary by the state highway commission. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such

amounts as shall be requested by the state highway commission. [1967 ex.s. c 7 § 4.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "state highway commission" means department of transportation; see RCW 47.04.015.

47.10.753 Additional funds—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1967 ex.s. c 7 § 5.]

47.10.754 Additional funds—Sale of bonds—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If the bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.751 through 47.10.760 shall be legal investment for any of the funds of the state, except the permanent school fund. [1967 ex.s. c 7 § 6.]

47.10.755 Additional funds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of state highways and for payment of the expenses incurred in the printing, issuance, and sale of any such bonds. [1967 ex.s. c 7 § 7.]

47.10.756 Additional funds—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.751 through 47.10.760 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.751 through 47.10.760 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.751 through 47.10.760, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in

amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.751 through 47.10.760. [1967 ex.s. c 7 § 8.]

*Reviser's note: Chapter 82.40 RCW, see note following RCW 47.10.729.

47.10.757 Additional funds—Source of funds for payment of bond principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of any other such funds to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available to the state for construction of state highways proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 110; 1967 ex.s. c 7 § 9.]

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

47.10.758 Additional funds—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.757, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, hereby created, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1967 ex.s. c 7 § 10.]

47.10.759 Additional funds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle fuels payable into the bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1967 ex.s. c 7 § 11.]

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47.10.760 Additional funds—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1969, the sum of thirty million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.751 through 47.10.760. [1967 ex.s. c 7 § 12.]

RESERVE FUNDS FOR HIGHWAY, STREET, AND ROAD PURPOSES—1967 ACT

47.10.761 Reserve funds—Purposes. It is the purpose of RCW 47.10.761 through 47.10.771 to provide reserve funds to the department for the following purposes:

(1) For construction, reconstruction, or repair of any state highway made necessary by slides, storm damage, or other unexpected or unusual causes;

(2) For construction or improvement of any state highway when necessary to alleviate or prevent intolerable traffic congestion caused by extraordinary and unanticipated economic development within any area of the state;

(3) To advance funds to any city or county to be used exclusively for the construction or improvement of any city street or county road when necessary to alleviate or prevent intolerable traffic congestion caused by extraordinary and unanticipated economic development within a particular area of the state. Before funds provided by the sale of bonds as authorized in RCW 47.10.761 through 47.10.770, are loaned to any city or county for the purposes specified herein, the department shall enter into an agreement with the city or county providing for repayment to the motor vehicle fund of such funds, together with the amount of bond interest thereon, from the city's or the county's share of the motor vehicle funds arising from excise taxes on motor vehicle fuels, over a period not to exceed twenty-five years; and

(4) To participate in projects on state highways or projects benefiting state highways that have been selected for funding by entities other than the Washington state department of transportation and require a financing contribution by the department of transportation. [1993 sp.s. c 11 § 1; 1984 c 7 § 111; 1967 ex.s. c 7 § 13.]

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

47.10.762 Issuance and sale of general obligation bonds. In order to provide reserve funds for the purposes specified in RCW 47.10.761, there shall be issued and sold general obligation bonds of the state of Washington in the sum of twenty-five million dollars or such amount thereof and at such times as may be determined to be necessary by the state transportation commission. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state transportation commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary for the purposes enumerated in RCW 47.10.761. [1993 sp.s. c 11 § 2; 1967 ex.s. c 7 § 14.]

47.10.763 Bonds—Term—Terms and conditions—Signatures—Registration—Where payable—Negotiable

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instruments. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1967 ex.s. c 7 § 15.]

47.10.764 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If the bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.761 through 47.10.771 shall be legal investment for any of the funds of the state, except the permanent school fund. [1967 ex.s. c 7 § 16.]

47.10.765 Bonds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the purposes enumerated in RCW 47.10.761 and for payment of the expense incurred in the drafting, printing, issuance and sale of any such bonds. [1967 ex.s. c 7 § 17.]

47.10.766 Bonds—Statement describing nature of obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.10.761 through 47.10.771 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.761 through 47.10.771 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.761 through 47.10.771, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.761 through 47.10.771. [1967 ex.s. c 7 § 18.]

*Reviser's note: Chapter 82.40 RCW, see note following RCW 47.10.729.

(2004 Ed.)

47.10.767 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 112; 1967 ex.s. c 7 § 19.]

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

47.10.768 Bonds—Pledge of federal aid funds. As additional security for payment of the principal amount of any or all of the bonds to be issued hereunder, the state finance committee, with the consent of the department, may pledge all or any portion of the federal aid funds received or from time to time to be received by the state from the United States under the provisions of the federal-aid highway act of 1956, as amended, for the construction of Washington's portion of the national system of interstate and defense highways. [1984 c 7 § 113; 1967 ex.s. c 7 § 20.]

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

47.10.769 Bonds—Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.767, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which, together with federal funds which may be pledged as provided in RCW 47.10.768, shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1967 ex.s. c 7 § 21.]

47.10.770 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels and the federal funds which may be pledged as provided in RCW 47.10.768, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any

excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1967 ex.s. c 7 § 22.]

47.10.771 Bonds—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1969, the sum of twenty-five million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.761 through 47.10.771. [1967 ex.s. c 7 § 23.]

STATE HIGHWAYS IN URBAN AREAS

47.10.775 Issuance and sale of limited obligation bonds, terms, conditions, retirement, use of proceeds, etc. See RCW 47.26.400 through 47.26.407.

COUNTY AND CITY ARTERIALS IN URBAN AREAS

47.10.777 Issuance and sale of limited obligation bonds, terms, conditions, retirement, use of proceeds, etc. See RCW 47.26.420 through 47.26.460.

INTERSTATE 90 COMPLETION—1979 ACT

47.10.790 Issuance and sale of general obligation bonds—State route 90 improvements—Category C improvements. (1) In order to provide funds for the location, design, right of way, and construction of selected interstate highway improvements, there shall be issued and sold upon the request of the Washington state transportation commission, a total of one hundred million dollars of general obligation bonds of the state of Washington to pay the state's share of costs for completion of state route 90 (state route 5 to state route 405) and other related state highway projects eligible for regular federal interstate funding and until December 31, 1989, to temporarily pay the regular federal share of construction of completion projects on state route 90 (state route 5 to state route 405) and other related state highway projects eligible for regular interstate funding in advance of federal-aid apportionments under the provisions of 23 U.S.C. Secs. 115 or 122: PROVIDED, That the total amount of bonds issued to temporarily pay the regular federal share of construction of federal-aid interstate highways in advance of federal-aid apportionments as authorized by this section and RCW 47.10.801 shall not exceed one hundred twenty million dollars: PROVIDED FURTHER, That the transportation commission shall consult with the legislative transportation committee prior to the adoption of plans for the obligation of federal-aid apportionments received in federal fiscal year 1985 and subsequent years to pay the regular federal share of federal-aid interstate highway construction projects or to convert such apportionments under the provisions of 23 U.S.C. Secs. 115 or 122.

(2) The transportation commission, in consultation with the legislative transportation committee, may at any time find and determine that any amount of the bonds authorized in subsection (1) of this section, and not then sold, are no longer

required to be issued and sold for the purposes described in subsection (1) of this section.

(3) Any bonds authorized by subsection (1) of this section that the transportation commission determines are no longer required for the purpose of paying the cost of the designated interstate highway improvements described therein shall be issued and sold, upon the request of the Washington state transportation commission, to provide funds for the location, design, right of way, and construction of major transportation improvements throughout the state that are identified as category C improvements in *RCW 47.05.030. [1985 c 406 § 1; 1982 c 19 § 3; 1981 c 316 § 10; 1979 ex.s. c 180 § 1.]

***Reviser's note:** RCW 47.05.030 was amended by 1993 c 490 § 3 and no longer defines highway projects or improvements.

Severability—1982 c 19: See note following RCW 47.10.801.

Severability—1981 c 316: See RCW 47.10.811.

47.10.791 Administration and amount of bond sales.

Upon request being made by the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.790 in accordance with the provisions of chapter 39.42 RCW. The amount of such bonds issued and sold under the provisions of RCW 47.10.790 through 47.10.798 in any biennium may not exceed the amount of a specific appropriation therefor. Such bonds may be sold from time to time in such amounts as may be necessary for the orderly progress of the state highway improvements specified in RCW 47.10.790. The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued under this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [1986 c 290 § 6; 1979 ex.s. c 180 § 2.]

47.10.792 Bond proceeds—Deposit and use. The proceeds from the sale of the bonds authorized by RCW 47.10.790 shall be deposited in the motor vehicle fund and such proceeds shall be available only for the purposes enumerated in RCW 47.10.790, for the payment of bond anticipation notes, if any, and for the payment of the expense incurred in the drafting, printing, issuance, and sale of such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds

shall be considered to be expenses incurred in the issuance and sale of the bonds. [1986 c 290 § 7; 1979 ex.s. c 180 § 3.]

47.10.793 Statement of general obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.10.790 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.10.790 through 47.10.798 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.790 through 47.10.798, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.790 through 47.10.798. [1995 c 274 § 6; 1979 ex.s. c 180 § 4.]

47.10.794 Designation of funds to repay bonds and interest. Any funds required to repay the bonds authorized by RCW 47.10.790 or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state for expenditure pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1979 ex.s. c 180 § 5.]

47.10.795 Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.794, the percentage of the receipts in money of the motor vehicle fund resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments when due and shall notify the treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the highway bond retirement fund heretofore created in the state treasury, which funds shall be available solely for payment of the principal of and interest on the bonds when due. If in any month it shall appear that the estimated percentage of moneys so made is insufficient to meet the requirements for payment of the principal thereof or interest thereon, the treasurer shall notify the state finance committee forthwith, and such committee shall

adjust its estimates so that all requirements for the interest on and principal of all bonds issued shall be fully met at all times. [1979 ex.s. c 180 § 6.]

47.10.796 Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the highway bond retirement fund shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds pursuant to applicable bond covenants or remain available in the fund to reduce requirements upon the fuel excise tax portion of the motor vehicle fund. [1979 ex.s. c 180 § 7.]

47.10.797 Bonds legal investment for state funds. The bonds authorized in RCW 47.10.790 through 47.10.798 constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1979 ex.s. c 180 § 8.]

47.10.798 Bonds equal charge against fuel tax revenues. Except as otherwise provided by statute, general obligation bonds issued under authority of legislation enacted during the 45th session of the legislature and thereafter and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1979 ex.s. c 180 § 9.]

47.10.799 Appropriation—Expenditure limited to bond sale proceeds. There is hereby appropriated from the motor vehicle fund to the department of transportation for the biennium ending June 30, 1981, the sum of ten million dollars, or so much thereof as may be necessary, to carry out the provisions of RCW 47.10.790: PROVIDED, That the money available for expenditure under this appropriation may not exceed the amount of money derived from the sale of ten million dollars of bonds authorized by RCW 47.10.790 and deposited to the credit of the motor vehicle fund. [1979 ex.s. c 180 § 10.]

47.10.800 Severability—1979 ex.s. c 180. If any provision of RCW 47.10.790 through 47.10.800 or its application to any person or circumstance is held invalid, the remainder of RCW 47.10.790 through 47.10.800 or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 180 § 12.]

INTERSTATE HIGHWAY, CATEGORY A,
CATEGORY C IMPROVEMENTS—1981 ACT

47.10.801 Issuance and sale of general obligation bonds. (1) In order to provide funds necessary for the location, design, right of way, and construction of selected interstate and other state highway improvements, there shall be issued and sold, subject to subsections (2), (3), and (4) of this section, upon the request of the Washington state transportation commission a total of four hundred sixty million dollars

of general obligation bonds of the state of Washington for the following purposes and specified sums:

(a) Not to exceed two hundred twenty-five million dollars to pay the state's share of costs for federal-aid interstate highway improvements and until December 31, 1989, to temporarily pay the regular federal share of construction of federal-aid interstate highway improvements to complete state routes 82, 90, 182, and 705 in advance of federal-aid apportionments under the provisions of 23 U.S.C. Secs. 115 or 122: PROVIDED, That the total amount of bonds issued to temporarily pay the regular federal share of construction of federal-aid interstate highways in advance of federal-aid apportionments as authorized by this section and RCW 47.10.790 shall not exceed one hundred twenty million dollars: PROVIDED FURTHER, That the transportation commission shall consult with the legislative transportation committee prior to the adoption of plans for the obligation of federal-aid apportionments received in federal fiscal year 1985 and subsequent years to pay the regular federal share of federal-aid interstate highway construction projects or to convert such apportionments under the provisions of 23 U.S.C. Secs. 115 or 122;

(b) Two hundred twenty-five million dollars for major transportation improvements throughout the state that are identified as category C improvements and for selected major non-interstate construction and reconstruction projects that are included as Category A Improvements in *RCW 47.05.030;

(c) Ten million dollars for state highway improvements necessitated by planned economic development, as determined through the procedures set forth in RCW 43.160.074 and 47.01.280.

(2) The amount of bonds authorized in subsection (1)(a) of this section shall be reduced if the transportation commission, in consultation with the legislative transportation committee, determines that any of the bonds that have not been sold are no longer required.

(3) The amount of bonds authorized in subsection (1)(b) of this section shall be increased by an amount not to exceed, and concurrent with, any reduction of bonds authorized under subsection (1)(a) of this section in the manner prescribed in subsection (2) of this section.

(4) The transportation commission may decrease the amount of bonds authorized in subsection (1)(c) of this section and increase the amount of bonds authorized in subsection (1)(a) or (b) of this section, or both by an amount equal to the decrease in subsection (1)(c) of this section. The transportation commission may decrease the amount of bonds authorized in subsection (1)(c) of this section only if the legislature appropriates an equal amount of funds from the motor vehicle fund - basic account for the purposes enumerated in subsection (1)(c) of this section. [1999 c 94 § 13; 1994 c 173 § 1. Prior: 1985 c 433 § 7; 1985 c 406 § 2; 1982 c 19 § 1; 1981 c 316 § 1.]

*Reviser's note: RCW 47.05.030 was amended by 1993 c 490 § 3 and no longer defines categories of highway projects or improvements.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective date—1994 c 173: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 173 § 2.]

Nonseverability—1985 c 433: See note following RCW 43.160.074.

Severability—1982 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 19 § 5.]

47.10.802 Administration and amount of bond sales.

Upon request being made by the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.801 in accordance with chapter 39.42 RCW. The amount of such bonds issued and sold under RCW 47.10.801 through 47.10.809 in any biennium may not exceed the amount of a specific appropriation therefor. Such bonds may be sold from time to time in such amounts as may be necessary for the orderly progress of the state highway improvements specified in RCW 47.10.801. The amount of bonds issued and sold under RCW 47.10.801(1)(a) in any biennium shall not, except as provided in that section, exceed the amount required to match federal-aid interstate funds available to the state of Washington. The transportation commission shall give notice of its intent to sell bonds to the legislative transportation committee before requesting the state finance committee to issue and sell bonds authorized by RCW 47.10.801(1)(a). The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued under this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [1986 c 290 § 1; 1983 1st ex.s. c 53 § 23; 1982 c 19 § 2; 1981 c 316 § 2.]

Severability—1983 1st ex.s. c 53: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 53 § 36.]

Severability—1982 c 19: See note following RCW 47.10.801.

47.10.803 Bond proceeds—Deposit and use. The proceeds from the sale of the bonds authorized by RCW 47.10.801(1) shall be deposited in the motor vehicle fund. All such proceeds shall be available only for the purposes enumerated in RCW 47.10.801, for the payment of bond anticipation notes, if any, and for the payment of the expense incurred in the drafting, printing, issuance, and sale of such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance

and sale of the bonds. [1999 c 94 § 14; 1986 c 290 § 2; 1985 c 433 § 8; 1981 c 316 § 3.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Nonseverability—1985 c 433: See note following RCW 43.160.074.

47.10.804 Statement of general obligation—Pledge of excise taxes. Bonds issued under RCW 47.10.801 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.10.801 through 47.10.809 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under RCW 47.10.801 through 47.10.809, and the legislature hereby agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under RCW 47.10.801 through 47.10.809. [1995 c 274 § 7; 1981 c 316 § 4.]

47.10.805 Designation of funds to repay bonds and interest. Any funds required to repay the bonds authorized by RCW 47.10.801 or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state for expenditure pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1981 c 316 § 5.]

47.10.806 Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of such bonds, the state finance committee shall estimate, subject to RCW 47.10.805, the percentage of the receipts in money of the motor vehicle fund resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments when due and shall notify the treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the highway bond retirement fund heretofore created in the state treasury, which funds shall be available solely for payment of the principal of and interest on the bonds when due. If in any month it shall appear that the estimated percentage of moneys so made is insufficient to meet the requirements for payment of the principal thereof or interest thereon, the treasurer shall notify the state finance

committee forthwith, and the committee shall adjust its estimates so that all requirements for the interest on and principal of all bonds issued shall be fully met at all times. [1981 c 316 § 6.]

47.10.807 Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the highway bond retirement fund shall prove more than is required for the payment of interest on bonds when due, or current retirement bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1981 c 316 § 7.]

47.10.808 Bonds legal investment for state funds. The bonds authorized in RCW 47.10.801 through 47.10.809 constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1981 c 316 § 8.]

47.10.809 Bonds equal charge against fuel tax revenues. Bonds issued under authority of RCW 47.10.801 through 47.10.809 and any subsequent general obligation bonds of the state of Washington which may be authorized and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1981 c 316 § 9.]

47.10.811 Severability—1981 c 316. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 316 § 13.]

CATEGORY C IMPROVEMENTS—1993 ACT

47.10.812 Issuance and sale of general obligation bonds. In order to provide funds necessary for the location, design, right of way, and construction of state highway improvements that are identified as special category C improvements, there shall be issued and sold upon the request of the Washington state transportation commission a total of three hundred thirty million dollars of general obligation bonds of the state of Washington. [1999 sp.s. c 2 § 1; 1993 c 431 § 1.]

47.10.813 Administration and amount of sale. Upon the request of the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.812 through 47.10.817 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.812 through 47.10.817 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for

sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [1993 c 431 § 2.]

47.10.814 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by RCW 47.10.812 through 47.10.817 shall be deposited in the special category C account in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.812, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [1993 c 431 § 3.]

47.10.815 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.812 through 47.10.817 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.812 through 47.10.817 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.812 through 47.10.817, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.812 through 47.10.817. [1995 c 274 § 8; 1993 c 431 § 4.]

47.10.816 Designation of funds to repay bonds and interest. Both principal and interest on the bonds issued for the purposes of RCW 47.10.812 through 47.10.817 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the special category C account in the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.812 through 47.10.817 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the special category C account in the motor vehicle fund. Funds required shall never constitute a charge against any other allocations of

motor vehicle fuel and special fuel tax revenues to the state, counties, cities and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the special category C account proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities and towns, shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the special category C account not required for bond retirement or interest on the bonds. [1993 c 431 § 5.]

47.10.817 Equal charge against fuel tax revenues. Bonds issued under the authority of RCW 47.10.812 through 47.10.816 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [1993 c 431 § 6.]

47.10.818 Severability—1993 c 431. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 431 § 8.]

INTERSTATE, OTHER HIGHWAY IMPROVEMENTS— 1993 ACT

47.10.819 Issuance and sale of general obligation bonds. In order to provide funds necessary for the location, design, right of way, and construction of selected interstate and other highway improvements, there shall be issued and sold upon the request of the Washington state transportation commission a total of one hundred million dollars of general obligation bonds of the state of Washington for the following purposes and specified sums:

(1) Not to exceed twenty-five million dollars to pay the state's and local governments' share of matching funds for the ten demonstration projects identified in the Intermodal Surface Transportation Efficiency Act of 1991.

(2) Not to exceed fifty million dollars to temporarily pay the regular federal share of construction in advance of federal-aid apportionments as authorized by this section.

(3) Not to exceed twenty-five million dollars for loans to local governments to provide the required matching funds to take advantage of available federal funds. These loans shall be on such terms and conditions as determined by the Washington state transportation commission, but in no event may the loans be for a period of more than ten years. The interest rate on the loans authorized under this subsection shall be equal to the interest rate on the bonds sold for such purposes. [1993 c 432 § 1.]

47.10.820 Administration and amount of sale. Upon the request of the transportation commission, the state

finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.819 through 47.10.824 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.819 through 47.10.824 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [1993 c 432 § 2.]

47.10.821 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by RCW 47.10.819 through 47.10.824 shall be deposited in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.819, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [1993 c 432 § 3.]

47.10.822 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.819 through 47.10.824 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.819 through 47.10.824 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.819 through 47.10.824, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.819 through 47.10.824. [1995 c 274 § 9; 1993 c 432 § 4.]

47.10.823 Designation of funds to repay bonds and interest. Both principal and interest on the bonds issued for the purposes of RCW 47.10.819 through 47.10.824 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

(2004 Ed.)

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.819 through 47.10.824 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and which is, or may be appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributed to the state, counties, cities, and towns, shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds. [1993 c 432 § 5.]

47.10.824 Equal charge against fuel tax revenues. Bonds issued under the authority of RCW 47.10.819 through 47.10.823 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [1993 c 432 § 6.]

47.10.825 Severability—1993 c 432. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 432 § 8.]

PUBLIC-PRIVATE TRANSPORTATION INITIATIVES—
1994 ACT

47.10.834 Issuance and sale of general obligation bonds. In order to provide funds necessary to implement the public-private transportation initiatives authorized by chapter 47.46 RCW, there shall be issued and sold upon the request of the Washington state transportation commission a total of twenty-five million six hundred twenty-five thousand dollars of general obligation bonds of the state of Washington. [1995 2nd sp.s. c 15 § 2; 1994 c 183 § 2.]

Severability—1995 2nd sp.s. c 15: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 2nd sp.s. c 15 § 9.]

Effective date—1995 2nd sp.s. c 15: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 16, 1995]." [1995 2nd sp.s. c 15 § 10.]

Finding—1994 c 183: "The legislature finds and declares:

Successful implementation of the public-private transportation initiatives program authorized in chapter 47.46 RCW may require the financial participation of the state in projects authorized in that chapter.

The participation may take the form of loans, loan guarantees, user charge guarantees, including incidental costs incurred by the department in direct support of activities required under chapter 47.46 RCW, or such other

cash contribution arrangements as may improve the ability of the private entities sponsoring the projects to obtain financing.

It is in the best interests of the people of the state that state funding of possible financial participation in the projects authorized under chapter 47.46 RCW be in the form of long-term bonds. In order to repay expenditures incurred in the 1993-1995 biennium, up to two million two hundred thousand dollars of these bonds may be expended on highway improvement projects, under chapter 47.05 RCW." [1995 2nd sp.s. c 15 § 1; 1994 c 183 § 1.]

47.10.835 Administration and amount of sale. Upon the request of the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.834 through 47.10.841 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.834 through 47.10.841 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. In making such appropriation of the net proceeds of the sale of the bonds, the legislature shall specify what portion of the appropriation is provided for possible loans and what portion of the appropriation is provided for other forms of cash contributions to projects.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [1994 c 183 § 3.]

47.10.836 Proceeds—Deposit and use. (1) The proceeds from the sale of bonds authorized by RCW 47.10.834 through 47.10.841 that are in support of possible loans as specified under RCW 47.10.835 shall be deposited into the motor vehicle fund. The proceeds shall be available only for the purposes of making loans to entities authorized to undertake projects selected under chapter 47.46 RCW as enumerated in RCW 47.10.835, including incidental costs incurred by the department in direct support of activities required under chapter 47.46 RCW, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

(2) The proceeds from the sale of bonds authorized by RCW 47.10.834 through 47.10.841 that are in support of all forms of cash contributions to projects selected under chapter 47.46 RCW, including incidental costs incurred by the department in direct support of activities required under chapter 47.46 RCW, except loans shall be deposited into the motor vehicle fund. The proceeds shall be available only for the purposes of making any contributions except loans to projects selected under chapter 47.46 RCW, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

(3) Up to two million two hundred thousand dollars of the proceeds from the sale of bonds authorized by RCW 47.10.834 through 47.10.841 may be expended on highway improvement projects under chapter 47.05 RCW and for the payment of bond issuance cost, including the cost of underwriting. Such proceeds shall be deposited into the motor vehicle fund. [1995 2nd sp.s. c 15 § 3; 1994 c 183 § 4.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.837 Designation of funds to repay bonds and interest. Principal and interest payments made on loans authorized by chapter 47.46 RCW shall be deposited into the motor vehicle fund and shall be available for the payment of principal and interest on bonds authorized by RCW 47.10.834 through 47.10.841 and for such other purposes as may be specified by law. [1995 2nd sp.s. c 15 § 4; 1994 c 183 § 5.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.838 Statement of general obligation—Pledge of excise taxes. (1) Bonds issued under the authority of RCW 47.10.834 through 47.10.841 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due.

(2) The principal and interest on the bonds issued for the purposes enumerated in RCW 47.10.836 shall be first payable in the manner provided in RCW 47.10.834 through 47.10.841 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of those excise taxes are pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.834 through 47.10.841, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.834 through 47.10.841. [1995 2nd sp.s. c 15 § 5; 1994 c 183 § 6.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.839 Repayment procedure—Bond retirement fund. (1) Both principal and interest on the bonds issued for the purposes of RCW 47.10.834 through 47.10.841 are payable from the highway bond retirement fund.

(2) The state finance committee shall, on or before June 30th of each year certify to the state treasurer the amount required for principal and interest on the bonds issued for the purposes specified in RCW 47.10.836 in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit into the highway bond retirement fund such amounts, and at such times, as are required by the bond proceedings.

(3) Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.834 through 47.10.841 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels which is, or may be appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, or towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund

proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

(4) Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel and special fuel taxes that are distributable to the state, counties, cities, or towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds. [1995 2nd sp.s. c 15 § 6; 1994 c 183 § 7.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.841 Equal charge against motor vehicle excise tax revenues. Bonds issued under the authority of RCW 47.10.834 through 47.10.839 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels taxes for the payment of principal and interest thereon are an equal charge against the revenues from the motor vehicle and special fuels excise taxes. [1995 2nd sp.s. c 15 § 7; 1994 c 183 § 9.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.842 Severability—1994 c 183. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 183 § 11.]

STATE AND LOCAL HIGHWAY IMPROVEMENTS— 1998 ACT

47.10.843 Bond issue authorized. In order to provide funds necessary for the location, design, right of way, and construction of state and local highway improvements, there shall be issued and sold upon the request of the Washington state transportation commission a maximum of one billion nine hundred million dollars of general obligation bonds of the state of Washington. [1998 c 321 § 16 (Referendum Bill No. 49, approved November 3, 1998).]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

47.10.844 Administration and amount of sale. Upon the request of the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.843 through 47.10.848 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.843 through 47.10.848 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

(2004 Ed.)

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [1998 c 321 § 17 (Referendum Bill No. 49, approved November 3, 1998).]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

47.10.845 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by RCW 47.10.843 through 47.10.848 shall be deposited in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.843, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [1998 c 321 § 18 (Referendum Bill No. 49, approved November 3, 1998).]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

47.10.846 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.843 through 47.10.848 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.843 through 47.10.848 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.843 through 47.10.848, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.843 through 47.10.848. [1998 c 321 § 19 (Referendum Bill No. 49, approved November 3, 1998).]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

47.10.847 Repayment procedure—Bond retirement fund. Both principal and interest on the bonds issued for the purposes of RCW 47.10.843 through 47.10.848 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be cre-

ated in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.843 through 47.10.848 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and which is, or may be, appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns, shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds. [1998 c 321 § 20 (Referendum Bill No. 49, approved November 3, 1998).]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

47.10.848 Equal charge against motor vehicle and special fuels tax revenues. Bonds issued under the authority of RCW 47.10.843 through 47.10.847 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [1998 c 321 § 21 (Referendum Bill No. 49, approved November 3, 1998).]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

2003 TRANSPORTATION PROJECTS— NICKEL ACCOUNT

47.10.861 Bond issue authorized. In order to provide funds necessary for the location, design, right of way, and construction of selected projects or improvements that are identified as transportation 2003 projects or improvements in

the omnibus transportation budget, there shall be issued and sold upon the request of the transportation commission a total of two billion six hundred million dollars of general obligation bonds of the state of Washington. [2003 c 147 § 1.]

Effective date—2003 c 147: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 147 § 16.]

47.10.862 Administration and amount of sale. Upon the request of the transportation commission, as appropriate, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds in RCW 47.10.861 through 47.10.866 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.861 through 47.10.866 shall be sold in the manner, at time or times, in amounts, and at the price as the state finance committee shall determine. No bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2003 c 147 § 2.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.863 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by RCW 47.10.861 shall be deposited in the transportation 2003 account (nickel account) in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.861, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [2003 c 147 § 3.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.864 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.861 through 47.10.866 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.861 through 47.10.866 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of these excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.861 through 47.10.866, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.861 through 47.10.866. [2003 c 147 § 4.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.865 Repayment procedure—Bond retirement fund. Both principal and interest on the bonds issued for the

purposes of RCW 47.10.861 through 47.10.866 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the transportation 2003 account (nickel account) in the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.861 through 47.10.866 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the transportation 2003 account (nickel account) in the motor vehicle fund. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the transportation 2003 account (nickel account) proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the transportation 2003 account (nickel account) not required for bond retirement or interest on the bonds. [2003 c 147 § 5.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.866 Equal charge against motor vehicle and special fuels tax revenues. Bonds issued under the authority of RCW 47.10.861 through 47.10.865 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [2003 c 147 § 6.]

Effective date—2003 c 147: See note following RCW 47.10.861.

MULTIMODAL TRANSPORTATION PROJECTS— 2003 ACT

47.10.867 Bond issue authorized—Appropriation of proceeds. For the purpose of providing funds for the planning, design, construction, reconstruction, and other necessary costs for transportation projects, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of three hundred forty-nine million five hundred thousand dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine.

(2004 Ed.)

No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2003 c 147 § 7.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.868 Proceeds—Deposit and use. The proceeds of the sale of the bonds authorized in RCW 47.10.867 must be deposited in the multimodal transportation account and must be used exclusively for the purposes specified in RCW 47.10.867 and for the payment of expenses incurred in the issuance and sale of the bonds. [2003 c 147 § 8.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.869 Repayment procedure. (1) The nondebt-limit reimbursable bond retirement account must be used for the payment of the principal and interest on the bonds authorized in RCW 47.10.867.

(2)(a) The state finance committee must, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 47.10.867.

(b) On or before the date on which any interest or principal and interest is due, the state treasurer shall transfer from the multimodal transportation account for deposit into the nondebt-limit reimbursable bond retirement account the amount computed in (a) of this subsection for bonds issued for the purposes of RCW 47.10.867.

(3) If the multimodal transportation account has insufficient revenues to pay the principal and interest computed in subsection (2)(a) of this section, then the debt-limit reimbursable bond retirement account must be used for the payment of the principal and interest on the bonds authorized in RCW 47.10.867 from any additional means provided by the legislature.

(4) If at any time the multimodal transportation account has insufficient revenues to repay the bonds, the legislature may provide additional means for the payment of the bonds. [2003 c 147 § 9.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.870 Statement of general obligation—Transfer and payment of funds. (1) Bonds issued under RCW 47.10.867 must state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal and interest, and must contain an unconditional promise to pay the principal and interest as it becomes due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2003 c 147 § 10.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.871 Additional repayment means. The legislature may provide additional means for raising moneys for the payment of the principal and interest on the bonds authorized in RCW 47.10.867, and RCW 47.10.869 and 47.10.870 are

not deemed to provide an exclusive method for their payment. [2003 c 147 § 11.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.872 Legal investment. The bonds authorized in RCW 47.10.867 are a legal investment for all state funds or funds under state control and for all funds of any other public body. [2003 c 147 § 12.]

Effective date—2003 c 147: See note following RCW 47.10.861.

Chapter 47.12 RCW

ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

Sections

- 47.12.010 Acquisition of property authorized—Condemnation actions—Cost.
- 47.12.011 Purchase options authorized.
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Acquisition of rights of way, city streets: RCW 47.24.030.

47.12.010 Acquisition of property authorized—Condemnation actions—Cost. Whenever it is necessary to secure any lands or interests in land for a right of way for any state highway, or for the drainage thereof or construction of a protection therefor or so as to afford unobstructed vision therefor toward any railroad crossing or another public highway crossing or any point of danger to public travel or to provide a visual or sound buffer between highways and adjacent properties or for the purpose of acquiring sand pits, gravel pits, borrow pits, stone quarries, or any other land for the extraction of materials for construction or maintenance or both, or for any site for the erection upon and use as a maintenance camp, of any state highway, or any site for other necessary structures or for structures for the health and accommodation of persons traveling or stopping upon the state highways of this state, or any site for the construction and maintenance of structures and facilities adjacent to, under, upon, within, or above the right of way of any state highway for exclusive or nonexclusive use by an urban public transportation system, or for any other highway purpose, together with right of way to reach such property and gain access thereto, the department of transportation is authorized to acquire such lands or interests in land in behalf of the state by gift, purchase, or condemnation. In case of condemnation to secure such lands or interests in land, the action shall be brought in the name of the state of Washington in the manner provided for the acquiring of property for the public uses of the state, and in such action the selection of the lands or interests in land by the secretary of transportation shall, in the absence of bad faith, arbitrary, capricious, or fraudulent action, be conclusive upon the court and judge before which the action is brought that said lands or interests in land are necessary for public use for the purposes sought. The cost and expense of such lands or interests in land may be paid as a part of the cost of the state highway for which such right of way, drainage, unobstructed vision, sand pits, gravel pits, borrow pits, stone quarries, maintenance camp sites, and structure sites or other lands are acquired. [1977 ex.s. c 151 § 46; 1967 c 108 § 4; 1961 c 13 § 47.12.010. Prior: 1937 c 53 § 25, part; RRS § 6400-25, part.]

Urban public transportation system defined: RCW 47.04.082.

Right of way donations: Chapter 47.14 RCW.

47.12.011 Purchase options authorized. Whenever it becomes necessary or feasible to purchase rights of way for state highways, and the department deems it to be in the best interest of the general public, the department may secure options for purchase of property needed or proposed for any entire project or section thereof or proposed alignment for the

location or relocation of any highway. [1984 c 7 § 114; 1961 c 13 § 47.12.011. Prior: 1955 c 49 § 1.]

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

47.12.015 "Reservation boundary" defined. For the purposes of this chapter "reservation boundary" means the boundary of the reservation as established by federal law or under the authority of the United States Secretary of the Interior. [2002 c 255 § 2.]

47.12.023 Acquisition of state lands or interests or rights therein—Procedures—Compensation—Reacquisition by department of natural resources. (1) Except as provided in RCW 47.12.026 and 47.12.029, whenever it is necessary to secure any lands or interests in lands for any highway purpose mentioned in RCW 47.12.010, or for the construction of any toll facility or ferry terminal or docking facility, the title to which is in the state of Washington and under the jurisdiction of the department of natural resources, the department of transportation may acquire jurisdiction over the lands or interests in lands, or acquire rights to remove materials from the lands in the manner set forth in this section.

(2) At any time after the final adoption of a right of way plan or other plan requiring the acquisition of lands or interests in lands for any purpose as authorized in subsection (1) of this section, the department of transportation may file with the department of natural resources a notice setting forth its intent to acquire jurisdiction of the lands or interests in lands under the jurisdiction of the department of natural resources required for right of way or other highway purposes related to the construction or improvement of such state highway, toll facility, or ferry terminal or docking facility.

(3) The department of transportation at the time of filing its notice of intent as provided in subsection (2) of this section shall file therewith a written statement showing the total amount of just compensation to be paid for the property in the event of settlement. The offer shall be based upon the department of transportation approved appraisal of the fair market value of the property to be acquired. In no event may the offer of settlement be referred to or used during any arbitration proceeding or trial conducted for the purpose of determining the amount of just compensation.

(4) Just compensation and/or fair market value for the purposes of this section shall be determined in accordance with applicable federal and state constitutional, statutory, and case law relating to the condemnation of private and public property for public purposes.

(5) If the department of natural resources does not accept the offer of the department of transportation, the department of transportation may nonetheless pay to the department of natural resources the amount of its offer and obtain immediate possession and use of the property pending the determination of just compensation in the manner hereinafter provided.

(6) If the amount of just compensation is not agreed to, either the department of natural resources or the department of transportation may request in writing the appointment of an arbitrator for the purpose of determining the amount of compensation to be paid by the department of transportation for the acquisition of jurisdiction over the lands or interests in

lands or rights therein. In that event the department of natural resources and the department of transportation may jointly agree on an arbitrator to determine the compensation, and his determination shall be final and conclusive upon both departments. The costs of the arbitrator shall be borne equally by the parties. If the department of natural resources and the department of transportation are unable to agree on the selection of an arbitrator within thirty days after a request therefor is made, either the department of transportation or the department of natural resources may file a petition with the superior court for Thurston county for the purpose of determining the amount of just compensation to be paid. The matter shall be tried by the court pursuant to the procedures set forth in RCW 8.04.080.

(7) Whenever the department of transportation has acquired immediate possession and use of property by payment of the amount of its offer to the department of natural resources, and the arbitration award or judgment of the court for the acquisition exceeds the payment for immediate possession and use, the department of transportation shall forthwith pay the amount of such excess to the department of natural resources with interest thereon from the date it obtained immediate possession. If the arbitration or court award is less than the amount previously paid by the department of transportation for immediate possession and use, the department of natural resources shall forthwith pay the amount of the difference to the department of transportation.

(8) Upon the payment of just compensation, as agreed to by the department of transportation and the department of natural resources, or as determined by arbitration or by judgment of the court, and other costs or fees as provided by statute, the department of natural resources shall cause to be executed and delivered to the department of transportation an instrument transferring jurisdiction over the lands or interests in lands, or rights to remove material from the lands, to the department of transportation.

(9) Except as provided in RCW 47.12.026, whenever the department of transportation ceases to use any lands or interests in lands acquired in the manner set forth in this section for the purposes mentioned herein, the department of natural resources may reacquire jurisdiction over the lands or interests in land by paying the fair market value thereof to the department of transportation. If the two departments are unable to agree on the fair market value of the lands or interests in lands, the market value shall be determined and the interests therein shall be transferred in accordance with the provisions and procedures set forth in subsections (4) through (8) of this section. [1984 c 7 § 115; 1977 ex.s. c 103 § 1.]

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

47.12.026 Acquisition of state lands or interests or rights therein—Easements—Removal of materials—Relocation of railroad tracks. (1) The department of transportation may acquire an easement for highway or toll facilities right of way or for ferry terminal or docking facilities, including the right to make necessary fills, on, over, or across the beds of navigable waters which are under the jurisdiction of the department of natural resources, in accordance with the provisions of RCW 47.12.023, except that no charge may be

made to the department of transportation for such an easement.

(2) The department of transportation may obtain an easement for highway or toll facilities purposes or for ferry terminal or docking facilities on, over, or across harbor areas in accordance with RCW 47.12.023 but only when the areas are approved by the harbor line commission as a public place for public landings, wharves, or other public conveniences of commerce or navigation. No charge may be made to the department of transportation for such an easement.

(3) Upon the selection by the department of transportation of an easement for highway or toll facilities right of way or for ferry terminal or docking facilities, as authorized in subsections (1) and (2) of this section, the department of natural resources shall cause to be executed and delivered to the department of transportation an instrument transferring the easement. Whenever the state no longer requires the easement for highway or toll facilities right of way or for ferry terminal or docking facilities, the easement shall automatically terminate and the department of transportation shall, upon request, cause to be executed an instrument relinquishing to the department of natural resources all of its interest in the lands.

(4) The department of transportation, pursuant to the procedures set forth in RCW 47.12.023, may remove sand and gravel and borrow materials and stone from the beds of navigable waters under the jurisdiction of the department of natural resources which lie below the line of ordinary high water upon the payment of fair market value per cubic yard for such materials to be determined in the manner set forth in RCW 47.12.023.

(5) The department of transportation may acquire full jurisdiction over lands under the jurisdiction of the department of natural resources including the beds of navigable waters that are required for the relocation of the operating tracks of any railroad that will be displaced by the acquisition of such railroad property for state highway purposes. The department of transportation may exchange lands so acquired in consideration or partial consideration for the land or property rights needed for highway purposes and may cause to be executed a conveyance of the lands in the manner prescribed in RCW 47.12.150. In that event the department of transportation shall pay to the department of natural resources, as just compensation for the acquisition, the fair market value of the property, including the beds of any navigable waters, to be determined in accordance with procedures set forth in RCW 47.12.023. [1984 c 7 § 116; 1977 ex.s. c 103 § 2.]

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

47.12.029 Acquisition of state lands or interests or rights therein—Certain purposes prohibited. The department of transportation shall not acquire jurisdiction of any lands or interest in lands under the jurisdiction of the department of natural resources for any of the purposes set forth in RCW 47.12.150, 47.12.160, 47.12.180, 47.12.250, and 47.12.270. [1984 c 7 § 117; 1977 ex.s. c 103 § 3.]

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

47.12.040 Acquisition of property from a political subdivision. Whenever it is necessary to secure any lands

for primary or secondary state highway right of way or other state highway purposes, the title to which is in any county of the state or in any political or municipal subdivision of the state, which land is not at the time being used as a public highway, the county legislative authority or the board of directors or governing body of any such political or municipal subdivision are authorized to directly lease, sell, or convey by gift the land or any interest therein to the state of Washington, without requiring competitive bids or notice to the public, and at such price as the legislative authority, directors, or governing body may deem for the best interests of the county or for the best interests of the political or municipal subdivision of the state. The county legislative authority or the directors or governing body of any political or municipal subdivision are empowered to execute a deed or other proper instrument to the land, passing title to the state of Washington, and the instrument need not require consideration other than the benefit which may be derived by the grantor on account of the use thereof. Whenever any state highway is established by legislative enactment and the state highway is upon the former route of a county road, the county legislative authority shall cause the title to the existing right of way or so much thereof as the department requires to be transferred to the state of Washington by proper instrument. [1984 c 7 § 118; 1961 c 13 § 47.12.040. Prior: 1943 c 266 § 1; 1937 c 53 § 26; Rem. Supp. 1943 § 6400-26.]

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

47.12.044 Proceedings to acquire property or rights for highway purposes—Precedence. Court proceedings necessary to acquire property or property rights for highway purposes pursuant to RCW 47.12.010 take precedence over all other causes not involving the public interest in all courts in cases where the state is unable to secure an order granting it immediate possession and use of the property or property rights pursuant to RCW 8.04.090 through 8.04.094. [1983 c 140 § 2.]

47.12.050 Work on remaining land as payment. Whenever it is considered in the securing of any lands for state highway purpose, whether by condemnation or otherwise, that it is for the best interest of the state, for specific structural items of damage claimed, the court or judge may order or the person whose lands are sought may agree that a portion or all work or labor necessary to the land or remaining land by reason of the taking by way of damage, be performed by the state through the department as all or a part of the consideration or satisfaction of the judgment therefor, in which event the department may perform the work as a portion of the right of way cost of the state highway. [1984 c 7 § 119; 1961 c 13 § 47.12.050. Prior: 1937 c 53 § 27; RRS § 6400-27.]

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

47.12.063 Surplus real property program. (1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or improvements or for construction of improvements at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) Regional transit authorities created under chapter 81.112 RCW;

(e) The former owner of the property from whom the state acquired title;

(f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;

(g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within fifteen days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;

(h) To any person through the solicitation of written bids through public advertising in the manner prescribed by RCW 47.28.050;

(i) To any other owner of real property required for transportation purposes;

(j) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 and is eligible to receive assistance through the Washington housing trust fund created in chapter 43.185 RCW; or

(k) A federally recognized Indian tribe within whose reservation boundary the property is located.

(3) Sales to purchasers may at the department's option be for cash, by real estate contract, or exchange of land or improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW or Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(4) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) All moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund. [2002 c 255 § 1; 1999 c 210 § 1; 1993 c 461 § 11; 1988 c 135 § 1; 1983 c 3 § 125; 1977 ex.s. c 78 § 1.]

Finding—1993 c 461: See note following RCW 43.63A.510.

47.12.064 Affordable housing—Inventory of suitable property. (1) The department shall identify and catalog real property that is no longer required for department purposes and is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households.

holds as defined in RCW 43.63A.510. The inventory shall include the location, approximate size, and current zoning classification of the property. The department shall provide a copy of the inventory to the department of community, trade, and economic development by November 1, 1993, and every November 1 thereafter.

(2) By November 1 of each year, beginning in 1994, the department shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The department shall include an updated listing of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [1995 c 399 § 121; 1993 c 461 § 10.]

Finding—1993 c 461: See note following RCW 43.63A.510.

47.12.066 Sale or lease of personal property—Provision of services—Proceeds. (1) The department may sell at fair market value, or lease at rental value (economic rent), materials or other personal property to any United States agency or to any municipal corporation, political subdivision, or another agency of the state and may provide services to any United States agency or to any municipal corporation, political subdivision, or another agency of the state at actual cost, including a reasonable amount for indirect costs.

(2) The department may sell at fair market value materials or other personal property to any private utility company regulated by the utilities and transportation commission for the purpose of making emergency repairs to utility facilities or to protect such facilities from imminent damage upon a finding in writing by the secretary that an emergency exists.

(3) The proceeds of all sales and leases under this section shall be placed in the motor vehicle fund. [1984 c 7 § 120; 1977 ex.s. c 78 § 2.]

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

47.12.080 Sale or exchange of unused land. The secretary of transportation may transfer and convey to the United States, its agencies or instrumentalities, to any other state agency, to any county or city or port district of this state, or to any public utility company, any unused state-owned real property under the jurisdiction of the department of transportation when, in the judgment of the secretary of transportation and the attorney general, the transfer and conveyance is consistent with public interest. Whenever the secretary makes an agreement for any such transfer or conveyance, and the attorney general concurs therein, the secretary shall execute and deliver unto the grantee a deed of conveyance, easement, or other instrument, duly acknowledged, as shall be necessary to fulfill the terms of the aforesaid agreement. All moneys paid to the state of Washington under any of the provisions hereof shall be deposited in the motor vehicle fund. [1984 c 7 § 121. Prior: 1977 ex.s. c 151 § 49; 1977 ex.s. c 78 § 5; 1975 1st ex.s. c 96 § 3; 1961 c 13 § 47.12.080; prior: 1945 c 127 § 1; Rem. Supp. 1945 § 6400-120.]

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

47.12.120 Lease of unused highway land or air space. The department may rent or lease any lands, improvements, or air space above or below any lands that are held for high-

way purposes but are not presently needed. The rental or lease:

(1) Must be upon such terms and conditions as the department may determine;

(2) Is subject to the provisions and requirements of zoning ordinances of political subdivisions of government;

(3) Includes lands used or to be used for both limited access and conventional highways that otherwise meet the requirements of this section; and

(4) In the case of bus shelters provided by a local transit authority that include commercial advertising, may charge the transit authority only for commercial space. [2003 c 198 § 2; 1977 ex.s. c 151 § 50; 1969 c 91 § 1; 1961 c 13 § 47.12.120. Prior: 1949 c 162 § 1; Rem. Supp. 1949 § 6400-122.]

47.12.125 Lease of unused highway land or air space—Disposition of proceeds. All moneys paid to the state of Washington under any of the provisions of RCW 47.12.120 shall be deposited in the department's advance right of way revolving fund, except moneys that are subject to federal aid reimbursement and moneys received from rental of capital facilities properties, which shall be deposited in the motor vehicle fund. [1999 c 94 § 15; 1991 c 291 § 3; 1961 c 13 § 47.12.125. Prior: 1949 c 162 § 2; Rem. Supp. 1949 § 6400-123.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

47.12.140 Severance and sale of timber and other personalty—Removal of nonmarketable materials. Whenever the department has acquired any lands for transportation purposes, except state granted lands, upon which are located any structures, timber, or other thing of value attached to the land that the department deems it best to sever from the land and sell as personal property, the same may be disposed of by one of the following means:

(1) The department may sell the personal property at public auction after due notice has been given in accordance with general rules adopted by the secretary. The department may set minimum prices that will be accepted for any item offered for sale at public auction as provided in this section and may prescribe terms or conditions of sale. If an item is offered for sale at the auction and no satisfactory bids are received or the amount bid is less than the minimum set by the department, the department may sell the item at private sale for the best price that it deems obtainable, but not less than the highest price bid at the public auction. The proceeds of all sales under this section must be placed in the motor vehicle fund.

(2) The department may issue permits to residents of this state to remove specified quantities of standing or downed trees and shrubs, rock, sand, gravel, or soils that have no market value in place and that the department desires to be removed from state-owned lands that are under the jurisdiction of the department. An applicant for a permit must certify that the materials so removed are to be used by the applicant and that they will not be disposed of to any other person. Removal of materials under the permit must be in accordance with rules adopted by the department. The fee for a permit is two dollars and fifty cents, which fee must be deposited in the

motor vehicle fund. The department may adopt rules providing for special access to limited access facilities for the purpose of removal of materials under permits authorized in this section.

(3) The department may sell timber or logs to an abutting landowner for cash at full appraised value, but only after each other abutting owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting owner requests in writing the right to purchase the timber within fifteen days after receiving notice of the proposed sale, the timber must be sold in accordance with subsection (1) of this section.

(4) The department may sell timber or logs having an appraised value of one thousand dollars or less directly to interested parties for cash at the full appraised value without notice or advertising. If the timber is attached to state-owned land, the department shall issue a permit to the purchaser of the timber to allow for the removal of the materials from state land. The permit fee is two dollars and fifty cents. [1997 c 240 § 1; 1981 c 260 § 12. Prior: 1977 ex.s. c 151 § 52; 1977 ex.s. c 78 § 6; 1961 c 13 § 47.12.140; prior: 1953 c 42 § 1.]

47.12.150 Acquisition, exchange of property to relocate displaced facility. Whenever the department shall need for highway purposes land or property rights belonging to the United States government or any municipality or political subdivision of the state, or which shall be a part of the right of way of any public utility having authority to exercise powers of eminent domain, when the acquisition of such property by the state will result in the displacement of any existing right of way or facility, the department is authorized to acquire by condemnation or otherwise such lands and property rights as shall be needed to relocate such right of way or facilities so displaced and to exchange lands or property rights so acquired in consideration or partial consideration for the land or property rights needed for highway purposes. The secretary of transportation shall execute each conveyance, which shall be duly acknowledged, necessary to accomplish such exchange. [1977 ex.s. c 151 § 53; 1975 1st ex.s. c 96 § 5; 1961 c 13 § 47.12.150. Prior: 1953 c 55 § 1.]

47.12.160 Acquisition of land outside highway right of way to minimize damage. Whenever a part of a parcel of land is to be acquired for state highway purposes and the remainder lying outside of the right of way is to be left in such shape or condition as to be of little value to its owner or to give rise to claims or litigation concerning severance or other damage, and its value does not exceed the probable amount of the severance claims or damages, the department may acquire by gift, purchase, or condemnation the whole parcel and may sell that portion lying outside of the highway right of way or may exchange the same for other property needed for highway purposes. The provisions of this section do not apply if the taking of that portion of the land lying outside of the highway right of way would deprive any adjacent owner of an existing right of ingress and egress to his property. [1984 c 7 § 122; 1961 c 13 § 47.12.160. Prior: 1953 c 131 § 1.]

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

47.12.170 Sale, lease of unneeded toll facility, ferry system property—Franchises for utility, railway purposes. See RCW 47.56.253 through 47.56.257.

47.12.180 Additional financing methods for property and engineering costs—Formal declarations. It is declared to be the public policy of the state of Washington to provide for the acquisition of real property and engineering costs necessary for the improvement of the state highway system, in advance of actual construction, for the purposes of eliminating costly delays in construction, reducing hardship to owners of the property, and eliminating economic waste occasioned by the improvement of such property immediately prior to its acquisition for highway uses.

The legislature therefore finds and declares that purchase and condemnation of real property necessary for the state highway system and engineering costs, reasonably in advance of programmed construction, is a public use and purpose and a highway purpose.

The department is hereby authorized to purchase or condemn any real property or property rights therein which it deems will be necessary for the improvement of routes on the state highway system by the method provided in RCW 47.12.180 through 47.12.240 or alternatively by the method provided in RCW 47.12.242 through 47.12.246. Neither method may be used to condemn property or property rights in advance of programmed construction until the department has complied with hearing procedures required for the location or relocation of the type of highway for which the property is to be condemned. [1984 c 7 § 123; 1969 ex.s. c 197 § 1; 1961 c 281 § 1.]

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

Severability—1961 c 281: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 281 § 12.]

47.12.190 Additional financing methods for property and engineering costs—Purchase or condemnation. The department, in addition to its other powers and duties as provided by law, is authorized to purchase or condemn any real property or property rights therein which it deems will be necessary for the improvements of routes on the state highway system by the method provided in RCW 47.12.180 through 47.12.240. Condemnation actions brought hereunder shall be brought in the name of the state as provided for acquiring property for the public uses of the state, and in such actions selection of the property and property rights by the secretary of transportation is conclusive that they are necessary for the purposes sought, in the absence of bad faith, or arbitrary, capricious, or fraudulent action. [1977 ex.s. c 151 § 54; 1961 c 281 § 2.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.200 Additional financing methods for property and engineering costs—Agreements with state finance committee. The transportation commission may enter into agreements with the state finance committee for financing the acquisition, by purchase or condemnation, of real property together with engineering costs that the transportation commission deems will be necessary for the improvement of the

state highway system. Such agreements may provide for the acquisition of an individual parcel or for the acquisition of any number of parcels within the limits of a contemplated highway project. [1977 ex.s. c 151 § 55; 1969 ex.s. c 197 § 2; 1961 c 281 § 3.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.210 Additional financing methods for property and engineering costs—Warrants on motor vehicle fund. Such an agreement shall provide that the state finance committee shall purchase, at par, warrants drawn upon the motor vehicle fund in payment for the property covered by the agreement and the engineering costs necessary for such advance purchase or condemnation. Such warrants shall be purchased by the state finance committee, upon the presentation by the holders thereof to the state treasurer, from any moneys available for investment in the state treasury as provided in RCW 43.84.080: PROVIDED, That in no event shall more than ten percent of the assets of any fund be used for the purpose of acquiring property as authorized herein, except in the case of current state funds in the state treasury, twenty percent of the balance therein available for investment may be invested as provided in RCW 47.12.180 through 47.12.240. [1981 c 3 § 38; 1969 ex.s. c 197 § 3; 1961 c 281 § 4.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Severability—1961 c 281: See note following RCW 47.12.180.

Authorization that certain funds may be invested in motor vehicle fund warrants: RCW 43.84.080.

47.12.220 Additional financing methods for property and engineering costs—Mandatory, permissive, provisions in agreement. Each such agreement shall include, but shall not be limited to the following:

(1) A provision stating the term of the agreement which shall not extend more than seven years from the effective date of the agreement;

(2) A designation of the specific fund or funds to be used to carry out such agreement;

(3) A provision that the department of transportation may redeem warrants purchased by the state finance committee at any time prior to the letting of a highway improvement contract utilizing the property; and further, during the effective period of each such agreement the department of transportation shall redeem such warrants whenever such a highway improvement contract is let, or upon the expiration of such agreement, whichever date is earlier;

(4) A provision stating the rate of interest such warrants shall bear commencing at the time of purchase by the state finance committee;

(5) Any additional provisions agreed upon by the transportation commission and the state finance committee which are necessary to carry out the purposes of such agreement as indicated by RCW 47.12.180 through 47.12.240, as now or hereafter amended. [1977 ex.s. c 151 § 56; 1969 ex.s. c 197 § 4; 1961 c 281 § 5.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.230 Additional financing methods for property and engineering costs—Warrant form and procedure. Warrants issued for payment of property and engineering costs as provided herein shall be of a distinctive design and shall contain the words "for purchase by the state finance committee from . . . fund" (indicating the proper investing fund as provided by the agreement). Such warrants shall be approved by the secretary of the state finance committee prior to their issuance by the state treasurer. Upon presentation of such warrants to the state treasurer for payment, he shall pay the par value thereof from the fund for which the state finance committee agreed to purchase such warrants whether or not there are then funds in the motor vehicle fund. The state treasurer shall deposit such warrants in the treasury for the investing fund. [1969 ex.s. c 197 § 5; 1961 c 281 § 6.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.240 Additional financing methods for property and engineering costs—Payment procedure—Prior charge. The state treasurer shall transfer from the motor vehicle fund to the credit of the fund purchasing such warrants interest at the rate and at the times provided for in the agreement. The state treasurer shall pay the warrants at the time provided for in the agreement. The obligations coming due are a prior charge against any funds in the motor vehicle fund available to the department for construction of state highways. [1984 c 7 § 124; 1961 c 281 § 7.]

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

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.242 "Advance right of way acquisition" defined. The term "advance right of way acquisition" means the acquisition of property and property rights, generally not more than ten years in advance of programmed highway construction projects, together with the engineering costs necessary for such advance right of way acquisition. Any property or property rights purchased must be in designated highway transportation corridors and be for projects approved by the commission as part of the state's six-year plan or included in the state's route development planning effort. [1991 c 291 § 1; 1969 ex.s. c 197 § 6.]

47.12.244 Advance right of way revolving fund. There is created the "advance right of way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation:

(1) An initial deposit of ten million dollars from the motor vehicle fund included in the department of transportation's 1991-93 budget;

(2) All moneys received by the department as rental income from real properties that are not subject to federal aid reimbursement, except moneys received from rental of capital facilities properties as defined in *chapter 47.13 RCW; and

(3) Any federal moneys available for acquisition of right of way for future construction under the provisions of section 108 of Title 23, United States Code. [1991 c 291 § 2; 1984 c 7 § 125; 1969 ex.s. c 197 § 7.]

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***Reviser's note:** Chapter 47.13 RCW was repealed by 1999 c 94 § 33, effective July 1, 1999.

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

47.12.246 Reimbursement to advance right of way revolving fund. (1) After any properties or property rights are acquired from funds in the advance right of way revolving fund, the department shall manage the properties in accordance with sound business practices. Funds received from interim management of the properties shall be deposited in the advance right of way revolving fund.

(2) When the department proceeds with the construction of a highway which will require the use of any of the property so acquired, the department shall reimburse the advance right of way revolving fund, from other funds available to it, the current appraised value of the property or property rights required for the project together with damages caused to the remainder by the acquisition after offsetting against all such compensation and damages the special benefits, if any, accruing to the remainder by reason of the state highway being constructed.

(3) When the department determines that any properties or property rights acquired from funds in the advance right of way revolving fund will not be required for a highway construction project the department may sell the property at fair market value in accordance with requirements of RCW 47.12.063. All proceeds of such sales shall be deposited in the advance right of way revolving fund.

(4) Deposits in the fund may be reexpended as provided in RCW 47.12.180, 47.12.200 through 47.12.230, and 47.12.242 through 47.12.248 without further or additional appropriations. [1991 c 291 § 4; 1984 c 7 § 126; 1969 ex.s. c 197 § 9.]

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

47.12.248 Structures acquired in advance of programmed construction—Maintenance. Whenever the department purchases or condemns any property under RCW 47.12.180 through 47.12.240 or 47.12.242 through 47.12.246, the department shall cause any structures so acquired and not removed within a reasonable time to be maintained in good appearance. [1984 c 7 § 127; 1969 ex.s. c 197 § 10.]

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

47.12.250 Acquisition of property for preservation, safety, buffer purposes. The department is authorized to acquire by purchase, lease, condemnation, gift, devise, bequest, grant, or exchange, title to or any interests or rights in real property adjacent to state highways for the preservation of natural beauty, historic sites or viewpoints or for safety rest areas or to provide a visual or sound buffer between highways and adjacent properties. However, the department shall not acquire, by condemnation, less than an owner's entire interest for providing a visual or sound buffer between highways and adjacent properties under RCW 47.12.010 and 47.12.250 if the owner objects to the taking of a lesser interest or right. [1984 c 7 § 128; 1967 c 108 § 5; 1965 ex.s. c 170 § 62.]

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

(2004 Ed.)

Roadside areas—Safety rest areas: Chapter 47.38 RCW.

Scenic and Recreational Highway Act: Chapter 47.39 RCW.

47.12.260 Acquisition of real property subject to local improvement assessments—Payment. See RCW 79.44.190.

47.12.270 Acquisition of property for park and ride lots. The department may acquire real property or interests in real property by gift, purchase, lease, or condemnation and may construct and maintain thereon fringe and transportation corridor parking facilities to serve motorists transferring to or from urban public transportation vehicles or private car pool vehicles. The department may obtain and exercise options for the purchase of property to be used for purposes described in this section. The department shall not expend any funds for acquisition or construction costs of any parking facility to be operated as a part of a transit system by a metropolitan municipal corporation unless the facility has been approved by the department in advance of its acquisition or construction. [1984 c 7 § 129; 1973 2nd ex.s. c 18 § 1.]

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

47.12.283 Sale of real property authorized—Procedure—Disposition of proceeds. (1) Whenever the department of transportation determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for highway purposes and that it is in the public interest to do so, the department may, in its discretion, sell the property under RCW 47.12.063 or under subsections (2) through (6) of this section.

(2) Whenever the department determines to sell real property under its jurisdiction at public auction, the department shall first give notice thereof by publication on the same day of the week for two consecutive weeks, with the first publication at least two weeks prior to the date of the auction, in a legal newspaper of general circulation in the area where the property to be sold is located. The notice shall be placed in both the legal notices section and the real estate classified section of the newspaper. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) The department shall sell the property at the public auction, in accordance with the terms set forth in the notice, to the highest and best bidder providing the bid is equal to or higher than the appraised fair market value of the property.

(4) If no bids are received at the auction or if all bids are rejected, the department may, in its discretion, enter into negotiations for the sale of the property or may list the property with a licensed real estate broker. No property shall be sold by negotiations or through a broker for less than the property's appraised fair market value. Any offer to purchase real property pursuant to this subsection shall be in writing and may be rejected at any time prior to written acceptance by the department.

(5) Before the department shall approve any offer for the purchase of real property having an appraised value of more than ten thousand dollars, pursuant to subsection (4) of this section, the department shall first publish a notice of the pro-

posed sale in a local newspaper of general circulation in the area where the property is located. The notice shall include a description of the property, the selling price, the terms of the sale, including the price and interest rate if sold by real estate contract, and the name and address of the department employee or the real estate broker handling the transaction. The notice shall further state that any person may, within ten days after the publication of the notice, deliver to the designated state employee or real estate broker a written offer to purchase the property for not less than ten percent more than the negotiated sale price, subject to the same terms and conditions. A subsequent offer shall not be considered unless it is accompanied by a deposit of twenty percent of the offer in the form of cash, money order, cashier's check, or certified check payable to the Washington state treasurer, to be forfeited to the state (for deposit in the motor vehicle fund) if the offeror fails to complete the sale if the offeror's offer is accepted. If a subsequent offer is received, the first offeror shall be informed by registered or certified mail sent to the address stated in his offer. The first offeror shall then have ten days, from the date of mailing the notice of the increased offer, in which to file with the designated state employee or real estate broker a higher offer than that of the subsequent offeror. After the expiration of the ten day period, the department shall approve in writing the highest and best offer which the department then has on file.

(6) All moneys received pursuant to this section, less any real estate broker's commissions paid pursuant to RCW 47.12.320, shall be deposited in the motor vehicle fund. [1979 ex.s. c 189 § 1.]

Effective date—1979 ex.s. c 189: "This 1979 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 189 § 8.]

47.12.287 Exchange of real property authorized—Conveyance by deed. The department of transportation is hereby authorized to enter into an exchange agreement with the owner of real property required for highway purposes to convey to such owner real property, owned by the state and under the department's jurisdiction, as full or part consideration for property to be acquired for highway purposes. Such an exchange agreement may relate back and apply to any exchange of property previously agreed to and partially executed (pursuant to an earlier exchange agreement found to be void for want of a governor's deed as required by prior law), and shall be subject to such agreed terms and conditions as are authorized by RCW 47.12.063(3) as now existing or hereafter amended. Any conveyance from the state of Washington made pursuant to this section shall be by deed executed by the secretary of transportation, which shall be duly acknowledged. [1979 ex.s. c 189 § 2.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

47.12.290 Sale of real property—Execution, acknowledgement, and delivery of deed. When full payment for real property agreed to be sold as authorized by RCW 47.12.283 has been received, the secretary of transportation shall execute the deed which shall be duly acknowledged and deliver it to the grantee. [1979 ex.s. c 189 § 3; 1975 1st ex.s. c 96 § 6; 1973 1st ex.s. c 177 § 2.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

47.12.300 Sale of unneeded property—Department of transportation—Authorized—Rules. See RCW 47.56.254.

47.12.301 Sale of unneeded property—Department of transportation—Certification to governor—Execution, delivery of deed. See RCW 47.56.255.

47.12.302 Department of transportation—Sale of unneeded property. See RCW 47.60.130.

47.12.320 Sale of property—Listing with broker. The department may list any available properties with any licensed real estate broker at a commission rate otherwise charged in the geographic area for such services. [1984 c 7 § 130; 1973 1st ex.s. c 177 § 7.]

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

47.12.330 Advanced environmental mitigation—Authorized. For the purpose of environmental mitigation of transportation projects, the department may acquire or develop, or both acquire and develop, environmental mitigation sites in advance of the construction of programmed projects. The term "advanced environmental mitigation" means mitigation of adverse impacts upon the environment from transportation projects before their design and construction. Advanced environmental mitigation consists of the acquisition of property; the acquisition of property, water, or air rights; the development of property for the purposes of improved environmental management; engineering costs necessary for such purchase and development; and the use of advanced environmental mitigation sites to fulfill project environmental permit requirements. Advanced environmental mitigation must be conducted in a manner that is consistent with the definition of mitigation found in the council of environmental quality regulations (40 C.F.R. Sec. 1508.20) and the governor's executive order on wetlands (EO 90-04). Advanced environmental mitigation is for projects approved by the transportation commission as part of the state's six-year plan or included in the state highway system plan. Advanced environmental mitigation must give consideration to activities related to fish passage, fish habitat, wetlands, and flood management. Advanced environmental mitigation may also be conducted in partnership with federal, state, or local government agencies, tribal governments, interest groups, or private parties. Partnership arrangements may include joint acquisition and development of mitigation sites, purchasing and selling mitigation bank credits among participants, and transfer of mitigation site title from one party to another. Specific conditions of partnership arrangements will be developed in written agreements for each applicable environmental mitigation site. [1998 c 181 § 2; 1997 c 140 § 2.]

Findings—1998 c 181: "The legislature finds that fish passage, fish habitat, wetlands, and flood management are critical issues in the effective management of watersheds in Washington. The legislature also finds that the state of Washington invests a considerable amount of resources on environmental mitigation activities related to fish passage, fish habitat, wetlands, and flood management. The department of transportation's advanced environmental mitigation revolving account established under RCW 47.12.340,

is a key funding component in bringing environmental mitigation together with comprehensive watershed management." [1998 c 181 § 1.]

Intent—1997 c 140: "It is the intent of chapter 140, Laws of 1997 to provide environmental mitigation in advance of the construction of programmed projects where desirable and feasible, [which] will provide a more efficient and predictable environmental permit process, increased benefits to environmental resources, and a key tool in using the watershed approach for environmental impact mitigation. The legislative transportation committee, through its adoption of the December 1994 report "Environmental Cost Savings and Permit Coordination Study," encourages state agencies to use a watershed approach based on a water resource inventory area in an improved environmental mitigation and permitting process. Establishment of an advanced transportation environmental mitigation revolving account would help the state to improve permit processes and environmental protection when providing transportation services." [1997 c 140 § 1.]

47.12.340 Advanced environmental mitigation revolving account. The advanced environmental mitigation revolving account is created in the custody of the treasurer, into which the department shall deposit directly and may expend without appropriation:

(1) An initial appropriation included in the department of transportation's 1997-99 budget, and deposits from other identified sources;

(2) All moneys received by the department from internal and external sources for the purposes of conducting advanced environmental mitigation; and

(3) Interest gained from the management of the advanced environmental mitigation revolving account. [1997 c 140 § 3.]

Intent—1997 c 140: See note following RCW 47.12.330.

47.12.350 Advanced environmental mitigation—Site management—Reimbursement of account. (1) After advanced environmental mitigation is conducted from funds in the advanced environmental mitigation revolving account, the advanced environmental mitigation sites must be managed in accordance with any permits, agreements, or other legal documents under which the subject advanced environmental mitigation is conducted.

(2) When the department or any of its transportation partners proceeds with the construction of a transportation project that will use advanced environmental mitigation sites to meet the environmental mitigation needs of a project, the advanced environmental mitigation revolving account shall be reimbursed from those transportation project funds appropriated for the use of the advanced environmental mitigation sites. Reimbursements to the advanced environmental mitigation revolving account must be paid at a rate that captures:

(a) Projected land acquisition costs for environmental mitigation for the subject transportation project;

(b) Advanced environmental mitigation site development costs;

(c) Advanced environmental mitigation site operational costs (e.g., site monitoring);

(d) Administrative costs for the management of the advanced environmental revolving account.

These costs must be adjusted based on inflation, as appropriate.

When only a portion of an advanced environmental mitigation site is used, the reimbursement rate charged to the purchasing party will be prorated for the portion used. [1997 c 140 § 4.]

Intent—1997 c 140: See note following RCW 47.12.330.

47.12.360 Advanced environmental mitigation—Reports. By January 1st of each odd-numbered year, the department shall report to the legislative transportation committee and the office of financial management:

- (1) Which properties were purchased and why;
- (2) Expenditures for the acquired parcels; and
- (3) Estimated savings from these actions. [1997 c 140 § 5.]

Intent—1997 c 140: See note following RCW 47.12.330.

47.12.370 Environmental mitigation—Exchange agreements. (1) The department may enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit nature conservancy corporations as defined in RCW 64.04.130, to convey properties under the jurisdiction of the department that serve as environmental mitigation sites, as full or part consideration for the grantee assuming all future maintenance and operation obligations and costs required to maintain and operate the environmental mitigation site in perpetuity.

(2) Tribal governments shall only be eligible to participate in an exchange agreement if they:

(a) Provide the department with a valid waiver of their tribal sovereign immunity from suit. The waiver must allow the department to enforce the terms of the exchange agreement or quitclaim deed in state court; and

(b) Agree that the property shall not be placed into trust status.

(3) The conveyances must be by quitclaim deed, or other form of conveyance, executed by the secretary of transportation, and must expressly restrict the use of the property to a mitigation site consistent with preservation of the functions and values of the site, and must provide for the automatic reversion to the department if the property is not used as a mitigation site or is not maintained in a manner that complies with applicable permits, laws, and regulations pertaining to the maintenance and operation of the mitigation site. [2003 c 187 § 1; 2002 c 188 § 1.]

Chapter 47.14 RCW

RIGHT OF WAY DONATIONS

Sections

47.14.010	Legislative finding, intent.
47.14.020	Definitions.
47.14.030	Credit against transportation benefit district assessment.
47.14.040	Advertising signs on donated parcel.
47.14.050	Department's duties.
47.14.900	Construction.
47.14.910	Severability—1987 c 267.

47.14.010 Legislative finding, intent. The legislature finds that in numerous areas throughout the state, rapid expansion of residential, commercial, industrial, and business activities is producing increased traffic levels. The legislature further finds that many property owners have exhibited a willingness to donate real property or property rights for transportation improvements to accommodate such increases in traffic. The legislature recognizes that the cost of right of

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way acquisition is often a significant, and even a prohibitive cost element in many transportation improvement projects.

The legislature seeks to encourage the voluntary donation of right of way to the state, counties, cities, and towns for transportation improvements recognizing that such donations can result in direct benefits to property owners, developers, and the community at large.

It is the intent of the legislature to further facilitate the department of transportation's authority under RCW 47.12.010, 47.24.030, and 47.52.050 to accept donations of right of way for state transportation purposes. The legislature further intends to facilitate the authority of a city, town, or county to accept donations of right of way for other transportation purposes.

The legislature therefore declares it to be in the best interest and welfare of the citizens of Washington for the state department of transportation, and for counties, cities, and towns to actively foster and encourage donations of right of way by willing donors in all areas where transportation improvements are to be made. In addition, and in lieu of monetary compensation for property needed for right of way purposes, the legislature seeks to provide incentives to potential donors such as are set forth in RCW 47.14.030 and 47.14.040. [1987 c 267 § 1.]

47.14.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Right of way" means the area of land designated for transportation purposes.

(2) "Airspace" means the space above and below the gradeline of all highways, roads, and streets, and the area alongside the traveled way and within approved right of way lines. [1987 c 267 § 2.]

47.14.030 Credit against transportation benefit district assessment. The governing body of a transportation benefit district may give credit for all or any portion of any real property donation against an assessment, charge, or other required financial contribution for transportation improvements within a transportation benefit district established under RCW 36.73.020 or 35.21.225. The credit granted shall be available against any assessment, charge or other required financial contribution for any transportation purpose which utilizes the donated property. [1987 c 267 § 3.]

47.14.040 Advertising signs on donated parcel. The department or the county, city, or town to which the right of way is donated shall, upon request, grant the donor an airspace lease or a permit for the purpose of erecting or maintaining, or both, one or more signs advertising a business of the donor that is conducted on premises adjacent to the donated parcel unless the sign or signs would be detrimental to the safety and operation of the highway, road, or street. This provision applies to all highways, roads, and streets other than limited access highways and streets, where it applies only until the donated parcel becomes part of a completed operating facility. Except as provided in this section, any such sign shall conform to the requirements of all other applicable federal, state, and local laws and ordinances. The lease agreement or permit shall take into consideration appli-

cable county and city zoning ordinances and may provide for compensation for removal of the sign in accordance with applicable federal, state, and local laws and ordinances. The lease agreement or permit shall specify the conditions for signage. [1987 c 267 § 4.]

47.14.050 Department's duties. The department shall:

- (1) Give priority to the refinement and modification of right of way procedures and policies dealing with donation;
- (2) Reduce or simplify paperwork requirements resulting from right of way procurement;
- (3) Increase communication and education efforts as a means to solicit and encourage voluntary right of way donations;
- (4) Enhance communication and coordination with local governments through agreements of understanding that address state acceptance of right of way donations secured under zoning, use permits, subdivision, and associated police power authority of local government. [1998 c 245 § 96; 1987 c 267 § 5.]

47.14.900 Construction. Nothing in this chapter may be construed to contravene the requirements of chapter 8.26 RCW. [1987 c 267 § 6.]

47.14.910 Severability—1987 c 267. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 267 § 12.]

**Chapter 47.17 RCW
STATE HIGHWAY ROUTES**

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47.17.960	Local bridges—Department responsibility.
47.17.990	Construction—Refunds to counties composed of islands.

Latitude in selecting route: RCW 47.28.010.

47.17.001 Criteria for changes to system. In considering whether to make additions, deletions, or other changes to the state highway system, the legislature shall be guided by the following criteria as contained in the Road Jurisdiction Committee Phase I report to the legislature dated January 1987:

(1) A rural highway route should be designated as a state highway if it meets any of the following criteria:

(a) Is designated as part of the national system of interstate and defense highways (popularly called the interstate system); or

(b) Is designated as part of the system of numbered United States routes; or

(c) Contains an international border crossing that is open twelve or more hours each day.

(2) A rural highway route may be designated as a state highway if it is part of an integrated system of roads and:

(a) Carries in excess of three hundred thousand tons annually and provides primary access to a rural port or intermodal freight terminal;

(b) Provides a major cross-connection between existing state highways;

(c) Connects places exhibiting one or more of the following characteristics:

(i) A population center of one thousand or greater;

(ii) An area or aggregation of areas having a population equivalency of one thousand or more, such as, but not limited to, recreation areas, military installations, and so forth;

(iii) A county seat;

(iv) A major commercial-industrial terminal in a rural area with a population equivalency of one thousand or greater; or

(d) Is designated as a scenic and recreational highway.

(3) An urban highway route that meets any of the following criteria should be designated as part of the state highway system:

(a) Is designated as part of the interstate system;

(b) Is designated as part of the system of numbered United States routes;

(c) Is an urban extension of a rural state highway into or through an urban area and is necessary to form an integrated system of state highways;

(d) Is a principal arterial that is a connecting link between two state highways and serves regionally oriented through traffic in urbanized areas with a population of fifty thousand or greater, or is a spur that serves regionally oriented traffic in urbanized areas.

(4) The following guidelines are intended to be used as a basis for interpreting and applying the criteria to specific routes:

(a) For any route wholly within one or more contiguous jurisdictions which would be proposed for transfer to the state highway system under these criteria, if local officials prefer, responsibility will remain at the local level.

(b) State highway routes maintain continuity of the system by being composed of routes that join other state routes at both ends or to arterial routes in the states of Oregon and Idaho and the Province of British Columbia.

(c) Public facilities may be considered to be served if they are within approximately two miles of a state highway.

(d) Exceptions may be made to include:

(i) Rural spurs as state highways if they meet the criteria relative to serving population centers of one thousand or greater population or activity centers with population equivalencies or an aggregated population of one thousand or greater;

(ii) Urban spurs as state highways that provide needed access to Washington state ferry terminals, state parks, major seaports, and trunk airports; and

(iii) Urban connecting links as state highways that function as needed bypass routing of regionally oriented through traffic and benefit truck routing, capacity alternative, business congestion, and geometric deficiencies.

(e) In urban and urbanized areas:

(i) Unless they are significant regional traffic generators, public facilities such as state hospitals, state correction centers, state universities, ferry terminals, and military bases do not constitute a criteria for establishment of a state highway; and

(ii) There may be no more than one parallel nonaccess controlled facility in the same corridor as a freeway or limited access facility as designated by the metropolitan planning organization.

(f) When there is a choice of two or more routes between population centers, the state route designation shall normally be based on the following considerations:

(i) The ability to handle higher traffic volumes;

(ii) The higher ability to accommodate further development or expansion along the existing alignment;

(iii) The most direct route and the lowest travel time;

(iv) The route that serves traffic with the most interstate, statewide, and interregional significance;

(v) The route that provides the optimal spacing between other state routes; and

(vi) The route that best serves the comprehensive plan for community development in those areas where such a plan has been developed and adopted.

(g) A route designated in chapter 47.39 RCW as a scenic and recreational highway may be designated as a state highway in addition to a parallel state highway route. [1993 c 430 § 1; 1990 c 233 § 1.]

47.17.005 State route No. 2. A state highway to be known as state route number 2 is established as follows:

Beginning at a junction with state route number 5 in Everett, thence easterly by way of Monroe, Stevens Pass, and Leavenworth to a junction with state route number 97 in the vicinity of Peshastin; also

From a junction with state route number 97 in the vicinity of Peshastin, thence easterly by way of Wenatchee, to a junction with state route number 97 in the vicinity of Orondo, thence easterly by way of Waterville, Wilbur, and Davenport to a junction with state route number 90 in the vicinity west of Spokane; also

Beginning at a junction with state route number 90 at Spokane, thence northerly to a junction with state route number 395 in the vicinity north of Spokane; also

From a junction with state route number 395 in the vicinity north of Spokane, thence northerly to a junction with state route number 20 at Newport; also

From a junction with state route number 20 at Newport, thence easterly to the Washington-Idaho boundary line. [1997 c 155 § 1; 1987 c 199 § 1; 1970 ex.s. c 51 § 2.]

Purpose—1970 ex.s. c 51: "This act is intended to assign state route numbers to existing state highways duly established by prior legislative act in lieu of primary state highway numbers and secondary state highway numbers. Nothing contained herein is intended to add any new section of highway to the state highway system or delete any section of highway from the state highway system." [1970 ex.s. c 51 § 179.]

47.17.010 State route No. 3. A state highway to be known as state route number 3 is established as follows:

Beginning at a junction with state route number 101 at Shelton, thence northeasterly to a junction with state route number 302 at Allyn; also

From that junction with state route number 302 at Allyn, thence northeasterly to a junction with state route number 106 in the vicinity of Belfair; also

From that junction with state route number 106 in the vicinity of Belfair, thence northeasterly by the most feasible route to Bremerton, thence northerly and easterly by the most feasible route in the vicinity of Poulsbo to a junction with state route number 104 in the vicinity of Port Gamble. [1970 ex.s. c 51 § 3.]

47.17.015 State route No. 4. A state highway to be known as state route number 4 is established as follows:

Beginning at a junction with state route number 101 in the vicinity of a location known as Johnson's Landing, in Pacific county, thence southeasterly by the most feasible route by way of Kelso to a junction with state route number 5. [1970 ex.s. c 51 § 4.]

47.17.020 State route No. 5. A state highway to be known as state route number 5 is established as follows:

Beginning at the Washington-Oregon boundary line on the interstate bridge over the Columbia river at Vancouver, thence northerly by way of Kelso, Chehalis, Centralia, Olympia, Tacoma, Seattle, Everett and Mt. Vernon, thence northwesterly to the east of Lake Samish, thence northeasterly and northerly by way of Bellingham to the international boundary line in the vicinity of Blaine in Whatcom county. [1970 ex.s. c 51 § 5.]

47.17.025 State route No. 6. A state highway to be known as state route number 6 is established as follows:

Beginning at a junction with state route number 101 at Raymond, thence easterly by the most feasible route to a junction with state route number 5 at Chehalis. [1970 ex.s. c 51 § 6.]

47.17.030 State route No. 7. A state highway to be known as state route number 7 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Morton, thence northerly to a junction with state route number 706 at Elbe; also

From that junction with state route number 706 at Elbe, thence northerly to a junction with state route number 5 at Tacoma. [1970 ex.s. c 51 § 7.]

47.17.035 State route No. 8. A state highway to be known as state route number 8 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 west of Olympia. [1987 c 199 § 2; 1970 ex.s. c 51 § 8.]

47.17.040 State route No. 9. A state highway to be known as state route number 9 is established as follows:

Beginning at a junction with state route number 522 north of Woodinville, thence northerly by way of Snohomish, Arlington and Sedro Woolley to a junction with state route number 542, in the vicinity of Deming; also

Beginning at a junction with state route number 542, in the vicinity of Lawrence, thence northerly to the international boundary at Sumas. [1970 ex.s. c 51 § 9.]

47.17.045 State route No. 10. A state highway to be known as state route number 10 is established as follows:

Beginning at a junction with state route number 970 at Teanaway junction thence easterly to a junction with state route number 97 west of Ellensburg. [1987 c 199 § 3; 1975 c 63 § 14; 1971 ex.s. c 73 § 1; 1970 ex.s. c 51 § 10.]

47.17.050 State route No. 11. A state highway to be known as state route number 11 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Burlington, thence northerly by way of Blanchard to a junction with state route number 5 at Bellingham. [1987 c 199 § 4; 1970 ex.s. c 51 § 11.]

47.17.055 State route No. 12. A state highway to be known as state route number 12 is established as follows:

Beginning at a junction with state route number 101 at Aberdeen, thence easterly by way of Montesano and Elma to a junction with state route number 8 in the vicinity of Elma; also

From that junction with state route number 8 in the vicinity of Elma, thence southeasterly to a junction with state route number 5 in the vicinity north of Centralia; also

Beginning at a junction with state route number 5 in the vicinity south of Chehalis, thence easterly by way of Morton and White Pass to a junction with state route number 410 northwest of Yakima; also

From that junction with state route number 410 northwest of Yakima, thence southeasterly to a junction with state route number 82 at Yakima; also

Beginning at a junction with state route number 182 near Pasco, thence southeasterly by the most feasible route by way of Wallula to Walla Walla, thence northerly by way of Dayton to a junction with state route number 127 at Dodge; also

From that junction with state route number 127 in the vicinity of Dodge, thence easterly by the most feasible route by way of Pomeroy and Clarkston to the Washington-Idaho boundary line. [1985 c 177 § 1; 1983 c 180 § 1; 1970 ex.s. c 51 § 12.]

47.17.060 State route No. 14. A state highway to be known as state route number 14 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence easterly by way of Stevenson to a junction with state route number 97 in the vicinity of Maryhill; also

Beginning at a junction with state route number 97 in the vicinity of Maryhill, thence easterly along the north bank of the Columbia river to a junction with state route number 82 in the vicinity of Plymouth. [1985 c 177 § 2; 1970 ex.s. c 51 § 13.]

47.17.065 State route No. 16. A state highway to be known as state route number 16 is established as follows:

Beginning at a junction with state route number 5 at Tacoma, thence northwesterly by way of the Tacoma Narrows Bridge to a junction with state route number 3 in the vicinity of Gorst. [1987 c 199 § 5; 1973 1st ex.s. c 151 § 1; 1970 ex.s. c 51 § 14.]

47.17.070 State route No. 17. A state highway to be known as state route number 17 is established as follows:

Beginning at a junction with state route number 395 in the vicinity of Mesa, thence northwesterly by way of the vicinity of Moses Lake, and Soap Lake, to a junction with state route number 2 west of Coulee City; also

From a junction with state route number 2 in the vicinity west of Coulee City, thence northerly by way of the vicinity of Leahy, crossing the Columbia river in the vicinity of Bridgeport, thence northwesterly to a junction with state route number 97 east of Brewster. [1979 ex.s. c 33 § 1; 1970 ex.s. c 51 § 15.]

47.17.075 State route No. 18. A state highway to be known as state route number 18 is established as follows:

Beginning at a junction with state route number 99 in the vicinity of northeast Tacoma, thence northeasterly by way of Auburn to a junction with state route number 90 west of North Bend. [1987 c 199 § 6; 1970 ex.s. c 51 § 16.]

47.17.077 State route No. 19. A state highway to be known as state route number 19 is established as follows:

Beginning at a junction with state route number 104, thence northerly to a junction with state route number 20 near Old Fort Townsend state park. [1991 c 342 § 1.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.080 State route No. 20. A state highway to be known as state route number 20 is established as follows:

Beginning at a junction with state route number 101 in the vicinity of Discovery Bay, thence northeasterly via the most feasible route to Port Townsend; also

From the state ferry terminal at Port Townsend via the state ferry system northeasterly to the state ferry terminal at Keystone; also

From the Keystone ferry dock on Whidbey Island, thence northeasterly by the most feasible route by way of Deception Pass, Burlington, Sedro Woolley, Concrete, Newhalem, Winthrop, Twisp, Okanogan, Tonasket, Republic, Kettle Falls, Colville, and Tiger; thence southerly and southeasterly to a junction with state route number 2 at Newport. [1994 c 209 § 1; 1973 1st ex.s. c 151 § 13; 1970 ex.s. c 51 § 17.]

47.17.081 State route No. 20 north. A state highway to be known as state route number 20 north is established as follows:

Beginning at a junction with state route number 20 in the vicinity southeast of Anacortes, thence northwesterly to the state ferry terminal at Anacortes; also

From the state ferry terminal at Anacortes via the state ferry system to the state ferry terminals at Lopez Island, Shaw Island, Orcas Island, and Friday Harbor. [1994 c 209 § 2; 1973 1st ex.s. c 151 § 17.]

47.17.085 State route No. 21. A state highway to be known as state route number 21 is established as follows:

Beginning at a junction with state route number 260 in Kahlotus, thence northerly by the most feasible route, crossing state route number 26, and continuing northerly to a junction with state route number 395 in the vicinity of Lind; also

Beginning at a junction with state route number 395 in the vicinity of Lind, thence northerly by the most feasible route by way of Odessa to a junction with state route number 2 in the vicinity west of Wilbur; also

Beginning at a junction with state route number 2 at Wilbur, thence northerly by the most feasible route to a junction with state route number 20 at Republic; also

Beginning at a junction with state route number 20 east of Republic, thence northeasterly by the most feasible route to the east of Curlew lake by way of Curlew to the international boundary line in the vicinity of Danville. [1983 c 79 § 1; 1975 c 63 § 1; 1970 ex.s. c 51 § 18.]

47.17.090 State route No. 22. A state highway to be known as state route number 22 is established as follows:

Beginning at a junction with state route number 82, thence southerly to a junction of state route number 97 in the vicinity of Toppenish; also

From a junction with state route number 97 at Toppenish, thence southeasterly by way of Mabton to a junction with state route number 82 at Prosser. [1987 c 199 § 7; 1970 ex.s. c 51 § 19.]

47.17.095 State route No. 23. A state highway to be known as state route number 23 is established as follows:

Beginning at a junction with state route number 195 in the vicinity north of Colfax, thence northwesterly to a junction with state route number 90 at Sprague; also

From that junction with state route number 90 at Sprague, thence northwesterly to a junction with state route number 28 at Harrington. [1987 c 199 § 8; 1970 ex.s. c 51 § 20.]

47.17.100 State route No. 24. A state highway to be known as state route number 24 is established as follows:

Beginning at a junction with state route number 82 at Yakima, thence easterly and northerly via Cold Creek and Vernita to a junction with state route number 26 in the vicinity of Othello. [1970 ex.s. c 51 § 21.]

47.17.105 State route No. 25. A state highway to be known as state route number 25 is established as follows:

Beginning at a junction with state route number 2 at Davenport, thence northerly by the most feasible route to a

junction with state route number 395 in the vicinity of Kettle Falls, thence northeasterly by the most feasible route to international boundary line. [1970 ex.s. c 51 § 22.]

47.17.110 State route No. 26. A state highway to be known as state route number 26 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of the east end of the Vantage bridge, thence southerly, parallel to the east bank of the Columbia river for a distance of approximately two and one-half miles, thence southeasterly to the vicinity of Othello, thence easterly to a junction with state route number 395, thence easterly by way of the vicinity of Washtucna and Dusty to a junction with state route number 195 in the vicinity of Colfax. [1979 ex.s. c 33 § 2; 1970 ex.s. c 51 § 23.]

47.17.115 State route No. 27. A state highway to be known as state route number 27 is established as follows:

Beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly by way of Tekoa, Latah, Fairfield, and Rockford to a junction with state route number 290 in the vicinity of Millwood. [1991 c 342 § 2; 1979 ex.s. c 195 § 1; 1975 c 63 § 2; 1970 ex.s. c 51 § 24.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.120 State route No. 28. A state highway to be known as state route number 28 is established as follows:

Beginning at a junction with state route number 2 in the vicinity east of Wenatchee, thence southeasterly to a junction with state route number 281 at Quincy; also

From that junction with state route number 281 at Quincy, thence easterly by way of Ephrata and Odessa to a junction with state route number 2 at Davenport. [1970 ex.s. c 51 § 25.]

47.17.130 State route No. 31. A state highway to be known as state route number 31 is established as follows:

Beginning at a junction with state route number 20 at Tiger, thence northerly by way of Metaline Falls to the international boundary. [1973 1st ex.s. c 151 § 14; 1970 ex.s. c 51 § 27.]

47.17.132 State route No. 35. A state highway to be known as state route number 35 is established as follows:

Beginning at the Washington-Oregon boundary line thence northerly to a junction with state route number 14 in the vicinity of White Salmon; however, until such time as a bridge across the Columbia River is constructed at a location adopted by the transportation commission no existing route may be maintained or improved by the transportation commission as a temporary route for state route number 35. [1997 c 308 § 1.]

47.17.133 State route No. 41. A state highway to be known as state route number 41 is established as follows:

Beginning at a junction with state route number 2 in Newport, thence southerly along the Washington-Idaho boundary line to Fourth Street in Newport. [1997 c 155 § 2.]

47.17.135 State route No. 82. A state highway to be known as state route number 82 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Ellensburg, thence southerly and easterly by way of Yakima, Union Gap, Sunnyside, Prosser, Kiona, and Goose Gap west of Richland, thence southeasterly near Kennewick and southwesterly by way of the vicinity of Plymouth to a crossing of the Columbia river at the Washington-Oregon boundary line. [1979 ex.s. c 33 § 3; 1970 ex.s. c 51 § 28.]

47.17.140 State route No. 90—American Veterans Memorial Highway. A state highway to be known as state route number 90 and designated as the American Veterans Memorial Highway is established as follows:

Beginning at a junction with state route number 5, thence, via the west approach to the Lake Washington bridge in Seattle, in an easterly direction by way of Mercer Island, North Bend, Snoqualmie pass, Ellensburg, Vantage, Moses Lake, Ritzville, Sprague and Spokane to the Washington-Idaho boundary line. [1991 c 56 § 2; 1971 ex.s. c 73 § 2; 1970 ex.s. c 51 § 29.]

Purpose—1991 c 56: "In order to create a great memorial and tribute to American veterans, it is proposed that the Washington state portion of Interstate 90 be renamed in their honor, to become the westernmost portion of a memorial highway reaching across the United States." [1991 c 56 § 1.]

47.17.145 State route No. 92. A state highway to be known as state route number 92 is established as follows:

Beginning at a junction with state route number 9 north-east of Everett, thence northeasterly by the most feasible route to Granite Falls. [1970 ex.s. c 51 § 30.]

47.17.153 State route No. 96. A state highway to be known as state route number 96 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Everett, thence easterly to a junction with state route number 9 in the vicinity of Ree's Corner. [1991 c 342 § 3.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.155 State route No. 97. A state highway to be known as state route number 97 is established as follows:

Beginning at the Washington-Oregon boundary on the interstate bridge across the Columbia river at Biggs Rapids, thence in a northerly direction to the junction with state route number 14 in the vicinity of Maryhill, thence in a northerly direction by way of Goldendale, thence northeasterly by way of Satus Pass to a junction with state route number 22 at Toppenish, thence northwesterly south of the Yakima river to a junction with state route number 82 at Union Gap; also

Beginning at a junction with state route number 90 in the vicinity of Ellensburg, thence northeasterly by way of Swauk Pass to a junction with state route number 2 in the vicinity of Peshastin; also

Beginning at a junction with state route number 2 in the vicinity north of Orondo, thence northerly by way of the vicinities of Chelan, Pateros, Brewster, Okanogan, and

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Oroville to the international boundary line. [1987 c 199 § 9; 1984 c 7 § 131; 1975 c 63 § 3; 1973 1st ex.s. c 151 § 2; 1970 ex.s. c 51 § 32.]

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

47.17.157 State route No. 97-alternate. A state highway to be known as state route number 97-alternate is established as follows:

Beginning at a junction with state route number 2 in the vicinity of Olds, thence northerly by way of Entiat to a junction with state route number 97 in the vicinity east of Chelan. [1987 c 199 § 10.]

47.17.160 State route No. 99. A state highway to be known as state route number 99 is established as follows:

Beginning at a junction with state route number 18 in the vicinity of Federal Way, thence northerly by way of Midway, to a junction with state route 518 in Tukwila; also

Beginning at a junction with state route number 599 in the vicinity of Tukwila, thence northerly by way of Seattle, Edmonds, and Lynnwood to a junction with state route number 5 in Everett: PROVIDED, That until state route number 509 is constructed and opened to traffic on an anticipated ultimate alignment from a junction with state route number 705 in Tacoma via the Port of Tacoma industrial area to a junction with state route number 18 in the vicinity of Federal Way that portion of state route number 99 between state route number 5 at Fife and state route number 18 in the vicinity of Federal Way shall remain on the state highway system. [2004 c 205 § 1; 1979 ex.s. c 33 § 4; 1971 ex.s. c 73 § 3; 1970 ex.s. c 51 § 33.]

47.17.163 State route No. 100. A state highway to be known as state route number 100 is established as follows:

Beginning at a junction with state route number 101 in Ilwaco, thence westerly and southerly to Fort Canby state park; also

Beginning at a junction with state route number 100 in Ilwaco, thence southerly to Fort Canby state park. [1991 c 342 § 4.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.165 State route No. 101. A state highway to be known as state route number 101 is established as follows:

Beginning at the Oregon boundary on the interstate bridge at Point Ellis, thence northwesterly by way of Ilwaco to a junction with state route number 4 in the vicinity of a location known as Johnson's Landing in Pacific county; also

From that junction with state route number 4 in the vicinity of a location known as Johnson's Landing, in Pacific county, thence northerly by way of South Bend to a junction with state route number 6 at Raymond; also

From that junction with state route number 6 at Raymond, thence northerly by way of Cosmopolis to a junction with state route number 12 at Aberdeen; also

From that junction with state route number 12 at Aberdeen, thence westerly to Hoquiam, thence northwesterly by way of Lake Quinalt to Forks, thence easterly by way of Port Angeles to the vicinity of Discovery Bay, thence south-

erly by way of Shelton to a junction with state route number 5 in the vicinity west of Olympia; also

Beginning at a junction with state route number 101 in the vicinity east of Ilwaco, thence northerly to a junction with state route number 101 in the vicinity northeast of Ilwaco. [1987 c 199 § 11; 1970 ex.s. c 51 § 34.]

47.17.168 State route No. 102. A state highway to be known as state route number 102 is established as follows:

Beginning at the Washington Corrections Center, thence northeasterly to a junction of state route number 101 north of Shelton.

Before award of any construction contract for improvements to state route number 102 under either program A or program C, the department of transportation shall secure a portion of the construction cost from Mason county. [1984 c 197 § 1.]

47.17.170 State route No. 103. A state highway to be known as state route number 103 is established as follows:

Beginning at a junction with state route number 101 at Seaview, thence northerly by way of Long Beach to Leadbetter Point state park. [1991 c 342 § 5; 1970 ex.s. c 51 § 35.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.175 State route No. 104. A state highway to be known as state route number 104 is established as follows:

Beginning at a junction with state route number 101 in the vicinity south of Discovery Bay, thence southeasterly to the vicinity of Shine on Hood Canal, thence crossing Hood Canal to a junction with state route number 3 in the vicinity of Port Gamble; also

From that junction with state route number 3 in the vicinity of Port Gamble, thence to Port Gamble, thence southerly and easterly to the state ferry terminal at Kingston; also

From the state ferry terminal at Kingston via the state ferry system easterly to the state ferry terminal at Edmonds; also

From the state ferry terminal at Edmonds, thence southeasterly to a junction with state route number 99 in the vicinity of the Snohomish-King county line; also

Beginning at a junction with state route number 99 in the vicinity of the Snohomish-King county line, thence southeasterly to a junction with state route number 522 in the vicinity of Lake Forest Park. [1994 c 209 § 3; 1970 ex.s. c 51 § 36.]

47.17.180 State route No. 105. A state highway to be known as state route number 105 is established as follows:

Beginning at a junction with state route number 101 at Raymond, thence westerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen. [1987 c 199 § 12; 1970 ex.s. c 51 § 37.]

47.17.185 State route No. 106. A state highway to be known as state route number 106 is established as follows:

Beginning at a junction with state route number 101 near the mouth of the Skokomish river, thence northeasterly along the southeast shore of Hood Canal to a junction with state route number 3 in the vicinity of Belfair. [1970 ex.s. c 51 § 38.]

47.17.190 State route No. 107. A state highway to be known as state route number 107 is established as follows:

Beginning at a junction with state route number 101 north of Artic, thence northeasterly to a junction with state route number 12 at Montesano. [1970 ex.s. c 51 § 39.]

47.17.195 State route No. 108. A state highway to be known as state route number 108 is established as follows:

Beginning at a junction with state route number 8 in the vicinity west of McCleary, thence northeasterly to a junction with state route number 101 south of Shelton. [1973 1st ex.s. c 151 § 3; 1970 ex.s. c 51 § 40.]

47.17.200 State route No. 109. A state highway to be known as state route number 109 is established as follows:

Beginning at a junction with state route number 101 in Hoquiam, thence northwesterly by way of Ocean City, Copalis, Pacific Beach, and Moclips to a junction with state route number 101 in the vicinity of Queets; also a bypass beginning at a junction with state route number 101 in the vicinity of the north city limits of Hoquiam, thence southerly to a junction with state route number 109 in the vicinity of the west city limits of Hoquiam. [1983 c 180 § 2; 1970 ex.s. c 51 § 41.]

Quinault Tribal Highway: RCW 47.20.710.

47.17.212 State route No. 110. A state highway to be known as state route number 110 is established as follows:

Beginning at a junction with state route number 101 in the vicinity north of Forks, thence westerly to the Olympic national park boundary in the vicinity of La Push; also

Beginning at a junction with state route number 110 near the Quillayute river, thence westerly to the Olympic national park boundary in the vicinity of Moro. [1991 c 342 § 6.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.215 State route No. 112. A state highway to be known as state route number 112 is established as follows:

Beginning at the easterly boundary of the Makah Indian Reservation, thence easterly by way of Clallam Bay and Pysht to a junction with state route number 101 in or near Port Angeles. [1971 ex.s. c 73 § 5; 1970 ex.s. c 51 § 44.]

47.17.216 State route No. 113. A state highway to be known as state route number 113 is established as follows:

Beginning at a junction with state route number 101 in the vicinity of Sappho, thence northerly to a junction with state route number 112 in the vicinity of the Pysht River. [1991 c 342 § 7.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.217 State route No. 115. A state highway to be known as state route number 115 is established as follows:

Beginning at Ocean Shores thence in an easterly and northerly direction by the most feasible route to a junction

with state route number 109 in the vicinity south of Ocean City. [1973 c 60 § 1.]

47.17.219 State route No. 116. A state highway to be known as state route number 116 is established as follows:

Beginning at a junction with state route number 19 in the vicinity of Irondale, thence easterly and northerly to Fort Flagger state park. [1991 c 342 § 8.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.221 State route No. 117. A state highway to be known as state route number 117 is established as follows:

Beginning at a junction with state route number 101 in Port Angeles, thence northerly to the port of Port Angeles at Marine Drive. [1991 c 342 § 9.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.223 State route No. 119. A state highway to be known as state route number 119 is established as follows:

Beginning at a junction with state route number 101 near Hoodspport, thence northwesterly to the Mount Rose development intersection. [1991 c 342 § 10.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.225 State route No. 121. A state highway to be known as state route number 121 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Maytown, thence easterly, northerly, and westerly by way of Millersylvania state park to a junction with state route number 5 south of Tumwater. [1991 c 342 § 11; 1970 ex.s. c 51 § 46.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.227 State route No. 122. A state highway to be known as state route number 122 is established as follows:

Beginning at a junction with state route number 12 near Mayfield dam, thence northeasterly and southerly by way of Mayfield to a junction with state route number 12 in Mossyrock. [1991 c 342 § 12.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.230 State route No. 123. A state highway to be known as state route number 123 is established as follows:

Beginning at a junction with state route number 12 in the vicinity west of White Pass, thence northerly to a junction with state route number 410 in the vicinity west of Chinook Pass. [1970 ex.s. c 51 § 47.]

47.17.235 State route No. 124. A state highway to be known as state route number 124 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Burbank, thence northeasterly by the most feasible route to a point in the vicinity of Eureka, thence easterly by the most feasible route to a junction with state route number 125 in the vicinity of Prescott, thence easterly to a junction with state route number 12 in the vicinity northeast of Waitsburg.

That portion of state route number 124 lying between the junction with state route number 12 and the county road to

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Ice Harbor Dam to be known as "Ice Harbor Drive". [1973 1st ex.s. c 151 § 4; 1970 ex.s. c 51 § 48.]

47.17.240 State route No. 125. A state highway to be known as state route number 125 is established as follows:

Beginning at the Washington-Oregon boundary line south of Walla Walla, thence northerly to a junction with state route number 12 at Walla Walla; also

From a junction with state route number 12 at Walla Walla, thence northerly to a junction with state route number 124 at Prescott. [1979 ex.s. c 33 § 5; 1970 ex.s. c 51 § 49.]

47.17.250 State route No. 127. A state highway to be known as state route number 127 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Dodge, thence northerly to a junction with state route number 26 in the vicinity of Dusty. [1979 ex.s. c 33 § 6; 1970 ex.s. c 51 § 51.]

47.17.255 State route No. 128. A state highway to be known as state route number 128 is established as follows:

Beginning at a junction with state route number 12 in Clarkston, thence northeasterly and easterly by way of the Red Wolf crossing to the Idaho state line. [1991 c 342 § 13; 1990 c 108 § 1; 1970 ex.s. c 51 § 52.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.260 State route No. 129. A state highway to be known as state route number 129 is established as follows:

Beginning at the Washington-Oregon boundary line in Asotin county, thence northerly by the most feasible route by way of Asotin to a junction with state route number 12 at Clarkston. [1970 ex.s. c 51 § 53.]

47.17.262 State route No. 131. A state highway to be known as state route number 131 is established as follows:

Beginning at the Gifford Pinchot national forest boundary south of Randle, thence northerly to a junction with state route number 12 in Randle. [1991 c 342 § 14.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.275 State route No. 141. A state highway to be known as state route number 141 is established as follows:

Beginning at a wye junction with state route number 14, the west branch in the vicinity east of Underwood and the east branch in the vicinity of White Salmon, thence northerly to the boundary of the Gifford Pinchot National Forest. [1970 ex.s. c 51 § 56.]

47.17.280 State route No. 142. A state highway to be known as state route number 142 is established as follows:

Beginning at a junction with state route number 14 in the vicinity of Lyle, thence northeasterly by way of Klickitat to a junction with state route number 97 in the vicinity of Golden-dale. [1970 ex.s. c 51 § 57.]

47.17.285 State route No. 150. A state highway to be known as state route number 150 is established as follows:

Beginning at Manson, thence southeasterly to the north of Lake Chelan to a junction with state route number 97-alternate at Chelan.

Also beginning at a junction with state route number 97-alternate at Chelan southerly to a junction with state route number 97 in the vicinity of Chelan Station. [1987 c 199 § 13; 1970 ex.s. c 51 § 58.]

47.17.295 State route No. 153. A state highway to be known as state route number 153 is established as follows:

Beginning at a junction with state route number 97 in the vicinity of Pateros, thence northerly and westerly by the most feasible route to a junction with state route number 20 in the vicinity south of Twisp. [1970 ex.s. c 51 § 60.]

47.17.300 State route No. 155. A state highway to be known as state route number 155 is established as follows:

Beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northeasterly to the boundary of the federal reservation at the Grand Coulee dam; also

Beginning at the boundary of the federal reservation at the Grand Coulee dam, thence northwesterly by the most feasible route by way of Nespelem and Disautel to a junction with state route number 97 at Omak; also

Beginning at a junction with state route number 155 at Omak, thence northwesterly crossing the Okanogan river to a junction with state route number 215 at Omak. [1975 c 63 § 4; 1970 ex.s. c 51 § 61.]

47.17.305 State route No. 160. A state highway to be known as state route number 160 is established as follows:

Beginning at a junction with state route number 16 in the vicinity south of Port Orchard, thence easterly on Sedgwick Road to the Washington state ferry dock at Point Southworth; also

From the state ferry terminal at Point Southworth via the state ferry system easterly to the state ferry terminal at Vashon Heights; also

From the state ferry terminal at Vashon Heights easterly via the state ferry system to the state ferry terminal at Fautleroy. [1994 c 209 § 4; 1993 c 430 § 2; 1970 ex.s. c 51 § 62; (1991 c 342 § 15 repealed by 1992 c 166 § 31).]

47.17.310 State route No. 161. A state highway to be known as state route number 161 is established as follows:

Beginning at a junction with state route number 7 in the vicinity of La Grande, thence northeasterly via Eatonville to Puyallup, thence northerly to a junction with state route number 18.

That portion of state route 161 within King county shall be designated Enchanted Parkway. [1987 c 520 § 1; 1971 ex.s. c 73 § 6; 1970 ex.s. c 51 § 63.]

47.17.315 State route No. 162. A state highway to be known as state route number 162 is established as follows:

Beginning at a junction with state route number 410 at Sumner, thence southerly to Orting, thence northeasterly to a junction with state route number 165 in the vicinity south of

Buckley. [1975 c 63 § 5; 1971 ex.s. c 73 § 7; 1970 ex.s. c 51 § 64.]

47.17.317 State route No. 163. A state highway to be known as state route number 163 is established as follows:

Beginning at a junction with state route number 16 in Tacoma, thence northerly to the Point Defiance ferry terminal; also

From the state ferry terminal at Point Defiance via the state ferry system northerly to the state ferry terminal at Tahlquah. [1994 c 209 § 5; 1991 c 342 § 16.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.320 State route No. 164. A state highway to be known as state route number 164 is established as follows:

Beginning at a junction with state route number 18 in the vicinity of Auburn, thence southeasterly to a junction with state route number 410 at Enumclaw. [1987 c 199 § 14; 1970 ex.s. c 51 § 65.]

47.17.325 State route No. 165. A state highway to be known as state route number 165 is established as follows:

Beginning at the northwest entrance to Mt. Rainier National Park, thence northerly to a junction with state route number 410 at Buckley. [1970 ex.s. c 51 § 66.]

47.17.328 State route No. 166. A state highway to be known as state route number 166 is established as follows:

Beginning at a junction with state route number 16 in the vicinity west of Port Orchard, thence northeasterly to the eastern Port Orchard city limits. [1993 c 430 § 3.]

47.17.330 State route No. 167. A state highway to be known as state route number 167 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Tacoma, thence easterly by way of the vicinity of Puyallup and Sumner, thence northerly by way of the vicinity of Auburn and Kent to a junction with state route number 900 in the vicinity of Renton. [1991 c 342 § 17; 1979 ex.s. c 33 § 8; 1970 ex.s. c 51 § 67.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.335 State route No. 168. A state highway to be known as state route number 168 is established as follows:

Beginning at a junction with state route number 410 in the vicinity of the junction of the Greenwater and White rivers, thence easterly to a junction with state route number 410 in the vicinity north of Cliffdell. [1970 ex.s. c 51 § 68.]

47.17.340 State route No. 169. A state highway to be known as state route number 169 is established as follows:

Beginning at a junction with state route number 164 at Enumclaw, thence northwesterly by way of Summit to a junction with state route number 900 in the vicinity of Renton. [1971 ex.s. c 73 § 8; 1970 ex.s. c 51 § 69.]

47.17.345 State route No. 170. A state highway to be known as state route number 170 is established as follows:

Beginning at a junction with state route number 17 west of Warden, thence easterly to Warden. [1970 ex.s. c 51 § 70.]

47.17.350 State route No. 171. A state highway to be known as state route number 171 is established as follows:

Beginning at a junction with state route number 90 west of Moses Lake, thence northeasterly by way of Moses Lake to a junction with state route number 28 in the vicinity west of Odessa. Until such time as state route number 171 is actually constructed on the location adopted by the department, no existing county roads may be maintained or improved by the department as a temporary route of state route number 171. [1984 c 7 § 132; 1970 ex.s. c 51 § 71.]

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

47.17.355 State route No. 172. A state highway to be known as state route number 172 is established as follows:

Beginning at a junction with state route number 2 in the vicinity of Waterville, thence northerly and easterly by the most feasible route by way of Mansfield to a junction with state route number 17 in the vicinity of Leahy. [1970 ex.s. c 51 § 72.]

47.17.360 State route No. 173. A state highway to be known as state route number 173 is established as follows:

Beginning at a junction with state route number 17 at Bridgeport thence northwesterly on the south side of the Columbia river to a junction with state route number 97 in the vicinity of Brewster. [1970 ex.s. c 51 § 73.]

47.17.365 State route No. 174. A state highway to be known as state route number 174 is established as follows:

Beginning at a junction with state route number 17 east of Bridgeport, thence easterly to the boundary of the federal reservation at Grand Coulee dam; also

Beginning at a junction with state route number 155 at Grand Coulee, thence southeasterly to a junction with state route number 21 in the vicinity north of Wilbur; also

A spur beginning at a junction with state route number 174 in the vicinity of the boundary of the federal reservation at the Grand Coulee dam and extending to Crown Point. [1987 c 199 § 15; 1970 ex.s. c 51 § 74.]

47.17.370 State route No. 181. A state highway to be known as state route number 181 is established as follows:

Beginning at a junction with state route number 516 in the vicinity of Kent, thence northerly to a junction with state route number 405 in the vicinity of Tukwila. [1991 c 342 § 18; 1979 ex.s. c 192 § 4; 1971 ex.s. c 73 § 9; 1970 ex.s. c 51 § 75.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Effective dates—1979 ex.s. c 192: See note following RCW 44.40.070.

47.17.372 State route No. 182. A state highway to be known as state route number 182 is established as follows:

Beginning at a junction with state route number 82 in the vicinity of Goose Gap, thence easterly via Richland to a junction with state route number 395 in the vicinity of Pasco. [1979 ex.s. c 33 § 9; 1971 ex.s. c 73 § 10.]

47.17.375 State route No. 193. A state highway to be known as state route number 193 is established as follows:

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Beginning at a junction with state route number 128 in the vicinity of the Red Wolf crossing, thence westerly to the port of Wilma. [1991 c 342 § 19; 1990 c 108 § 2; 1984 c 7 § 133; 1970 ex.s. c 51 § 76.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

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

47.17.377 State route No. 194. A state highway to be known as state route number 194 is established as follows:

Beginning at the port of Almota, thence northerly and easterly to a junction with state route number 195 in the vicinity of Pullman. [1991 c 342 § 20.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.380 State route No. 195. A state highway to be known as state route number 195 is established as follows:

Beginning at the Washington-Idaho boundary line south-east of Uniontown, thence northwesterly and northerly by way of the vicinity of Pullman, Colfax, and Rosalia to a junction with state route number 90 at Spokane. [1979 ex.s. c 33 § 10; 1970 ex.s. c 51 § 77.]

47.17.382 State route No. 197. A state highway to be known as state route number 197 is established as follows:

Beginning at the Washington-Oregon boundary on the interstate bridge across the Columbia river in the vicinity of The Dalles, thence northerly to a junction with state route number 14. [1979 ex.s. c 33 § 11; 1973 1st ex.s. c 151 § 6.]

47.17.385 State route No. 202. A state highway to be known as state route number 202 is established as follows:

Beginning at a junction with state route number 522 near Bothell, thence southeasterly to a junction with state route number 90 in the vicinity of North Bend. [1987 c 199 § 16; 1970 ex.s. c 51 § 78.]

47.17.390 State route No. 203. A state highway to be known as state route number 203 is established as follows:

Beginning at a junction with state route number 202 at Fall City, thence northerly by the most feasible route by way of Duvall to a junction with state route number 2 at Monroe. [1970 ex.s. c 51 § 79.]

47.17.395 State route No. 204. A state highway to be known as state route number 204 is established as follows:

Beginning at a junction with state route number 2 in the vicinity east of Everett, thence northeasterly to a junction with state route number 9. [1987 c 199 § 17; 1970 ex.s. c 51 § 80.]

47.17.400 State route No. 205. A state highway to be known as state route number 205 is established as follows:

Beginning at the Washington-Oregon boundary line in the vicinity east of Vancouver, thence northwesterly to a junction with state route number 5 in the vicinity of Salmon Creek, north of Vancouver. [1970 ex.s. c 51 § 81.]

47.17.405 State route No. 206. A state highway to be known as state route number 206 is established as follows:

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Beginning at a junction with state route number 2 in the vicinity north of Mead, thence northeasterly to the entrance to Mt. Spokane State Park. [1987 c 199 § 18; 1970 ex.s. c 51 § 82.]

47.17.410 State route No. 207. A state highway to be known as state route number 207 is established as follows:

Beginning at a junction with state route number 2 in the vicinity north of Winton, thence northerly to Lake Wenatchee state park. [1991 c 342 § 21; 1970 ex.s. c 51 § 83.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.416 State route No. 211. A state highway to be known as state route number 211 is established as follows:

Beginning at a junction with state route number 2 southwest of Newport, thence northerly by the most feasible route by way of Sacheen Lake to a junction with state route number 20 at Usk. [1975 c 63 § 10.]

47.17.417 State route No. 213. A state highway to be known as state route number 213 is established as follows:

Beginning at a junction with state route number 97 in the vicinity of Malott, thence northeasterly to a junction with state route number 20 southwest of Okanogan. Until such time as this route is actually constructed on the location adopted by the department, no county roads may be maintained or improved by the department as a temporary route. [1984 c 7 § 134; 1973 1st ex.s. c 151 § 18.]

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

47.17.419 State route No. 215. A state highway to be known as state route number 215 is established as follows:

Beginning at a junction with state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak. [1973 1st ex.s. c 151 § 19.]

47.17.425 State route No. 221. A state highway to be known as state route number 221 is established as follows:

Beginning at a junction with state route number 14 in the vicinity of Patterson, thence northerly to a junction with state route number 22 in the vicinity of Prosser. [1970 ex.s. c 51 § 86.]

47.17.430 State route No. 223. A state highway to be known as state route number 223 is established as follows:

Beginning at a junction with state route number 22 in the vicinity southeast of Toppenish, thence easterly to a junction with state route number 12 in the vicinity of Granger. The establishment of state route number 223 as defined in this section shall be effective July 1, 1965. [1970 ex.s. c 51 § 87.]

47.17.435 State route No. 224. A state highway to be known as state route number 224 is established as follows:

Beginning at a junction with state route number 82 at Kiona, thence northeasterly to a junction with state route number 240 at Richland. [1987 c 199 § 19; 1970 ex.s. c 51 § 88.]

47.17.436 State route No. 225. A state highway to be known as state route number 225 is established as follows:

Beginning at a junction with state route number 224 in Kiona, thence northeasterly by way of Benton City to a junction with state route number 240 near Horn Rapids dam. [1991 c 342 § 22.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.440 State route No. 230. A state highway to be known as state route number 230 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Ritzville, thence easterly by the most feasible route to a junction with state route number 23 in the vicinity of Ewan. [1970 ex.s. c 51 § 89.]

47.17.445 State route No. 231. A state highway to be known as state route number 231 is established as follows:

Beginning at a junction with state route number 23 in the vicinity northwest of Sprague, thence northerly by way of Edwall to a junction with state route number 2 in the vicinity west of Reardan; also

Beginning at a junction with state route number 2 in the vicinity of Reardan, thence northerly by way of Long Lake across the Spokane river, thence northeasterly by way of Springdale to a junction with state route number 395 in the vicinity of Chewelah. [1970 ex.s. c 51 § 90.]

47.17.455 State route No. 240. A state highway to be known as state route number 240 is established as follows:

Beginning at a junction with state route number 24 in the vicinity east of Cold Creek, thence southeasterly by the most feasible route across the Atomic Energy Commission Reservation to a junction with state route number 224 at Richland; also

From that junction with state route number 224 at Richland, thence southerly to a junction with state route number 182 at Richland; also

From a junction with state route number 182 at Richland southeasterly to a junction with state route number 395 at Kennewick. The secretary may enter into negotiations with appropriate federal agencies to secure right of way for the highway over and across the Atomic Energy Commission Reservation. [1985 c 177 § 3; 1984 c 7 § 135; 1970 ex.s. c 51 § 92.]

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

47.17.460 State route No. 241. A state highway to be known as state route number 241 is established as follows:

Beginning at a junction with state route number 22 in Mabton, thence northerly and northeasterly by way of Sunny-side to a junction with state route number 24. [1991 c 342 § 23; 1987 c 199 § 20; 1970 ex.s. c 51 § 93.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.465 State route No. 243. A state highway to be known as state route number 243 is established as follows:

Beginning at a junction with state route number 24 north of its crossing of the Columbia river, thence westerly and northerly by way of Arrowsmith and Beverly to a junction

with state route number 26 south of the Columbia river bridge at Vantage. [1970 ex.s. c 51 § 94.]

47.17.475 State route No. 260. A state highway to be known as state route number 260 is established as follows:

Beginning at a junction with state route number 17 west of Connell, thence easterly to a junction with state route number 395 in the vicinity of Connell, thence northeasterly by way of Kahlotus to a junction with state route number 26 at Washtucna. [1970 ex.s. c 51 § 96.]

47.17.480 State route No. 261. A state highway to be known as state route number 261 is established as follows:

Beginning at a junction with state route number 12 at Delaney, thence northwesterly to a junction with state route number 260 in the vicinity of McAdam; also

Beginning at a junction with state route number 26 at Washtucna, thence northerly to a junction with state route number 90 at Ritzville. [1987 c 199 § 21; 1971 ex.s. c 73 § 12; 1970 ex.s. c 51 § 97.]

47.17.481 State route No. 262. A state highway to be known as state route number 262 is established as follows:

Beginning at a junction with state route number 26 east of Royal City, thence northerly and easterly to a junction with state route number 17 west of Warden. [1991 c 342 § 24.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.482 State route No. 263. A state highway to be known as state route number 263 is established as follows:

Beginning at the port of Windust, thence easterly and northerly to a junction with state route number 260 in Kahlotus. [1991 c 342 § 25.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.485 State route No. 270. A state highway to be known as state route number 270 is established as follows:

Beginning at a junction with state route number 195 at Pullman, thence easterly by the most feasible route to a point on the Washington-Idaho boundary line. [1970 ex.s. c 51 § 98.]

47.17.490 State route No. 271. A state highway to be known as state route number 271 is established as follows:

Beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia. [1970 ex.s. c 51 § 99.]

47.17.495 State route No. 272. A state highway to be known as state route number 272 is established as follows:

Beginning at a junction with state route number 195 at Colfax, thence easterly to a junction with state route number 27 at Palouse; also

Beginning at a junction with state route number 27 at Palouse, thence northeasterly by the most feasible route to a point on the Washington-Idaho boundary line. [1970 ex.s. c 51 § 100.]

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47.17.500 State route No. 274. A state highway to be known as state route number 274 is established as follows:

Beginning at a junction with state route number 27 at Tekoa, thence easterly to the Washington-Idaho boundary line. [1970 ex.s. c 51 § 101.]

47.17.502 State route No. 276. A state highway to be known as state route number 276 is established as follows:

Beginning at a junction with state route number 195 west of Pullman, thence easterly and southeasterly to a junction with state route number 270 east of Pullman. [1973 1st ex.s. c 151 § 7.]

47.17.503 State route No. 278. A state highway to be known as state route number 278 is established as follows:

Beginning at a junction with state route number 27 in Rockford, thence easterly and southerly to the Washington-Idaho boundary. [1991 c 342 § 26.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.505 State route No. 281. A state highway to be known as state route number 281 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of George, thence northerly to a junction with state route number 28 at Quincy; also

Beginning at a junction with state route number 281 at a point north of the above described junction on state route number 90, thence in a southeasterly direction to a junction with state route number 90 in the vicinity east of George, some 1.6 miles more or less, resulting in a wye connection between state route number 281 and state route number 90. [1971 ex.s. c 73 § 13; 1970 ex.s. c 51 § 102.]

47.17.510 State route No. 282. A state highway to be known as state route number 282 is established as follows:

Beginning at a junction with state route number 28 in the vicinity of Ephrata, thence southeasterly to a junction with state route number 17 in the vicinity of Rocky Ford creek. [1970 ex.s. c 51 § 103.]

47.17.515 State route No. 283. A state highway to be known as state route number 283 is established as follows:

Beginning at a junction with state route number 281 in the vicinity of Burke Junction, thence northeasterly by the most feasible route to a junction with state route number 28 in the vicinity west of Ephrata. [1970 ex.s. c 51 § 104.]

47.17.517 State route No. 285. A state highway to be known as state route number 285 is established as follows:

Beginning at a junction with state route number 28 in East Wenatchee, thence westerly across the Columbia river and northwesterly to a junction with state route number 2 in Wenatchee. [1991 c 342 § 27; 1977 ex.s. c 224 § 1.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.520 State route No. 290. A state highway to be known as state route number 290 is established as follows:

Beginning at a junction with state route number 2 in Spokane, thence northeasterly by way of Millwood, Trentwood,

and Newman Lake to the termination of Idaho state highway number 53 at the Washington-Idaho boundary line; also

Beginning at a junction with state route number 90 in Spokane, thence northerly to a junction with state route number 290 in the vicinity of Hamilton Street. [1977 ex.s. c 6 § 1; 1970 ex.s. c 51 § 105.]

47.17.525 State route No. 291. A state highway to be known as state route number 291 is established as follows:

Beginning at a junction with state route number 2 in Spokane, thence northwesterly along the north bank of the Spokane river to the vicinity of Tumtum; and thence southwesterly along the north shore of Long Lake to a junction with state route number 231 in the vicinity of the Little Falls Dam. [1983 c 180 § 4; 1970 ex.s. c 51 § 106.]

47.17.530 State route No. 292. A state highway to be known as state route number 292 is established as follows:

Beginning at a junction with state route number 231 at Springdale, thence easterly to a junction with state route number 395 in the vicinity of Loon Lake. [1970 ex.s. c 51 § 107.]

47.17.540 State route No. 300. A state highway to be known as state route number 300 is established as follows:

Beginning at the western boundary of the Belfair State Park, thence generally easterly to a junction with state route number 3 at Belfair. [1970 ex.s. c 51 § 109.]

47.17.545 State route No. 302. A state highway to be known as state route number 302 is established as follows:

Beginning at a junction with state route number 3 in the vicinity of Allyn, thence easterly to a junction with state route number 16 in the vicinity of Purdy. [1987 c 199 § 22; 1970 ex.s. c 51 § 110.]

47.17.550 State route No. 303. A state highway to be known as state route number 303 is established as follows:

Beginning at a junction with state route number 304 at Bremerton, thence by way of the Warren Avenue bridge across the Port Washington Narrows northerly to a junction with state route number 3 in the vicinity north of Silverdale. [1991 c 342 § 28; 1971 ex.s. c 73 § 14; 1970 ex.s. c 51 § 111.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.556 State route No. 304. A state highway to be known as state route number 304 is established as follows:

Beginning at a junction with state route number 3 in Bremerton, thence easterly to the ferry terminal in Bremerton; also

From the state ferry terminal at Bremerton via the state ferry system easterly to the junction with state route number 519 at the state ferry terminal in Seattle. [1994 c 209 § 6; 1993 c 430 § 4.]

47.17.560 State route No. 305. A state highway to be known as state route number 305 is established as follows:

Beginning at the junction with state route number 519 at the state ferry terminal in Seattle, thence via the state ferry

system northwesterly to the state ferry terminal at Bainbridge Island; also

From the state ferry terminal at Bainbridge Island, thence northerly by the most feasible route to the north end of Bainbridge Island, across Agate Pass, thence northwesterly by the most feasible route to a junction with state route number 3 in the vicinity north of Poulsbo. [1994 c 209 § 7; 1970 ex.s. c 51 § 113.]

47.17.566 State route No. 307. A state highway to be known as state route number 307 is established as follows:

Beginning at a junction with state route number 305 at Poulsbo, thence northeasterly to a junction with state route number 104 near Miller Lake. [1991 c 342 § 29.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.567 State route No. 308. A state highway to be known as state route number 308 is established as follows:

Beginning at a junction with state route number 3, thence easterly to Keyport. [1987 c 199 § 23; 1971 ex.s. c 73 § 15.]

47.17.569 State route No. 310. A state highway to be known as state route number 310 is established as follows:

Beginning at a junction with state route number 3 near Oyster Bay, thence easterly to a junction with state route number 304 in Bremerton. [1991 c 342 § 30.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.571 State route No. 339. A state highway to be known as state route number 339 is established as follows:

Beginning at the junction of state route number 160 at the state ferry terminal at Vashon Heights, thence via the state ferry system northeasterly to the junction with state route number 519 at the state ferry terminal in Seattle. [1994 c 209 § 9.]

47.17.575 State route No. 395. A state highway to be known as state route number 395 is established as follows:

Beginning at a junction with state route number 82 at Kennewick, northerly to a junction with state route number 182 at Pasco; also

From a junction with state route number 182 at Pasco, thence northeasterly by way of the vicinity of Mesa and Connell to a junction with state route number 90 at Ritzville; also

From a junction with state route number 2 in the vicinity north of Spokane, thence northerly by way of the vicinity of Colville and Kettle Falls to the international boundary line in the vicinity of Laurier. [1985 c 177 § 4; 1979 ex.s. c 33 § 13; 1970 ex.s. c 51 § 116.]

47.17.577 State route No. 397. A state highway to be known as state route number 397 is established as follows:

Beginning at Piert Road in the vicinity southeast of Finely, thence northwesterly and northerly across the Columbia River, thence easterly and northerly to a junction with state route number 395 in Pasco. [1993 c 430 § 5; 1991 c 342 § 31.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.580 State route No. 401. A state highway to be known as state route number 401 is established as follows:

Beginning at Point Ellice on state route number 101, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle. [1970 ex.s. c 51 § 117.]

47.17.595 State route No. 405. A state highway to be known as state route number 405 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Seattle, thence northeasterly to Renton, thence northerly east of Lake Washington to a junction with state route number 5 north of Seattle. [1970 ex.s. c 51 § 120.]

47.17.605 State route No. 409. A state highway to be known as state route number 409 is established as follows:

Beginning at the South Ferry landing, as now located, or as it may be relocated, on the south side of Puget Island, thence generally northerly by the most feasible route to the Puget Island bridge, thence crossing said bridge to a junction with state route number 4 at the north approach of said bridge at the town of Cathlamet: PROVIDED, That the state of Washington shall not assume or pay any bond or bonds outstanding against said bridge, or interest on said bonds, but said bond or bonds, and interest thereon, shall remain the sole obligation of the obligors named on said bonds. [1970 ex.s. c 51 § 122.]

47.17.610 State route No. 410. A state highway to be known as state route number 410 is established as follows:

Beginning at a junction with state route number 167 at Sumner, thence easterly by way of Buckley, Enumclaw, and Chinook Pass, to a junction with state route number 12 northwest of Yakima: PROVIDED, That until such time as state route number 167 is constructed and opened to traffic on an anticipated ultimate alignment from a junction with state route number 5 near Tacoma easterly to Sumner on the north side of the Puyallup river, the public highway between state route number 5 in Tacoma and state route number 161 in Sumner, on the south side of the Puyallup river, shall remain on the state highway system. [1987 c 199 § 24; 1973 1st ex.s. c 151 § 8; 1970 ex.s. c 51 § 123.]

47.17.615 State route No. 411. A state highway to be known as state route number 411 is established as follows:

Beginning at a junction with state route number 432 in Longview, thence northerly to a junction with state route number 5 at Castle Rock. [1991 c 342 § 32; 1970 ex.s. c 51 § 124.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.625 State route No. 432. A state highway to be known as state route number 432 is established as follows:

Beginning at a junction with state route number 4 in the vicinity west of Longview, thence southeasterly to a junction with state route number 5 south of Kelso. [1991 c 342 § 33; 1970 ex.s. c 51 § 126.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.630 State route No. 433. A state highway to be known as state route number 433 is established as follows:

Beginning at the Washington-Oregon boundary on the interstate bridge at Longview, thence northerly to a junction with state route number 432 in Longview. [1991 c 342 § 34; 1987 c 199 § 25; 1970 ex.s. c 51 § 127.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.635 State route No. 500. A state highway to be known as state route number 500 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence northeasterly to Orchards, thence southeasterly to a junction with state route number 14 at Camas. [1970 ex.s. c 51 § 128.]

47.17.640 State route No. 501—Erwin O. Rieger Memorial Highway. A state highway to be known as state route number 501 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence northerly by way of Lower River Road and an extension thereof to Ridgefield, thence easterly to a junction with state route number 5 in the vicinity south of La Center. That portion of state route number 501 from the northerly junction of N.W. Lower River Road to the Ridgefield city limits is designated "the Erwin O. Rieger Memorial Highway." The department may enter into an agreement with the Port of Vancouver, Clark county, or the United States Army Engineers, or any combination thereof, to obtain material dredged from the Columbia river and have it stockpiled at no expense to the state. [1991 c 78 § 1; 1984 c 7 § 136; 1970 ex.s. c 51 § 129.]

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

47.17.645 State route No. 502. A state highway to be known as state route number 502 is established as follows:

Beginning at a junction with state route number 5 in the vicinity north of Vancouver, thence easterly to a junction with state route number 503 at Battleground. [1970 ex.s. c 51 § 130.]

47.17.650 State route No. 503. A state highway to be known as state route number 503 is established as follows:

Beginning at a junction with state route number 500 at Orchards, thence northerly to a junction with state route number 502 at Battle Ground, thence northerly to Amboy, thence northeasterly by way of Cougar to the Cowlitz-Skamania county line; also

Beginning at a junction with state route number 503 in the vicinity of Yale, thence westerly to a junction with state route number 5 in the vicinity of Woodland. [1991 c 342 § 35; 1975 c 63 § 6; 1970 ex.s. c 51 § 131.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.655 State route No. 504—Spirit Lake Memorial Highway. A state highway to be known as state route number 504, hereby designated the Spirit Lake Memorial Highway, dedicated to the memory of those who lost their lives in the 1980 eruption of Mt. St. Helens, is established as follows:

Beginning at a junction with state route number 5 in the vicinity north of Castle Rock, thence easterly along the north shore of Silver Lake by way of Silverlake and Toutle, past a junction with state route number 505, thence by way of Kid Valley and St. Helens to the former Spirit Lake. [1982 c 82 § 1; 1970 ex.s. c 51 § 132.]

47.17.660 State route No. 505. A state highway to be known as state route number 505 is established as follows:

Beginning in Winlock, thence via Toledo, easterly and southerly to a junction with state route number 504 in the vicinity north of Toutle. [1991 c 342 § 36; 1970 ex.s. c 51 § 133.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.665 State route No. 506. A state highway to be known as state route number 506 is established as follows:

Beginning at Ryderwood, thence by way of Vader north-easterly to a junction with state route number 5 west of Toledo. [1970 ex.s. c 51 § 134.]

47.17.670 State route No. 507. A state highway to be known as state route number 507 is established as follows:

Beginning at a junction with state route number 5 in Centralia, thence northerly by the most feasible route by way of Bucoda to Tenino, thence northeasterly by way of Rainier, Yelm and McKenna to a junction with state route number 7 in the vicinity south of Tacoma. [1970 ex.s. c 51 § 135.]

47.17.675 State route No. 508. A state highway to be known as state route number 508 is established as follows:

Beginning at a junction with state route number 5 south of Chehalis, thence easterly by way of Onalaska to a junction with state route number 7 at Morton. [1970 ex.s. c 51 § 136.]

47.17.680 State route No. 509. A state highway to be known as state route number 509 is established as follows:

Beginning at a junction with state route number 705 at Tacoma, thence northeasterly to a junction with state route number 99 in the vicinity of Redondo; also

From a junction with state route number 516 at Des Moines, thence northerly to a junction with state route number 99 in Seattle. [1991 c 342 § 37; 1979 ex.s. c 33 § 14; 1970 ex.s. c 51 § 137.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.685 State route No. 510. A state highway to be known as state route number 510 is established as follows:

Beginning at a junction with state route number 5, thence southeasterly via St. Clair to a junction with state route number 507 at Yelm. [1970 ex.s. c 51 § 138.]

47.17.690 State route No. 512. A state highway to be known as state route number 512 is established as follows:

Beginning at a junction with state route number 5 south of Tacoma, thence easterly to a junction with state route number 7 south of Tacoma, thence easterly to a junction with state route number 167 in the vicinity of Puyallup. [1970 ex.s. c 51 § 139.]

47.17.695 State route No. 513. A state highway to be known as state route number 513 is established as follows:

Beginning at a junction with state route number 520 in Seattle, thence northerly and easterly to the vicinity of Sand Point. [1991 c 342 § 38; 1971 ex.s. c 73 § 16; 1970 ex.s. c 51 § 140.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.705 State route No. 515. A state highway to be known as state route number 515 is established as follows:

Beginning at a junction with state route number 516 in the vicinity east of Kent, thence northerly to a junction with state route number 900 in Renton. [1970 ex.s. c 51 § 142.]

47.17.710 State route No. 516. A state highway to be known as state route number 516 is established as follows:

Beginning at a junction with state route number 509 in the vicinity south of Des Moines, thence southeasterly to a junction with state route number 5; also

From that junction with state route number 5, thence easterly to a junction with state route number 167 in Kent, thence easterly to a junction with state route number 169 south of Maple Valley. [1970 ex.s. c 51 § 143.]

47.17.715 State route No. 518. A state highway to be known as state route number 518 is established as follows:

Beginning at a junction with state route number 509 near Sunnydale, thence easterly to a junction with state route number 5 in the vicinity of Seattle. [1970 ex.s. c 51 § 144.]

47.17.717 State route No. 519. A state highway to be known as state route number 519 is established as follows:

Beginning at a junction with state route number 90 in Seattle, thence westerly, and northerly to the Washington state ferry terminal. [1991 c 342 § 39.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.720 State route No. 520. A state highway to be known as state route number 520 is established as follows:

Beginning at a junction with state route number 5 in Seattle, thence easterly via the Evergreen Point bridge to a junction with state route number 202 in the vicinity of Redmond. [1970 ex.s. c 51 § 145.]

47.17.725 State route No. 522. A state highway to be known as state route number 522 is established as follows:

Beginning at Seattle in King county, thence easterly by the most feasible route to the north of Lake Washington by way of Bothell to a junction with state route number 202 near Bothell; also

From that junction with state route number 202 near Bothell, thence northeasterly by the most feasible route to a junction with state route number 2 in the vicinity of Monroe. [1970 ex.s. c 51 § 146.]

47.17.727 State route No. 523. A state highway to be known as state route number 523 is established as follows:

Beginning at a junction with state route number 99 and Northeast 145th Street in Seattle, thence easterly to a junction with state route number 522. [1991 c 342 § 40.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.730 State route No. 524. A state highway to be known as state route number 524 is established as follows:

Beginning at a junction with state route number 104 at Edmonds, thence northeasterly to a junction with state route number 5 in the vicinity of Lynnwood, thence easterly to a junction with state route number 522 near Maltby. [1991 c 342 § 41; 1984 c 7 § 137; 1970 ex.s. c 51 § 147.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

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

47.17.735 State route No. 525. A state highway to be known as state route number 525 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Everett, thence northwesterly to the state ferry terminal at Mukilteo; also

From the junction with state route number 526 at Mukilteo, thence southerly to a junction with state route number 525; also

From the state ferry terminal at Mukilteo via the state ferry system northerly to the state ferry terminal at Clinton; also

From the state ferry terminal at Clinton, thence northwesterly to a junction with state route number 20 in the vicinity east of Keystone. [2001 c 130 § 1; 1994 c 209 § 8; 1973 1st ex.s. c 151 § 15; 1970 ex.s. c 51 § 148.]

47.17.740 State route No. 526. A state highway to be known as state route number 526 is established as follows:

Beginning at a junction with state route number 525 at Mukilteo, thence easterly to a junction with state route number 5 in the vicinity of its junction with state route number 527. [1970 ex.s. c 51 § 149.]

47.17.745 State route No. 527. A state highway to be known as state route number 527 is established as follows:

Beginning at a junction with state route number 522 in the vicinity of Bothell, thence northerly to a junction with state route number 5 in the vicinity south of Everett. [1970 ex.s. c 51 § 150.]

47.17.750 State route No. 528. A state highway to be known as state route number 528 is established as follows:

Beginning at a junction with state route number 5 near Marysville, thence easterly to a junction with state route number 9. Until such time as state route number 528 from Marysville to a junction with state route number 9 is actually constructed on the location adopted by the department, no existing city streets or county roads may be maintained or improved by the department as a temporary route of state route number 528. [1984 c 7 § 138; 1971 ex.s. c 73 § 18; 1970 ex.s. c 51 § 151.]

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

47.17.752 State route No. 529. A state highway to be known as state route number 529 is established as follows:

Beginning at a junction with state route number 5 in Everett, thence westerly and northerly through Everett to a

junction with state route number 528 in Marysville. [1991 c 342 § 42; 1971 ex.s. c 73 § 19.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.755 State route No. 530. A state highway to be known as state route number 530 is established as follows:

Beginning at a junction with state route number 5 in the vicinity west of Arlington, thence easterly and northerly by way of Darrington to a junction with state route number 20 in the vicinity of Rockport. [1991 c 342 § 43; 1983 c 131 § 1; 1971 ex.s. c 73 § 20; 1970 ex.s. c 51 § 152.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.757 State route No. 531. A state highway to be known as state route number 531 is established as follows:

Beginning at Wenberg state park, thence northerly and easterly to a junction with state route number 9 in the vicinity north of Marysville. [1991 c 342 § 44.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.760 State route No. 532. A state highway to be known as state route number 532 is established as follows:

Beginning at a point on Camano Island known as McEacherns Corner, thence easterly over a bridge and by way of Stanwood to a junction with state route number 530 in the vicinity of Stanwood, thence easterly to a junction with state route number 5 in the vicinity east of Stanwood. [1970 ex.s. c 51 § 153.]

47.17.765 State route No. 534. A state highway to be known as state route number 534 is established as follows:

Beginning at a junction with state route number 5 at Conway, thence southeasterly to a junction with state route number 9 at McMurray. [1970 ex.s. c 51 § 154.]

47.17.770 State route No. 536. A state highway to be known as state route number 536 is established as follows:

Beginning at a junction with state route number 20 at Fredonia, thence easterly to a junction with state route number 5 at Mt. Vernon. [1973 1st ex.s. c 151 § 16; 1970 ex.s. c 51 § 155.]

47.17.780 State route No. 538. A state highway to be known as state route number 538 is established as follows:

Beginning at a junction with state route number 5 at Mt. Vernon, thence easterly to a junction with state route number 9. [1970 ex.s. c 51 § 157.]

47.17.785 State route No. 539. A state highway to be known as state route number 539 is established as follows:

Beginning at a junction with state route number 5 at Bellingham, thence northerly to the international boundary in the vicinity east of Delta. [1970 ex.s. c 51 § 158.]

47.17.795 State route No. 542. A state highway to be known as state route number 542 is established as follows:

Beginning at a junction with state route number 5 at Bellingham, thence easterly to a point in the vicinity of Austin Pass in Whatcom county. [1970 ex.s. c 51 § 160.]

47.17.797 State route No. 543. A state highway to be known as state route number 543 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Blaine, thence northerly to the international boundary. [1971 ex.s. c 73 § 22.]

47.17.800 State route No. 544. A state highway to be known as state route number 544 is established as follows:

Beginning at a junction with state route number 539 in the vicinity of Wiser lake, thence northeasterly by way of Everson to a junction with state route number 9 in the vicinity of Nooksack. [1970 ex.s. c 51 § 161.]

47.17.805 State route No. 546. A state highway to be known as state route number 546 is established as follows:

Beginning at a junction with state route number 539 approximately 2.7 miles south of the international boundary, thence easterly by way of Van Buren to a junction with state route number 9. [1970 ex.s. c 51 § 162.]

47.17.806 State route No. 547. A state highway to be known as state route number 547 is established as follows:

Beginning at the junction of state route number 542 in the vicinity of Kendall, thence northwesterly to a junction with state route number 9 at Sumas. [1984 c 197 § 2.]

47.17.807 State route No. 548. A state highway to be known as state route number 548 is established as follows:

Beginning at a junction with state route number 5 in the vicinity north of Ferndale, thence westerly and northerly to a junction with state route number 5 in Blaine. [1991 c 342 § 45.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.808 State route No. 599. A state highway to be known as state route number 599 is established as follows:

Beginning in the vicinity south of Seattle at a junction with state route number 5, thence in a northwesterly direction west of the Duwamish river to a junction with state route number 99 in the vicinity of South 118 street south of Seattle. [1971 ex.s. c 73 § 23.]

47.17.815 State route No. 702. A state highway to be known as state route number 702 is established as follows:

Beginning at a junction with state route number 507 at McKenna, thence easterly to a junction with state route number 7. [1970 ex.s. c 51 § 164.]

47.17.818 State route No. 704. A state highway to be known as state route number 704 is established as follows: Beginning at a junction with state route number 5 in south Pierce county, thence easterly across Fort Lewis to a junction with state route number 7. [2002 c 56 § 304.]

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

47.17.819 State route No. 705. A state highway to be known as state route number 705 is established as follows:

Beginning at a junction with state route number 5 in Tacoma, thence northerly to a junction with Schuster Park-

way in the Tacoma central business district. [1979 ex.s. c 33 § 15.]

47.17.820 State route No. 706—Road to Paradise. A state highway to be known as state route number 706, designated the Road to Paradise, is established as follows:

Beginning at a junction with state route number 7 at Elbe, thence easterly to a southwest entrance to Mt. Rainier National Park. [1990 c 97 § 1; 1970 ex.s. c 51 § 165.]

47.17.821 State route No. 730. A state highway to be known as state route number 730 is established as follows:

Beginning at the Washington-Oregon boundary line, thence northeasterly to a junction with state route number 12 south of Wallula. [1985 c 177 § 5.]

47.17.823 State route No. 821. A state highway to be known as state route number 821 is established as follows:

Beginning at a junction with state route number 82 in the vicinity north of Yakima, thence northerly to a junction with state route number 82 south of Ellensburg. [1973 1st ex.s. c 151 § 9.]

47.17.824 State route No. 823. A state highway to be known as state route number 823 is established as follows:

Beginning at the junction of state route number 82 in the vicinity of Selah northerly by way of Selah and easterly to a junction with state route number 821 in the vicinity of the firing center interchange.

Before award of any construction contract for improvements to state route number 823 under either program A or program C, the department of transportation shall secure a portion of the construction cost from the city of Selah or Yakima county, or both. [1991 c 342 § 46; 1984 c 197 § 3.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.825 State route No. 900. A state highway to be known as state route number 900 is established as follows:

Beginning at a junction with state route number 5 in Seattle near the Duwamish River, thence southerly by way of Renton to a junction with state route number 90 in the vicinity of Issaquah. [1991 c 342 § 47; 1979 ex.s. c 33 § 16; 1970 ex.s. c 51 § 166.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.835 State route No. 902. A state highway to be known as state route number 902 is established as follows:

Beginning at a junction with state route number 90, thence northwesterly, northerly, northeasterly, and easterly, via the town of Medical Lake, to a junction with state route number 90 at a point approximately three miles northeast of Four Lakes. [1991 c 342 § 49; 1970 ex.s. c 51 § 168.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.840 State route No. 903. A state highway to be known as state route number 903 is established as follows:

Beginning at a junction with state route number 970 in the vicinity of Cle Elum, thence northwesterly by way of Cle Elum and Roslyn to the National Forest boundary in the

vicinity of Lake Cle Elum. [1975 c 63 § 7; 1970 ex.s. c 51 § 169.]

47.17.845 State route No. 904. A state highway to be known as state route number 904 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Tyler, thence northeasterly via Cheney to a junction with state route number 90 in the vicinity of Four Lakes. [1971 ex.s. c 73 § 25; 1970 ex.s. c 51 § 170.]

47.17.850 State route No. 906. A state highway to be known as state route number 906 is established as follows:

Beginning at a junction with state route number 90 at the West Summit interchange of Snoqualmie Pass, thence along the alignment of the state route number 90 as it existed on May 11, 1967, in a southeasterly direction to a junction with state route number 90 at the Hyak interchange.

The legislative transportation committee, the house and senate transportation committees, and the department shall undertake appropriate studies to evaluate state route number 906 to determine whether or not it should permanently remain on the state system. [1984 c 7 § 139; 1977 ex.s. c 235 § 16; 1971 ex.s. c 73 § 26; 1970 ex.s. c 51 § 171.]

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

47.17.855 State route No. 908. A state highway to be known as state route number 908 is established as follows:

Beginning at a junction with state route number 405 in Kirkland, thence easterly to a junction with state route number 202 in the vicinity of Redmond. [1991 c 342 § 50; 1971 ex.s. c 73 § 27.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.917 State route No. 970. A state highway to be known as state route number 970 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Cle Elum, thence northeasterly by way of Teanaway to a junction with state route number 97 in the vicinity of Virden. [1975 c 63 § 12.]

47.17.919 State route No. 971. A state highway to be known as state route number 971 is established as follows:

Beginning at a junction with state route number 97-alternate in the vicinity of Winesap, thence northerly to Lake Chelan state park, thence southeasterly to a junction with state route number 97-alternate west of Chelan. [1991 c 342 § 51.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.960 Local bridges—Department responsibility. Although not part of the state highway system, the bridges designated in this section shall remain the continuing responsibility of the Washington state department of transportation. Continuing responsibility includes all structural maintenance, repair, and replacement of the substructure, superstructure, and roadway deck. Local agencies are responsible for snow and ice control, sweeping, striping, lane marking, and channelization.

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State of Washington Inventory of
Bridges and Structures
(SWIBS) Number

Facility	(SWIBS) Number
S. Fork Skykomish River Bridge	WN-002000487032
Manette Bridge	WN-303250032700
Grays River Bridge (Rosburg)	WN-403000064300
Elochoman Bridge	WN-407000023300

[1991 c 342 § 55.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.990 Construction—Refunds to counties composed of islands. Nothing in this chapter precludes the refund of all vehicle license fees and motor vehicle fuel tax directly or indirectly paid by the residents of those counties composed entirely of islands and that have neither a fixed physical connection with the mainland nor any state highways on any of the islands of which they are composed, as authorized under RCW 46.68.080. [1994 c 209 § 10.]

Chapter 47.20 RCW

MISCELLANEOUS PROJECTS

Sections

47.20.570	Manette bridge authorized.
47.20.580	Washington State University highway authorized.
47.20.590	University of Washington approach authorized.
47.20.600	Washington State University highway, University of Washington approach—Acquisition of property.
47.20.605	Washington State University highway, University of Washington approach—Public use.
47.20.610	Washington State University highway, University of Washington approach—Condemnation.
47.20.620	Washington State University highway, University of Washington approach—Measure of damage to buildings.
47.20.630	Washington State University highway, University of Washington approach—Sale of buildings, personalty, acquired in acquisition of land.
47.20.635	University of Washington approach—Ordinance requisite—Construction and maintenance.
47.20.640	Reestablishment and redesignation of intersections when highway relocated.
47.20.645	Interstate 90 corridor—Legislative finding.
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47.20.653	Interstate 90 corridor—Court proceedings, priority.
47.20.700	State route No. 504 (Spirit Lake Memorial Highway)—Extension and parking facilities.
47.20.710	Quinalt Tribal Highway—Agreement authorized—Route.
47.20.715	Quinalt Tribal Highway—Maintenance, operation, improvements—Intersections, access.
47.20.720	Quinalt Tribal Highway—Certain portion as limited access.
47.20.725	Quinalt Tribal Highway—Acquisition of remaining right of way.
47.20.730	Quinalt Tribal Highway—Department as agent.
47.20.735	Quinalt Tribal Highway—Authority to seek federal funding.
47.20.780	Design-build—Competitive bidding.
47.20.785	Design-build—Qualified projects.
47.20.900	Severability—1975 1st ex.s. c 272.

47.20.570 Manette bridge authorized. The department is authorized and directed to construct a bridge across Port Washington Narrows connecting state route number 304 at or near Bremerton with state route number 303 on the Manette Peninsula; to make surveys and plans; and to condemn or otherwise acquire such lands as are necessary or proper for approaches to the bridge or for the relocation of any portion of the highway to locate the bridge at the most feasible place. The bridge shall become and be maintained as

a part of the state highway system. [1984 c 7 § 140; 1970 ex.s. c 51 § 173; 1961 c 13 § 47.20.570. Prior: 1947 c 4 p 6 § 2; Rem. Supp. 1947 § 6584a-1.]

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

47.20.580 Washington State University highway authorized. The department is hereby authorized and directed to locate, construct, pave, and maintain a suitable highway on the most feasible route beginning in the vicinity of the stadium of the Washington State University and extending in a northwesterly direction to a connection with state route number 27, near the north boundary of the city of Pullman. [1984 c 7 § 141; 1970 ex.s. c 51 § 174; 1961 c 13 § 47.20.580. Prior: 1945 c 27 § 1; Rem. Supp. 1945 § 6402-40.]

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

47.20.590 University of Washington approach authorized. The department is hereby authorized and directed to select and locate a suitable and fitting street and highway approach to the University of Washington campus in the city of Seattle, from Roosevelt Way to Fifteenth Avenue northeast, including an underpass beneath the surface of Roosevelt Way, and necessary approaches to the underpass. [1984 c 7 § 142; 1961 c 13 § 47.20.590. Prior: 1945 c 27 § 2; Rem. Supp. 1945 § 6402-41.]

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

47.20.600 Washington State University highway, University of Washington approach—Acquisition of property. The department is hereby authorized and directed in the name of the state of Washington to acquire by purchase, gift, or condemnation, any and all private real estate, rights, and interests necessary to locate, construct, and maintain the Washington State University highway and the University of Washington approach provided for herein. [1984 c 7 § 143; 1961 c 13 § 47.20.600. Prior: 1945 c 27 § 3; Rem. Supp. 1945 § 6402-42.]

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

47.20.605 Washington State University highway, University of Washington approach—Public use. The use of the private real estate, rights, and interests, selected by the department as necessary for the approach, underpass, and highway is declared to be a public use. [1984 c 7 § 144; 1961 c 13 § 47.20.605. Prior: 1945 c 27 § 4; Rem. Supp. 1945 § 6402-43. Formerly RCW 47.20.600, part.]

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

47.20.610 Washington State University highway, University of Washington approach—Condemnation. In case of condemnation to secure any real estate, rights, or interests authorized under this chapter, the court actions shall be brought in the name of the state of Washington in the respective counties in which the real estate is located and in the manner provided by law for acquiring property for public uses for the state. In such actions the selection of the real estate, rights, and interests by the department is, in the absence of bad faith, arbitrary, capricious, or fraudulent action, conclusive upon the court and judge before which the

action is brought that the real estate, rights, and interests are necessary for public use for the purposes sought. [1984 c 7 § 145; 1961 c 13 § 47.20.610. Prior: 1945 c 27 § 5; Rem. Supp. 1945 § 6402-44.]

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

47.20.620 Washington State University highway, University of Washington approach—Measure of damage to buildings. If, in any condemnation proceeding authorized herein, it appears that there is any building wholly or partially upon any of the real estate to be taken, the jury, or the court, if the jury be waived, shall add to the value of the land taken the amount of damages to the building. If the entire building is taken, or if the building is damaged so that it cannot be readjusted to the real estate not taken, then the measure of damages shall be the fair cash value of the building. If part of a building is taken or damaged and the building can be readjusted or replaced on the real estate remaining, then the measure of damages shall be the cost of readjusting or moving the building, or part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving. [1961 c 13 § 47.20.620. Prior: 1945 c 27 § 6; Rem. Supp. 1945 § 6402-45.]

47.20.630 Washington State University highway, University of Washington approach—Sale of buildings, personalty, acquired in acquisition of land. The department shall have power to sell at public or private sale any building, equipment, or fixtures acquired in the acquisition of the real estate for such price as it shall fix and to execute to the purchaser upon payment of the purchase price a bill of sale in the name of the state. Proceeds of the sale shall be placed in the motor vehicle fund of the state treasury. The department shall have power to permit occupation of buildings on real estate so acquired for such specified limited time as it deems will lapse before construction of the approach, underpass, and highway can be undertaken; and in behalf of the state it may be shown in any condemnation proceeding the period during which such occupancy will be permitted for the purpose of mitigating damages. [1984 c 7 § 146; 1961 c 13 § 47.20.630. Prior: 1945 c 27 § 7; Rem. Supp. 1945 § 6402-46.]

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

47.20.635 University of Washington approach—Ordinance requisite—Construction and maintenance. No action may be taken by the department for the acquisition of real estate, rights, and interests for the approach and underpass to the University of Washington unless and until the city of Seattle, through its legislative authority, enacts an ordinance providing that the city of Seattle will, within three months after the necessary real estate, rights, and interests have been secured by the state as provided in this chapter, begin the work of grading, paving, and such other work as is necessary to complete and render available for use of the public, the approach and underpass and approaches to the underpass; and further providing that the city of Seattle shall thereafter keep and maintain the approach and underpass and approach to the underpass in a good state of repair and suitable for public travel and use, which construction and main-

tenance work the city of Seattle is hereby authorized and empowered to do and perform. [1984 c 7 § 147; 1961 c 13 § 47.20.635. Prior: 1945 c 27 § 8; Rem. Supp. 1945 § 6402-47.]

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

47.20.640 Reestablishment and redesignation of intersections when highway relocated. In any case where a state highway is relocated in such manner that it ceases to intersect another state highway, the department is authorized to extend and designate either of the state highways to reestablish an appropriate intersection. [1984 c 7 § 148; 1967 ex.s. c 145 § 44; 1961 c 13 § 47.20.640. Prior: 1953 c 82 § 1.]

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

47.20.645 Interstate 90 corridor—Legislative finding. The legislature finds that the department initiated route studies for the location of that segment of the national system of interstate and defense highways (interstate system) between south Bellevue and state route No. 5 in Seattle in 1957 culminating in a corridor public hearing and adoption of a corridor in 1963; that thereafter the department, utilizing a multidisciplinary design team and soliciting the broadest public participation, developed a series of designs culminating in a public design hearing in 1970, a public limited access hearing in 1971, and adoption of a design and limited access plan for the facility in 1971; that commencing in 1970 the proposed facility has been the subject of numerous lawsuits and administrative proceedings that have prevented advancement of the project to construction; that since further development of the project was enjoined by federal courts in 1971 the cost of constructing the project has increased by more than one hundred million dollars; that the traffic congestion and traffic hazards existing in the existing highway corridor between south Bellevue, Mercer Island, and the city of Seattle are no longer tolerable; that after more than seventeen years of studies the public interest now requires that final decisions regarding the appropriate system for meeting the transportation requirements between south Bellevue and the city of Seattle be made promptly and in accordance with a prescribed schedule.

It is therefore the sense of the legislature that further protracted delay in establishing the transportation system to be constructed between south Bellevue and state route No. 5 in the city of Seattle is contrary to the interest of the people of this state and can no longer be tolerated as acceptable public administration. Accordingly the schedule for finally determining the character of transportation modes between south Bellevue and state route No. 5 in the city of Seattle as set forth in RCW 47.20.645 through 47.20.653 and 47.20.900 is adopted as the public policy of this state. [1984 c 7 § 149; 1975 1st ex.s. c 272 § 1.]

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

47.20.647 Interstate 90 corridor—Withdrawal of local governments from project—Effect on use of state funds. (1) The Puget Sound council of governments (until July 1, 1975, known as the Puget Sound governmental conference) now engaged in a study of the withdrawal from the interstate system of that segment of state route No. 90

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between the south Bellevue interchange and the Connecticut street interchange on state route No. 5 and the substitution of public mass transit projects in lieu thereof as authorized by section 103(e)(4) of Title 23, United States Code, is directed to complete all phases of the study by November 1, 1975.

(2) No later than January 15, 1976, the city councils of Seattle, Mercer Island and Bellevue and the county council of King County shall each by resolution either approve or disapprove a request to withdraw from the interstate system the segment of state route No. 90 between south Bellevue interchange and the Connecticut street interchange on state route No. 5. Nothing in this subsection shall be construed as requiring the city or county councils to adopt by January 15, 1976 any proposal for substitute mass transit projects.

(3) If at least three of the four city and county councils request withdrawal from the interstate system of the designated segment of state route No. 90 by January 15, 1976, and such request is thereafter concurred in by the governor and the Puget Sound council of governments, such determination shall be final as it relates to the state of Washington and except as may be required to terminate the project in an orderly manner, no moneys shall thereafter be expended from the motor vehicle fund for further development of the designated section of highway as an interstate highway without further express authorization of the legislature.

(4) If fewer than three of the four city and county councils request withdrawal from the interstate system of the designated segment of state route No. 90 by January 15, 1976, or if the governor does not concur in the withdrawal request, then no tax revenues collected by the state of Washington shall thereafter be expended for the construction of substitute public mass transit projects in the Seattle metropolitan area pursuant to section 103(e)(4) of Title 23, United States Code, without further express authorization of the legislature. [1975 1st ex.s. c 272 § 2.]

47.20.653 Interstate 90 corridor—Court proceedings, priority. State court proceedings instituted to challenge the validity of any steps taken in pursuance of the construction of the segment of the interstate system between south Bellevue and state route No. 5 in Seattle, or the construction of substitute public mass transit projects in lieu thereof, shall take precedence over all other causes not involving the public interest in all courts of this state to the end construction of such facilities may be expedited to the fullest. The legislature of the state of Washington respectfully requests of the federal judiciary that challenges instituted in the federal courts relating to the validity of steps leading to the construction of the designated interstate highway or substitute public mass transit projects in lieu thereof be expedited to the fullest. [1975 1st ex.s. c 272 § 5.]

47.20.700 State route No. 504 (Spirit Lake Memorial Highway)—Extension and parking facilities. The department of transportation may provide for the construction of an extension of state route number 504 from the vicinity of Maple Flats to the vicinity of the United States Corps of Engineers debris dam on the north fork of the Toutle river on an alignment to be approved by the department of transportation. The department may enter into an agreement with the

principal owner of the necessary right of way providing as follows:

(1) The owner of the right of way shall construct the highway extension and public parking facilities as specified by the department of transportation.

(2) The owner of the right of way shall convey to the state, right of way for the highway extension a minimum of one hundred fifty feet in width (except right of way presently under the control of the department of natural resources), together with areas for public parking facilities as designated by the department of transportation.

(3) The department of transportation shall reimburse the present owner of the right of way for the actual cost of construction of the highway extension and the public parking facilities.

(4) The construction of the highway extension and public parking facilities shall be completed within one year after March 27, 1982.

The department of transportation may acquire that part of the right of way necessary for the highway extension that is now under the control of the department of natural resources in the manner provided in RCW 47.12.023 through 47.12.029.

All expenditures by the department of transportation pursuant to this section shall be from appropriations for the construction of category A projects. [1982 c 82 § 2.]

47.20.710 Quinault Tribal Highway—Agreement authorized—Route. The department of transportation is authorized to enter into a cooperative agreement with the governing authority for the Indian peoples of the Quinault Indian Reservation and appropriate agencies of the United States for the location, design, right of way acquisition, construction, and maintenance of a highway beginning at the south boundary of the Quinault Indian reservation on state route number 109, thence northerly along the present right of way of state route number 109 to the township line, thence inland and northerly across the Raft river to an intersection with state route number 101 south of Queets. The highway shall be known as the "Tribal Highway" and may also be designated by the department as state route number 109. It is anticipated that this highway construction will be funded from federal sources other than normal federal aid highway allocations. [1985 c 228 § 1.]

State route number 109: RCW 47.17.200.

47.20.715 Quinault Tribal Highway—Maintenance, operation, improvements—Intersections, access. As a part of the agreement, the department may assume responsibility for the operation and maintenance and future improvement of the highway. The agreement may also reserve to the governing authority for the Indian peoples of the Quinault Indian Reservation authority to construct public road intersections or grade separation crossings of the highway. Existing rights of access from adjoining property to existing state route number 109 from the south reservation boundary to the township line shall not be affected by RCW 47.20.710 through 47.20.735 or the agreement authorized by RCW 47.20.710. [1985 c 228 § 2.]

47.20.720 Quinault Tribal Highway—Certain portion as limited access. The department is authorized to determine the location of the highway from the township line to a junction with state route number 101 after consultations with the governing authority for the Indian peoples of the Quinault Indian Reservation and the bureau of Indian affairs. The department may then proceed with the establishment of this section of the highway as a limited access facility in the manner prescribed in RCW 47.52.131 through 47.52.137 and 47.52.195 (and the administrative rules adopted by the department to implement those sections), subject, however, to the following conditions: (1) The access report required by RCW 47.52.131 shall be approved by the governing authority for the Indian peoples of the Quinault Indian Reservation before public hearings; and (2) the final limited access plan adopted pursuant to RCW 47.52.137 at the conclusion of the public hearing, or after any appeal from it has been decided, shall be approved by the governing authority for the Indian peoples of the Quinault Indian Reservation and the bureau of Indian affairs before right of way is acquired for this section of highway. [1985 c 228 § 3.]

47.20.725 Quinault Tribal Highway—Acquisition of remaining right of way. The department is authorized to acquire the remaining right of way for the Tribal Highway by purchase or by condemnation under state or federal eminent domain statutes. The secretary of transportation pursuant to the agreement is authorized to convey by deed to the governing authority for the Indian peoples of the Quinault Indian Reservation the right of way to the entire highway when fully acquired in return for a conveyance by the governing authority for the Indian peoples of the Quinault Indian Reservation to the state of Washington of a perpetual easement for public travel on the through lanes and shoulders of the highway when constructed. The agreement may also authorize the governing authority for the Indian peoples of the Quinault Indian Reservation to convey to the United States an easement to construct, maintain, and repair the highway improvements if such an easement is required by regulations of the bureau of Indian affairs. [1985 c 228 § 4.]

47.20.730 Quinault Tribal Highway—Department as agent. Except as otherwise provided by RCW 47.20.710 through 47.20.735 or by the agreement authorized by RCW 47.20.710, the department may proceed with the location, design, acquisition of right of way, construction, and maintenance of the highway as an agent of the governing authority for the Indian peoples of the Quinault Indian Reservation in accordance with applicable state or federal law. [1985 c 228 § 5.]

47.20.735 Quinault Tribal Highway—Authority to seek federal funding. The department is authorized to join with the governing authority for the Indian peoples of the Quinault Indian Reservation to seek federal funding for the construction of the Tribal Highway. [1985 c 228 § 6.]

47.20.780 Design-build—Competitive bidding. (*Expires April 30, 2008.*) The department of transportation shall develop a process for awarding competitively bid high-

way construction contracts for projects over ten million dollars that may be constructed using a design-build procedure. As used in this section and RCW 47.20.785, "design-build procedure" means a method of contracting under which the department of transportation contracts with another party for the party to both design and build the structures, facilities, and other items specified in the contract.

The process developed by the department must, at a minimum, include the scope of services required under the design-build procedure, contractor prequalification requirements, criteria for evaluating technical information and project costs, contractor selection criteria, and issue resolution procedures.

This section expires April 30, 2008. [2001 c 226 § 2.]

Findings—Purpose—2001 c 226: "The legislature finds and declares that a contracting procedure that facilitates construction of transportation facilities in a more timely manner may occasionally be necessary to ensure that construction can proceed simultaneously with the design of the facility. The legislature further finds that the design-build process and other alternative project delivery concepts achieve the goals of time savings and avoidance of costly change orders.

The legislature finds and declares that a 2001 audit, conducted by Talbot, Korvola & Warwick, examining the Washington state ferries' capital program resulted in a recommendation for improvements and changes in auto ferry procurement processes. The auditors recommended that auto ferries be procured through use of a modified request for proposals process whereby the prevailing shipbuilder and Washington state ferries engage in a design and build partnership. This process promotes ownership of the design by the shipbuilder while using the department of transportation's expertise in ferry design and operations. Alternative processes like design-build partnerships can promote innovation and create competitive incentives that increase the likelihood of finishing projects on time and within the budget.

The purpose of this act is to authorize the department's use of a modified request for proposals process for procurement of auto ferries, and to prescribe appropriate requirements and criteria to ensure that contracting procedures for this procurement process serve the public interest." [2001 c 226 § 1.]

47.20.785 Design-build—Qualified projects. (Expires April 30, 2008.) The department of transportation may use the design-build procedure for public works projects over ten million dollars where:

- (1) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or
- (2) The projects selected provide opportunity for greater innovation and efficiencies between the designer and the builder; or
- (3) Significant savings in project delivery time would be realized.

This section expires April 30, 2008. [2001 c 226 § 3.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.20.900 Severability—1975 1st ex.s. c 272. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 272 § 6.]

**Chapter 47.22 RCW
COMBINATION HIGHWAY ROUTES**

Sections

47.22.010 East Pacific highway.

(2004 Ed.)

47.22.020 Lewis and Clark Highway.

47.22.010 East Pacific highway. There is hereby established the east Pacific highway which shall be composed of the following existing highway routes: Beginning on state route number 5 at or near Centralia; thence by way of state route number 5 to its junction with state route number 12 or by way of state route number 507 between Centralia and Tenino; thence on state route number 507 to Roy junction with state route number 7; thence on state route number 7 to a junction with state route number 512; thence on state route number 512 to Puyallup; thence on state route numbers 410 and 167 to Sumner, Auburn, Kent and Renton; thence on state route number 405 to Kirkland; thence on state route number 405 north to a junction with state route number 522; thence on state route number 522 to a junction with state route number 9 northeast of Woodinville; and thence on state route number 9 to Snohomish, Arlington, Sedro Woolley, and to a junction with state route number 542 at Deming; thence westerly on state route 542 to a junction with state route number 9 at Lawrence; thence on state route number 9 via Sumas, to the Canadian international boundary. [1970 ex.s. c 51 § 175; 1961 c 13 § 47.22.010. Prior: 1951 c 273 § 1.]

47.22.020 Lewis and Clark Highway. There is established the Lewis and Clark Highway, which shall be composed of the following existing routes: State route 193 from the junction of state route 12 at Clarkston to Wawawai River Road; state route 12 from Clarkston to Waitsburg; state route 124 from Waitsburg to Pasco (west); state route 12 from Pasco to Waitsburg via Wallula and Walla Walla (east); state routes 395 and 82 from state route 12, through the Tri-Cities region, to the junction at state route 14; state route 14 from the junction of state routes 395 and 82 to Maryhill; state routes 14 and 5 from Maryhill to state route 432 through Longview to state route 4; state route 4 from Longview to the junction with state route 101 near the vicinity of Johnson's landing; state route 401 from Naselle junction to Megler; state route 101 from Megler through Ilwaco and Seaview to the junction with state route 4; state route spur/alternate state route 101; state route loop 100; state route spur 100; and state route 103. [1999 c 57 § 1; 1970 ex.s. c 51 § 176; 1967 ex.s. c 145 § 13; 1961 c 13 § 47.22.020. Prior: 1955 c 178 § 1.]

Chapter 47.24 RCW

CITY STREETS AS PART OF STATE HIGHWAYS

Sections

- 47.24.010 Designation—Construction, maintenance—Return to city or town.
- 47.24.020 Jurisdiction, control.
- 47.24.030 Acquisition of rights of way—Condemnation proceedings.
- 47.24.040 Street fund—Expenditures on streets forming part of state highway.
- 47.24.050 Aid on streets by state or county—Payment.

City streets

*parkways, boulevards, generally: Title 35 RCW.
sidewalks, etc.: Chapters 35.68 through 35.79 RCW.*

Design standards committee for city streets: Chapter 35.78 RCW.

Off-street parking

*cities: Chapter 35.86 RCW.
towns: RCW 35.27.550 through 35.27.590.*

Platted streets as public highways: RCW 58.08.035, 58.08.050.

Speed limits in cities: RCW 46.61.415, 46.61.430, 46.61.440.

Viaducts, bridges, elevated roadways, tunnels, etc., in cities: Chapter 35.85 RCW.

47.24.010 Designation—Construction, maintenance—Return to city or town. The transportation commission shall determine what streets, together with bridges thereon and wharves necessary for use for ferriage of motor vehicle traffic in connection with such streets, if any, in any incorporated cities and towns shall form a part of the route of state highways and between the first and fifteenth days of July of any year the department of transportation shall identify by brief description, the streets, together with the bridges thereon and wharves, if any, in such city or town which are designated as forming a part of the route of any state highway; and all such streets, including curbs and gutters and street intersections and such bridges and wharves, shall thereafter be a part of the state highway system and as such shall be constructed and maintained by the department of transportation from any state funds available therefor: **PROVIDED**, That the responsibility for the construction and maintenance of any such street together with its appurtenances may be returned to a city or a town upon certification by the department of transportation to the clerk of any city or town that such street, or portion thereof, is no longer required as a part of the state highway system: **PROVIDED FURTHER**, That any such certification that a street, or portion thereof, is no longer required as a part of the state highway system shall be made between the first and fifteenth of July following the determination by the department that such street or portion thereof is no longer required as a part of the state highway system, but this shall not prevent the department and any city or town from entering into an agreement that a city or town will accept responsibility for such a street or portion thereof at some time other than between the first and fifteenth of July of any year. [1998 c 245 § 97; 1979 ex.s. c 86 § 2; 1977 ex.s. c 151 § 57; 1973 c 95 § 3; 1961 c 13 § 47.24.010. Prior: 1959 c 160 § 1; 1957 c 83 § 2; 1955 c 179 § 2; 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

47.24.020 Jurisdiction, control. The jurisdiction, control, and duty of the state and city or town with respect to such streets is as follows:

(1) The department has no authority to change or establish any grade of any such street without approval of the governing body of such city or town, except with respect to limited access facilities established by the commission;

(2) The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. However, within incorporated cities and towns the title to a state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over such facility as provided in chapter 47.52 RCW;

(3) The department has authority to prohibit the suspension of signs, banners, or decorations above the portion of such street between the curbs or portion used for highway

purposes up to a vertical height of twenty feet above the surface of the roadway;

(4) The city or town shall at its own expense maintain all underground facilities in such streets, and has the right to construct such additional underground facilities as may be necessary in such streets. However, pavement trenching and restoration performed as part of installation of such facilities must meet or exceed requirements established by the department;

(5) The city or town has the right to grant the privilege to open the surface of any such street, but all damage occasioned thereby shall promptly be repaired either by the city or town itself or at its direction. Pavement trenching and restoration performed under a privilege granted by the city under this subsection must meet or exceed requirements established by the department;

(6) The city or town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins, and remove all snow, except that the state shall when necessary plow the snow on the roadway. In cities and towns having a population of twenty-two thousand five hundred or less according to the latest determination of population by the office of financial management, the state, when necessary for public safety, shall assume, at its expense, responsibility for the stability of the slopes of cuts and fills and the embankments within the right of way to protect the roadway itself. When the population of a city or town first exceeds twenty-two thousand five hundred according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. The state shall install, maintain, and operate all illuminating facilities on any limited access facility, together with its interchanges, located within the corporate limits of any city or town, and shall assume and pay the costs of all such installation, maintenance, and operation incurred after November 1, 1954;

(7) The department has the right to use all storm sewers on such highways without cost; and if new storm sewer facilities are necessary in construction of new streets by the department, the cost of the facilities shall be borne by the state and/or city as may be mutually agreed upon between the department and the governing body of the city or town;

(8) Cities and towns have exclusive right to grant franchises not in conflict with state laws and rules, over, beneath, and upon such streets, but the department is authorized to enforce in an action brought in the name of the state any condition of any franchise which a city or town has granted on such street. No franchise for transportation of passengers in motor vehicles may be granted on such streets without the approval of the department, but the department shall not refuse to approve such franchise unless another street conveniently located and of strength of construction to sustain travel of such vehicles is accessible;

(9) Every franchise or permit granted any person by a city or town for use of any portion of such street by a public utility must require the grantee or permittee to restore, repair, and replace any portion of the street damaged or injured by it

to conditions that meet or exceed requirements established by the department;

(10) The city or town has the right to issue overload or overwidth permits for vehicles to operate on such streets or roads subject to regulations printed and distributed to the cities and towns by the department;

(11) Cities and towns shall regulate and enforce all traffic and parking restrictions on such streets, but all regulations adopted by a city or town relating to speed, parking, and traffic control devices on such streets not identical to state law relating thereto are subject to the approval of the department before becoming effective. All regulations pertaining to speed, parking, and traffic control devices relating to such streets heretofore adopted by a city or town not identical with state laws shall become null and void unless approved by the department heretofore or within one year after March 21, 1963;

(12) The department shall erect, control, and maintain at state expense all route markers and directional signs, except street signs, on such streets;

(13) The department shall install, operate, maintain, and control at state expense all traffic control signals, signs, and traffic control devices for the purpose of regulating both pedestrian and motor vehicular traffic on, entering upon, or leaving state highways in cities and towns having a population of twenty-two thousand five hundred or less according to the latest determination of population by the office of financial management. Such cities and towns may submit to the department a plan for traffic control signals, signs, and traffic control devices desired by them, indicating the location, nature of installation, or type thereof, or a proposed amendment to such an existing plan or installation, and the department shall consult with the cities or towns concerning the plan before installing such signals, signs, or devices. Cities and towns having a population in excess of twenty-two thousand five hundred according to the latest determination of population by the office of financial management shall install, maintain, operate, and control such signals, signs, and devices at their own expense, subject to approval of the department for the installation and type only. When the population of a city or town first exceeds twenty-two thousand five hundred according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. For the purpose of this subsection, striping, lane marking, and channelization are considered traffic control devices;

(14) All revenue from parking meters placed on such streets belongs to the city or town;

(15) Rights of way for such streets shall be acquired by either the city or town or by the state as shall be mutually agreed upon. Costs of acquiring rights of way may be at the sole expense of the state or at the expense of the city or town or at the expense of the state and the city or town as may be mutually agreed upon. Title to all such rights of way so acquired shall vest in the city or town: PROVIDED, That no vacation, sale, rental, or any other nontransportation use of any unused portion of any such street may be made by the city or town without the prior written approval of the depart-

ment; and all revenue derived from sale, vacation, rental, or any nontransportation use of such rights of way shall be shared by the city or town and the state in the same proportion as the purchase costs were shared;

(16) If any city or town fails to perform any of its obligations as set forth in this section or in any cooperative agreement entered into with the department for the maintenance of a city or town street forming part of the route of a state highway, the department may notify the mayor of the city or town to perform the necessary maintenance within thirty days. If the city or town within the thirty days fails to perform the maintenance or fails to authorize the department to perform the maintenance as provided by RCW 47.24.050, the department may perform the maintenance, the cost of which is to be deducted from any sums in the motor vehicle fund credited or to be credited to the city or town. [2001 c 201 § 8; 1993 c 126 § 1; 1991 c 342 § 52; 1987 c 68 § 1; 1984 c 7 § 150; 1977 ex.s. c 78 § 7; 1967 c 115 § 1; 1963 c 150 § 1; 1961 c 13 § 47.24.020. Prior: 1957 c 83 § 3; 1955 c 179 § 3; 1953 c 193 § 1; 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

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

47.24.030 Acquisition of rights of way—Condemnation proceedings. The department is authorized to acquire rights of way, by purchase, gift, or condemnation for any such streets, highways, bridges, and wharves. Any such condemnation proceedings shall be exercised in the manner provided by law for condemnation proceedings to acquire lands required for state highways. [1984 c 7 § 151; 1961 c 13 § 47.24.030. Prior: 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

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

Right of way donations: Chapter 47.14 RCW.

47.24.040 Street fund—Expenditures on streets forming part of state highway. All funds accruing to the credit of incorporated cities and towns in the motor vehicle fund shall be paid monthly to such incorporated cities and towns and shall, by the respective cities and towns, be placed in a fund to be designated as "city street fund" and disbursed as authorized and directed by the legislative authority of the city or town, as agents of the state, for salaries and wages, material, supplies, equipment, purchase or condemnation of right of way, engineering or any other proper highway or street purpose in connection with the construction, alteration, repair, improvement or maintenance of any city street or bridge, or viaduct or underpassage along, upon or across such streets. Such expenditure may be made either independently or in conjunction with any federal, state or any county funds. [1961 c 13 § 47.24.040. Prior: 1949 c 220 § 4; 1947 c 96 § 1; 1943 c 82 § 9; 1939 c 181 § 8; 1937 c 187 § 60; Rem. Supp. 1949 § 6450-60.]

47.24.050 Aid on streets by state or county—Payment. If a city or town, whether or not any of its streets are designated as forming a part of a state highway, is unable to

construct, repair, or maintain its streets for good cause, or if it is in need of engineering assistance to construct, repair, or maintain any of its streets, it may authorize the department to perform such construction, repair, or maintenance, or it may secure necessary engineering assistance from the department, to the extent of the funds credited or to be credited in the motor vehicle fund for payment to the city or town. Any sums due from a city or town for such purposes shall be paid on vouchers approved and submitted by the department from moneys credited to the city or town in the motor vehicle fund, and the amount of the payments shall be deducted from funds which would otherwise be paid to the city or town from the motor vehicle fund. The department may in certain special cases, in its discretion, enter into an agreement with the governing officials of the city or town for the performance of such work or services, the terms of which shall provide for reimbursement of the motor vehicle fund for the benefit of the state's share of the fund by the city or town of the cost thereof from any funds of the city or town on hand and legally available for the work or services. The city or town may, by resolution, authorize the legislative authority of the county in which it is located, to perform any such construction, repair, or maintenance, and the work shall be paid for by the city or town at the actual cost thereof as provided for payment for work performed on city streets, and any payment received therefor by a county shall be deposited in the county road fund to be expended under the same provisions as are imposed upon the funds used to perform the construction, repair, or maintenance. [1984 c 7 § 152; 1961 c 13 § 47.24.050. Prior: 1951 c 54 § 1; 1949 c 220 § 6; 1943 c 82 § 11; 1937 c 187 § 63; Rem. Supp. 1949 § 6450-63.]

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

Chapter 47.26 RCW DEVELOPMENT IN URBAN AREAS— URBAN ARTERIALS

Sections

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BOND ISSUE—STATE HIGHWAYS IN URBAN AREAS

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BOND ISSUE—COUNTY AND CITY ARTERIALS IN URBAN AREAS

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47.26.910	Effective dates—1967 ex.s. c 83.
47.26.930	Construction—1969 ex.s. c 171.

Bicycle transportation management program: RCW 47.04.190.

Public-private transportation initiatives—1994 act: RCW 47.10.834 through 47.10.839.

47.26.010 Declaration of intent. Due to unprecedented industrial development and population increases, the state of Washington is confronted with emergency needs for

improvement of state highways, county roads, and city streets in urban areas. It is the intent of the legislature to provide sufficient new highway revenues to alleviate and prevent intolerable traffic congestion in urban areas without the disruption of the long range statewide highway program essential to the economic well-being of the people of this state. [1967 ex.s. c 83 § 1.]

Reviser's note: Throughout chapter 47.26 RCW the term "this 1967 amendatory act" has been translated to "this chapter." This 1967 amendatory act [1967 ex.s. c 83] consists of chapter 47.26 RCW and RCW 35.77.010, 36.81.121, 46.16.040, 46.16.070, 46.16.111, 46.16.121, 46.16.125, 46.68.100, 46.68.150, 82.36.020, 82.36.100, 82.37.030, 82.37.190, 82.40.020, 82.40.290, and the repeal of RCW 46.16.072, 46.16.075, 46.16.110, and 46.16.120.

47.26.020 Motor vehicle fuel tax—Tax imposed—Rate—Distribution of proceeds. See RCW 82.36.020.

47.26.022 Motor vehicle fuel tax—Tax required of nondistributors—Duties—Procedure—Distribution of proceeds—Penalties. See RCW 82.36.100.

47.26.028 Special fuel tax—Tax imposed—Rate. See RCW 82.38.030.

47.26.030 Special fuel tax—Disposition of funds. See RCW 82.38.290.

47.26.040 "Urban area" defined. The term "urban area" as used in this chapter means every area of this state designated as an urban area by the department in cooperation with the board and regional transportation planning organizations. [1994 c 179 § 7; 1984 c 7 § 153; 1977 ex.s. c 317 § 12; 1975 1st ex.s. c 253 § 1; 1967 ex.s. c 83 § 10.]

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

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.044 "Board" defined. The term "board" as used in this chapter means the transportation improvement board. [1994 c 179 § 6.]

47.26.050 Regional grouping for purpose of apportioning urban state highway funds. For the purpose of apportioning urban state highway funds, the urban areas of the state are grouped within five regions of the state as follows:

(1) Puget Sound region shall include those urban areas within the counties of King, Pierce and Snohomish.

(2) Northwest region shall include those urban areas within the counties of Clallam, Jefferson, Island, Kitsap, San Juan, Skagit and Whatcom.

(3) Northeast region shall include those urban areas within the counties of Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens and Whitman.

(4) Southeast region shall include those urban areas within the counties of Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla and Yakima.

(5) Southwest region shall include those urban areas within the counties of Clark, Cowlitz, Grays Harbor, Lewis,

Mason, Pacific, Skamania, Thurston and Wahkiakum. [1967 ex.s. c 83 § 11.]

47.26.080 Urban arterial trust account—Withholding of funds for noncompliance. There is hereby created in the motor vehicle fund the urban arterial trust account. The intent of the urban arterial trust account program is to improve the arterial street system of the state by improving mobility and safety while supporting an environment essential to the quality of life of the citizens of the state of Washington. The city hardship assistance program, as provided in RCW 47.26.164, and the small city program, as provided for in RCW 47.26.115, are implemented within the urban arterial trust account.

The board shall not allocate funds, nor make payments of the funds under RCW 47.26.260, to any county, city, or town identified by the governor under RCW 36.70A.340. [1999 c 94 § 16; 1994 c 179 § 8; 1991 sp.s. c 32 § 32; 1988 c 167 § 13; 1981 c 315 § 2; 1979 c 5 § 1; 1977 ex.s. c 317 § 22; 1967 ex.s. c 83 § 14.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective date—1981 c 315: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 315 § 14.]

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.084 Transportation improvement account—Certification of funding. The transportation improvement account is hereby created in the motor vehicle fund. The intent of the program is to improve mobility of people and goods in Washington state by supporting economic development and environmentally responsive solutions to our statewide transportation system needs.

Within one year after board approval of an application for funding, a county, city, or transportation benefit district shall provide written certification to the board of the pledged local and/or private funding. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board. [1999 c 94 § 17; 1994 c 179 § 10; 1988 c 167 § 2.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.086 Transportation improvement account projects—Intent—Limitations. Transportation improvement account projects selected for funding programs after fiscal year 1995 are governed by the requirements of this section.

The board shall allocate funds from the account by June 30th of each year for the ensuing fiscal year to urban counties, cities with a population of five thousand and over, and to transportation benefit districts. Projects may include, but are not limited to, multi-agency projects and arterial improve-

ment projects in fast-growing areas. The board shall endeavor to provide geographical diversity in selecting improvement projects to be funded from the account.

The intent of the program is to improve mobility of people and goods in Washington state by supporting economic development and environmentally responsive solutions to our statewide transportation system needs.

To be eligible to receive these funds, a project must be consistent with the Growth Management Act, the Clean Air Act including conformity, and the Commute Trip Reduction Law and consideration must have been given to the project's relationship, both actual and potential, with the statewide rail passenger program and rapid mass transit. Projects must be consistent with any adopted high capacity transportation plan, must consider existing or reasonably foreseeable congestion levels attributable to economic development or growth and all modes of transportation and safety, and must be partially funded by local government or private contributions, or a combination of such contributions. Priority consideration shall be given to those projects with the greatest percentage of local or private contribution, or both.

Within one year after board approval of an application for funding, the lead agency shall provide written certification to the board of the pledged local and private funding for the phase of the project approved. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board. [1994 c 179 § 11.]

47.26.090 "Arterial" defined. The term "arterial" as used in this chapter means any state highway, county road, or city street, in an urban area, that is functionally classified as a principal arterial, minor arterial, or collector street by the department in cooperation with the board, regional transportation planning organizations, cities, and counties. The board shall develop criteria and procedures for designating arterials in the incorporated cities and towns lying outside urban areas. [1994 c 179 § 12; 1988 c 167 § 14. Prior: 1967 ex.s. c 83 § 15.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.100 "City" defined. The term "city" as used in *this chapter shall include incorporated towns. [1967 ex.s. c 83 § 16.]

***Reviser's note:** The term "this chapter" has been substituted for "this 1967 amendatory act." See note following RCW 47.26.010 for codification of "this 1967 amendatory act" [1967 ex.s. c 83].

47.26.110 "Urban arterial" defined. The term "urban arterial" as used in *this chapter means an arterial within an urban area. [1967 ex.s. c 83 § 17.]

***Reviser's note:** The term "this chapter" has been substituted for "this 1967 amendatory act." See note following RCW 47.26.010 for codification of "this 1967 amendatory act." [1967 ex.s. c 83.]

47.26.115 Small city program. The intent of the small city program is to preserve and improve the roadway system consistent with local needs of incorporated cities and towns with a population of less than five thousand. The board shall adopt rules and procedures to govern the allocation of funds

distributed to the small city program. [1999 c 94 § 18; 1994 c 179 § 9.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

47.26.121 Transportation improvement board—Membership—Chair—Expenses. (1) There is hereby created a transportation improvement board of twenty-one members, six of whom shall be county members and six of whom shall be city members. The remaining members shall be: (a) One representative appointed by the governor who shall be a state employee with responsibility for transportation policy, planning, or funding; (b) two representatives from the department of transportation; (c) two representatives of public transit systems; (d) a private sector representative; (e) a member representing the ports; (f) a member representing nonmotorized transportation; and (g) a member representing special needs transportation.

(2) Of the county members of the board, one shall be a county engineer or public works director; one shall be the executive director of the county road administration board; one shall be a county planning director or planning manager; one shall be a county executive, councilmember, or commissioner from a county with a population of one hundred twenty-five thousand or more; one shall be a county executive, councilmember, or commissioner of a county who serves on the board of a public transit system; and one shall be a county executive, councilmember, or commissioner from a county with a population of less than one hundred twenty-five thousand. All county members of the board, except the executive director of the county road administration board, shall be appointed. Not more than one county member of the board shall be from any one county. No more than two of the three county-elected officials may represent counties located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(3) Of the city members of the board one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city with a population of twenty thousand or more; one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city of less than twenty thousand population; one shall be a city planning director or planning manager; one shall be a mayor, commissioner, or city councilmember of a city with a population of twenty thousand or more; one shall be a mayor, commissioner, or city councilmember of a city who serves on the board of a public transit system; and one shall be a mayor, commissioner, or councilmember of a city of less than twenty thousand population. All of the city members shall be appointed. Not more than one city member of the board shall be from any one city. No more than two of the three city-elected officials may represent cities located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(4) Of the transit members, at least one shall be a general manager, executive director, or transit director of a public transit system in an urban area with a population over two hundred thousand and at least one representative from a rural

or small urban transit system in an area with a population less than two hundred thousand.

(5) The private sector member shall be a citizen with business, management, and transportation related experience and shall be active in a business community-based transportation organization.

(6) The port member shall be a commissioner or senior staff person of a public port.

(7) The nonmotorized transportation member shall be a citizen with a demonstrated interest and involvement with a nonmotorized transportation group.

(8) The specialized transportation member shall be a citizen with a demonstrated interest and involvement with a statewide specialized needs transportation group.

(9) Appointments of county, city, Washington department of transportation, transit, port, nonmotorized transportation, special needs transportation, and private sector representatives shall be made by the secretary of the department of transportation. Appointees shall be chosen from a list of two persons for each position nominated by the Washington state association of counties for county members, the association of Washington cities for city members, the Washington state transit association for the transit members, and the Washington public ports association for the port member. The private sector, nonmotorized transportation, and special needs members shall be sought through classified advertisements in selected newspapers collectively serving all urban areas of the state, and other appropriate means. Persons applying for the private sector, nonmotorized transportation, or special needs transportation member position must provide a letter of interest and a resume to the secretary of the department of transportation. In the case of a vacancy, the appointment shall be only for the remainder of the unexpired term in which the vacancy has occurred. A vacancy shall be deemed to have occurred on the board when any member elected to public office completes that term of office or is removed therefrom for any reason or when any member employed by a political subdivision terminates such employment for whatsoever reason or when a private sector, nonmotorized transportation, or special needs transportation member resigns or is unable or unwilling to serve.

(10) Appointments shall be for terms of four years. Terms of all appointed members shall expire on June 30th of even-numbered years. The initial term of appointed members may be for less than four years. No appointed member may serve more than two consecutive four-year terms.

(11) The board shall elect a chair from among its members for a two-year term.

(12) Expenses of the board shall be paid in accordance with RCW 47.26.140.

(13) For purposes of this section, "public transit system" means a city-owned transit system, county transportation authority, metropolitan municipal corporation, public transportation benefit area, or regional transit authority. [1996 c 49 § 1; 1995 c 269 § 2603; 1994 c 179 § 13; 1993 c 172 § 1. Prior: 1991 c 363 § 124; 1991 c 308 § 1; 1990 c 266 § 4; 1988 c 167 § 1.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

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Effective date—1993 c 172: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 172 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—1991 c 308: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 308 § 2.]

References to urban arterial board—1988 c 167: "References in the Revised Code of Washington to the urban arterial board shall be construed to mean the transportation improvement board." [1988 c 167 § 35.]

Savings—1988 c 167: "All rules and all pending business before the urban arterial board shall be continued and acted upon by the transportation improvement board. All existing contracts and obligations of the urban arterial board shall remain in full force and shall be performed by the transportation improvement board." [1988 c 167 § 36.]

Severability—1988 c 167: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 167 § 37.]

47.26.130 Transportation improvement board—Travel expenses. Members of the transportation improvement board shall receive no compensation for their services on the board, but shall be reimbursed for travel expenses incurred while attending meetings of the board or while engaged on other business of the board when authorized by the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1988 c 167 § 15; 1975-'76 2nd ex.s. c 34 § 139; 1975 1st ex.s. c 1 § 2; 1969 ex.s. c 171 § 2; 1967 ex.s. c 83 § 19.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

47.26.140 Transportation improvement board—Executive director, staff—Finances. The transportation improvement board shall appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board, and may employ additional staff as it deems appropriate. All costs associated with staff, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060, shall be paid from the urban arterial trust account, public transportation systems account, and the transportation improvement account in the motor vehicle fund as determined by the biennial appropriation. [1999 c 94 § 19; 1996 c 49 § 2; 1995 c 269 § 2605; 1994 c 179 § 14; 1988 c 167 § 16; 1977 ex.s. c 151 § 58; 1975-'76 2nd ex.s. c 34 § 140; 1969 ex.s. c 171 § 3; 1967 ex.s. c 83 § 20.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

47.26.150 Transportation improvement board—Meetings. The transportation improvement board shall meet

at least once quarterly and upon the call of its chairman and shall from time to time adopt rules and regulations for its own government and as may be necessary for it to discharge its duties and exercise its powers under this chapter. [1988 c 167 § 17. Prior: 1967 ex.s. c 83 § 21.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.160 Transportation improvement board—Powers and duties. The transportation improvement board shall:

(1) Adopt rules necessary to implement the provisions of chapter 47.66 RCW and this chapter relating to the allocation of funds;

(2) Adopt reasonably uniform design standards for city and county arterials. [1995 c 269 § 2607; 1994 c 179 § 15; 1988 c 167 § 18; 1987 c 505 § 51; 1984 c 7 § 155; 1977 ex.s. c 235 § 17; 1971 ex.s. c 291 § 1; 1967 ex.s. c 83 § 22.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

47.26.164 City hardship assistance program—Implementation. The board shall adopt reasonable rules necessary to implement the city hardship assistance program as recommended by the road jurisdiction study.

The following criteria shall be used to implement the program:

(1) Only those cities with a net gain in cost responsibility due to jurisdictional transfers in chapter 342, Laws of 1991, as determined by the board, may participate;

(2) Cities with populations of fifteen thousand or less, as determined by the office of financial management, may participate;

(3) The board shall develop criteria and procedures under which eligible cities may request funding for rehabilitation projects on city streets acquired under chapter 342, Laws of 1991; and

(4) The board shall also be authorized to allocate funds from the city hardship assistance program to cities with a population under twenty thousand to offset extraordinary costs associated with the transfer of roadways other than pursuant to chapter 342, Laws of 1991, that occur after January 1, 1991. [1999 c 94 § 20; 1991 c 342 § 60.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.26.165 Coordination of long-range needs studies. See RCW 47.01.240.

47.26.167 Jurisdictional transfers. The legislature recognizes the need for a multijurisdictional body to review future requests for jurisdictional transfers. The board is hereby directed, beginning September 1, 1991, to receive petitions from cities, counties, or the state requesting any addition or deletion from the state highway system. The board is required to utilize the criteria established in RCW

47.17.001 in evaluating petitions and to adopt rules for implementation of this process. The board shall forward to the legislative transportation committee by November 15 each year any recommended jurisdictional transfers. [1991 c 342 § 62.]

Effective dates—1991 c 342: "(1) Sections 62 and 63 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1991.

(2) The remainder of this act shall take effect April 1, 1992." [1991 c 342 § 68.]

47.26.170 Long-range arterial construction planning—Arterial inventory data. Each county having within its boundaries an urban area and cities and towns shall prepare and submit to the transportation improvement board arterial inventory data required to determine the long-range arterial construction needs. The counties, cities, and towns shall revise the arterial inventory data every four years to show the current arterial construction needs through the advanced planning period, and as revised shall submit them to the transportation improvement board during the first week of January every four years beginning in 1996. The inventory data shall be prepared pursuant to guidelines established by the transportation improvement board. As information is updated, it shall be made available to the commission and the legislative transportation committee. [1994 c 179 § 16; 1988 c 167 § 19; 1984 c 7 § 156; 1971 ex.s. c 291 § 2; 1967 ex.s. c 83 § 23.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

47.26.185 Qualifications for administering and supervising projects—Rules. The transportation improvement board may adopt rules establishing qualifications for cities and counties administering and supervising the design and construction of projects financed in part from funds administered by the board. The rules establishing qualification shall take into account the resources and population of the city or county, its permanent engineering staff, its design and construction supervision experience, and other factors the board deems appropriate. Any city or county failing to meet the qualifications established by the board for administering and supervising a project shall contract with a qualified city or county or the department for the administration and supervision of the design and construction of any approved project as a condition for receiving funds for the project. [1994 c 179 § 17; 1988 c 167 § 21; 1984 c 7 § 157; 1975 1st ex.s. c 253 § 4.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

47.26.190 Geographical diversity—Rules. The board shall adopt rules that provide geographical diversity in selecting improvement projects to be funded from the urban arterial trust account and *small city account funds. [1994 c 179 § 18; 1988 c 167 § 22; 1987 c 360 § 1; 1981 c 315 § 4; 1979 c 151 § 162; 1977 ex.s. c 317 § 14; 1973 1st ex.s. c 126 § 2;

1971 ex.s. c 291 § 3; 1969 ex.s. c 171 § 4; 1967 ex.s. c 83 § 25.]

***Reviser's note:** The "small city account" was renamed the "small city program" pursuant to 1999 c 94 § 18.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective date—1981 c 315: See note following RCW 47.26.080.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Population determinations, office of financial management: Chapter 43.62 RCW.

47.26.200 Counties—Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way. See RCW 36.81.121.

47.26.210 Cities—Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way. See RCW 35.77.010.

47.26.260 Payment of funds—Rules—Limitations. The transportation improvement board shall adopt rules providing for the approval of payments of funds in the accounts to a county, city, town, or transportation benefit district for costs of predesign, design, engineering, and costs of construction of an approved project from time to time as work progresses. These payments shall at no time exceed the account share of the costs incurred to the date of the voucher covering such payment. [1994 c 179 § 19; 1988 c 167 § 26; 1973 1st ex.s. c 126 § 1; 1967 ex.s. c 83 § 32.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.270 Matching funds requirements. Counties, cities, towns, and transportation benefit districts receiving funds from the board shall provide such matching funds as established by rules adopted by the transportation improvement board. When determining matching requirements, the board shall consider (1) financial resources available to counties and cities to meet arterial needs, (2) the amounts and percentages of funds available for road or street construction traditionally expended by counties and cities on arterials, (3) in the case of counties, the relative needs of arterials lying outside urban areas, and (4) the requirements necessary to avoid diversion of funds traditionally expended for arterial construction to other street or road purposes or to nonhighway purposes. [1994 c 179 § 20; 1988 c 167 § 27; 1983 1st ex.s. c 49 § 22; 1977 ex.s. c 317 § 16; 1967 ex.s. c 83 § 33.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.282 Land use implications. In any project funded by the transportation improvement board, except for projects in cities having a population of less than five thousand persons, and in addition to any other items required to be

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considered by statute, the board also shall consider the land use implications of the project, such as whether the programs and projects:

(1) Support development in and revitalization of existing downtowns;

(2) Implement local comprehensive plans for rural and urban residential and nonresidential densities;

(3) Have land use planning and regulations encouraging compact development for rural and urban residential and nonresidential densities; and

(4) Promote the use of multimodal transportation. [2002 c 189 § 5.]

47.26.300 Bicycle routes—Legislative declaration. The state of Washington is confronted with emergency shortages of energy sources utilized for the transportation of its citizens and must seek alternative methods of providing public mobility.

Bicycles are suitable for many transportation purposes, and are pollution-free in addition to using a minimal amount of resources and energy. However, the increased use of bicycles for both transportation and recreation has led to an increase in both fatal and nonfatal injuries to bicyclists.

The legislature therefore finds that the establishment, improvement, and upgrading of bicycle routes is necessary to promote public mobility, conserve energy, and provide for the safety of the bicycling and motoring public. [1974 ex.s. c 141 § 1.]

47.26.305 Bicycle routes—Use of board funds. Bicycle routes shall, when established in accordance with RCW 47.06.100 be eligible for establishment, improvement, and upgrading with board funds. The board shall adopt rules and procedures that will encourage the development of a system of bicycle routes within counties, cities, and towns. [1994 c 179 § 21; 1988 c 167 § 28; 1974 ex.s. c 141 § 2.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.320 Advance right-of-way acquisition—Definition. The term "advance right-of-way acquisition" as used in this chapter means the acquisition of property and property rights, together with the engineering costs necessary for the advance right-of-way acquisition. Property or property rights purchased must be for projects approved by the transportation improvement board or the county road administration board as part of a city or county six-year plan or program. [2001 c 201 § 1.]

47.26.325 Advance right-of-way acquisition—Revolving fund. The city and county advance right-of-way revolving fund is created in the custody of the treasurer. The transportation improvement board is the administrator of the fund and may deposit directly and spend without appropriation.

The transportation improvement board and the county road administration board, in consultation with the association of Washington cities and the Washington association of counties, shall adopt reasonable rules and develop policies to implement this program. [2001 c 201 § 2.]

47.26.330 Advance right-of-way acquisition—Management of properties and funds. (1) After any properties or property rights are acquired through funds in the city and county advance right-of-way revolving fund, the acquiring city or county is responsible for the management of the properties in accordance with sound business practices and shall provide annual status reports to the board. Funds received by the city or county from the interim management of the properties must be deposited into the city and county advance right-of-way revolving fund.

(2) When the city or county proceeds with the construction of an arterial project that will require the use of any of the property so acquired, the city or county shall reimburse the city and county advance right-of-way revolving fund. Reimbursement must reflect the original cost of the acquired property or property rights required for the project plus an interest rate as determined annually by the board. The board shall report on the interest rate set to the transportation committees through its annual report.

(3) When the city or county determines that any properties or property rights acquired from funds in the city and county advance right-of-way revolving fund will not be required for an arterial construction project or the property has been held by the city or county for more than six years, the city or county shall either sell the property at fair market value or reimburse the fund at fair market value. All proceeds of the sale must be deposited in the city and county advance right-of-way revolving fund. At the board's discretion, a portion of savings on transportation improvement board projects realized through the use of the city and county advance [right-of-way] revolving fund may be deposited back into the city and county advance right-of-way revolving fund.

(4) Deposits in the fund may be reexpended without further or additional appropriations. [2001 c 201 § 3.]

BOND ISSUE—STATE HIGHWAYS IN URBAN AREAS

47.26.400 Issuance and sale of general obligation bonds—Authorized—Amount—Declaration of purpose. In order to provide funds necessary to meet the urgent needs for highway construction on state highways within urban areas, there shall be issued and sold general obligation bonds of the state of Washington in the sum of two hundred million dollars or such amount thereof and at such times as determined to be necessary by the commission. The amount of the bonds issued and sold under the provisions of RCW 47.26.400 through 47.26.407 in any biennium shall not exceed the amount of a specific appropriation therefor from the proceeds of such bonds, for the construction of state highways in urban areas. The issuance, sale, and retirement of the bonds shall be under the supervision and control of the state finance committee which, upon request being made by the commission, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the commission. [1984 c 7 § 161; 1973 1st ex.s. c 169 § 1; 1967 ex.s. c 83 § 36.]

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

47.26.401 Bonds—Term—Terms and conditions—Signatures—Registration—Where payable—Negotiable

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instruments. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1973 1st ex.s. c 169 § 2; 1967 ex.s. c 83 § 37.]

47.26.402 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If the bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.26.400 through 47.26.407 shall be legal investment for any of the funds of the state, except the permanent school fund. [1967 ex.s. c 83 § 38.]

47.26.403 Bonds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of state highways within the urban areas of the state, and for payment of the expenses incurred in the printing, issuance, and sale of any such bonds. [1967 ex.s. c 83 § 39.]

47.26.404 Bonds—Statement describing nature of obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.26.400 through 47.26.407 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.26.400 through 47.26.407 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.26.400 through 47.26.407, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to

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pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.26.400 through 47.26.407. [1973 1st ex.s. c 169 § 3; 1967 ex.s. c 83 § 40.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment see chapter 82.38 RCW.

47.26.405 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay such bonds, or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state under the provisions of *RCW 46.68.090(1)(c) for construction of state highways in urban areas, and shall never constitute a charge against any allocations of any other such funds to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available to the state for construction of state highways in urban areas proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1999 c 269 § 5; 1977 ex.s. c 317 § 17; 1967 ex.s. c 83 § 41.]

***Reviser's note:** RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(c) to subsection (2)(a).

Effective date—1999 c 269: See note following RCW 36.78.070.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.406 Bonds—Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.26.405, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, hereby created, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1967 ex.s. c 83 § 42.]

47.26.407 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle fuels payable into the bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of

the motor vehicle fund at the next interest or bond payment period. [1967 ex.s. c 83 § 43.]

BOND ISSUE—COUNTY AND CITY ARTERIALS IN URBAN AREAS

47.26.420 Issuance and sale of general obligation bonds—Authorized—Amount—Declaration of purpose. In order to provide funds necessary to meet the urgent construction needs on county and city arterials within urban areas, there are hereby authorized for issuance general obligation bonds of the state of Washington, the first authorization of which shall be in the sum of two hundred million dollars, and the second authorization of which, to be known as series II bonds, shall be in the sum of sixty million dollars, and the third authorization of which, to be known as series III bonds, shall be in the sum of one hundred million dollars which shall be issued and sold in such amounts and at such times as determined to be necessary by the state transportation commission. The amount of such bonds issued and sold under the provisions of RCW 47.26.420 through 47.26.427 in any biennium shall not exceed the amount of a specific appropriation therefor, from the proceeds of such bonds, for the construction of county and city arterials in urban areas. The issuance, sale, and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the state transportation commission, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the state transportation commission. [1981 c 315 § 5; 1979 c 5 § 3. Prior: 1977 ex.s. c 317 § 18; 1973 1st ex.s. c 169 § 4; 1967 ex.s. c 83 § 45.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Appropriation—Expenditure limited to bond sale proceeds—1981 c 315: "There is appropriated from the urban arterial trust account in the motor vehicle fund to the urban arterial board for the biennium ending June 30, 1983, the sum of thirty-five million dollars, or so much thereof as may be necessary, to carry out section 5 of this act: PROVIDED, That the money available for expenditure under this appropriation may not exceed the amount of money derived from the sale of bonds authorized by section 5 of this act and deposited to the credit of the urban arterial trust account in the motor vehicle fund." [1981 c 315 § 13.]

Construction—1979 c 5: "Nothing in this 1979 act shall be construed to impair the obligations of any first authorization bonds issued or to be issued under RCW 47.26.420 through 47.26.427, or to enlarge the original authorization thereof over two hundred million dollars, and the retirement of and issuance of the remainder of the authorized amount of such bonds shall proceed in accordance with law under the supervision of the state finance committee." [1979 c 5 § 12.]

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.421 Bonds—Term—Terms and conditions—Signatures—Registration—Where payable—Negotiable instruments. Each of such first authorization bonds, series II bonds, and series III bonds shall be made payable at any time not exceeding thirty years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, either or both of which signatures may be in

printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in Seattle or New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1986 c 290 § 3; 1981 c 315 § 6; 1979 c 5 § 4; 1973 1st ex.s. c 169 § 5; 1967 ex.s. c 83 § 46.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.422 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The first authorization bonds, series II bonds, and series III bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued pursuant to this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. Bonds issued under the provisions of RCW 47.26.420 through 47.26.427 and 47.26.425 shall be legal investment for any of the funds of the state, except the permanent school fund. [1986 c 290 § 4; 1981 c 315 § 7; 1979 c 5 § 5; 1967 ex.s. c 83 § 47.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.423 Bonds—Bond proceeds—Deposit and use. The money arising from the sale of the first authorization bonds, series II bonds, and series III bonds shall be deposited in the state treasury to the credit of the urban arterial trust account in the motor vehicle fund, and such money shall be available only for the construction and improvement of county and city urban arterials, and for payment of the expense incurred in the printing, issuance, and sale of any such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1986 c 290 § 5; 1981 c 315 § 8; 1979 c 5 § 6; 1967 ex.s. c 83 § 48.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.424 Bonds—Statement describing nature of obligation—Pledge of excise taxes. The first authorization bonds, series II bonds, and series III bonds shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on such bonds shall be first payable in the manner provided in RCW 47.26.420 through 47.26.427, 47.26.425, and 47.26.4254 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds. [1995 c 274 § 11; 1981 c 315 § 9; 1979 c 5 § 7; 1977 ex.s. c 317 § 19; 1973 1st ex.s. c 169 § 6; 1967 ex.s. c 83 § 49.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Construction—1979 c 5: See note following RCW 47.26.420.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.425 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay the first authorization of two hundred million dollars of bonds authorized by RCW 47.26.420, as amended by section 18, chapter 317, Laws of 1977 ex. sess. or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the urban arterial trust account in the motor vehicle fund pursuant to *RCW 46.68.090(1)(g), and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the urban arterial trust account proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1999 sp.s. c 1 § 609. Prior: 1999 c 269 § 6; 1999 c 94 § 21; 1994 c 179 § 22; 1977 ex.s. c 317 § 20; 1967 ex.s. c 83 § 50.]

***Reviser's note:** RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(g) to subsection (2)(e).

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.4252 Bonds—Series II bonds, 1979 reenactment—Designation of funds to repay bonds and interest. Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due,

shall first be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and which is distributed to the urban arterial trust account in the motor vehicle fund pursuant to *RCW 46.68.090(1)(g), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979. If the moneys distributed to the urban arterial trust account shall ever be insufficient to repay the first authorization bonds together with interest thereon, and the series II bonds or the interest thereon when due, the amount required to make such payments on such bonds or interest thereon shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, shall be repaid from the first moneys distributed to the urban arterial trust account not required for redemption of the first authorization bonds or series II and series III bonds or interest on those bond issues. [1999 sp.s. c 1 § 610. Prior: 1999 c 269 § 7; 1999 c 94 § 22; 1995 c 274 § 12; 1994 c 179 § 23; 1983 1st ex.s. c 49 § 23; 1979 c 5 § 8.]

***Reviser's note:** RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(g) to subsection (2)(e).

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.4254 Bonds—Series III bonds—Designation of funds to repay bonds and interest. (1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and that is distributed to the urban arterial trust account in the motor vehicle fund pursuant to *RCW 46.68.090(1)(g), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420. If the moneys so distributed to the urban arterial trust account, after first being applied to administrative expenses of the transportation improvement board and to the requirements of bond retirement and payment of interest on first authorization bonds and series II bonds as provided in RCW 47.26.425 and 47.26.4252, are insufficient to meet the requirements for bond retirement or interest on any series III bonds, the amount required to make such payments on series III bonds or interest thereon shall next be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090, subject, however, to subsection (2) of this section.

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(2) To the extent that moneys so distributed to the urban arterial trust account are insufficient to meet the requirements for bond retirement or interest on any series III bonds, sixty percent of the amount required to make such payments when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state. The remaining forty percent shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the cities and towns pursuant to *RCW 46.68.090(1)(i) and to the counties pursuant to *RCW 46.68.090(1)(j). Of the counties', cities', and towns' share of any additional amounts required in each fiscal year, the percentage thereof to be taken from the counties' distributive share and from the cities' and towns' distributive share shall correspond to the percentage of funds authorized for specific county projects and for specific city and town projects, respectively, from the proceeds of series III bonds, for the period through the first eleven months of the prior fiscal year as determined by the chairman of the transportation improvement board and reported to the state finance committee and the state treasurer not later than the first working day of June.

(3) Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues that are distributable to the state, counties, cities, and towns shall be repaid from the first moneys distributed to the urban arterial trust account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds. [1999 sp.s. c 1 § 611. Prior: 1999 c 269 § 8; 1999 c 94 § 23; 1995 c 274 § 13; 1994 c 179 § 24; 1988 c 167 § 30; 1983 1st ex.s. c 49 § 24; 1981 c 315 § 10.]

***Reviser's note:** RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(g), (i), and (j) to subsection (2)(e), (g), and (h).

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—1981 c 315: See note following RCW 47.26.080.

47.26.4255 Bonds—Series II bonds, 1979 reenactment—Charge against fuel tax revenues. Except as otherwise provided by statute, the series II bonds issued under authority of RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, the bonds authorized by RCW 47.60.560 through 47.60.640, and any general obligation bonds of the state of Washington which may be authorized by the forty-sixth legislature or thereafter and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1979 c 5 § 9.]

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.426 Bonds—Repayment procedure—Bond retirement account. At least one year prior to the date any

interest is due and payable on such first authorization bonds, series II bonds, and series III bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.26.425, 47.26.4252, and 47.26.4254 the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer, subject to RCW 47.26.425, 47.26.4252, and 47.26.4254, shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the transportation improvement board bond retirement account, maintained in the office of the state treasurer, which fund shall be available for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1999 c 268 § 1; 1981 c 315 § 11; 1979 c 5 § 10; 1967 ex.s. c 83 § 51.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.427 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the transportation improvement board bond retirement account, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund [account] to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1999 c 268 § 2; 1979 c 5 § 11; 1967 ex.s. c 83 § 52.]

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.440 Budget for expenditures from funds administered by board—Estimate of revenues. Not later than November 1st of each even-numbered year the transportation improvement board shall prepare and present to the commission for comment and recommendation an adopted budget for expenditures from funds administered by the board during the ensuing biennium. The budget shall contain an estimate of the revenues to be credited to the several accounts and the amount, if any, of bond proceeds which the board determines should be made available through the sale of bonds in the ensuing biennium. [1994 c 179 § 25; 1988 c 167 § 32; 1984 c 7 § 163; 1967 ex.s. c 83 § 54.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

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47.26.450 Allocation of funds—Value engineering studies—Rules. The board shall adopt rules and procedures to govern the allocation of funds subject to the appropriations actually approved by the legislature.

The board shall develop rules and procedures to require value engineering studies performed by an interagency team for certain board funded projects. When determining the process, the board shall consider the project cost, length, and complexity. [1994 c 179 § 26; 1988 c 167 § 33; 1987 c 360 § 2; 1973 1st ex.s. c 126 § 3; 1969 ex.s. c 171 § 6.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.460 Increase in funds allocated to a project—Rules—Factors. The board shall adopt reasonable rules pursuant to which funds allocated to a project may be increased upon a subsequent application of the county, city, town, or transportation benefit district constructing the project. The rules adopted by the board shall consider the following factors: (1) The financial effect of increasing the original allocation for the project upon other urban arterial projects either approved or requested; (2) whether the project for which an additional authorization is requested can be reduced in scope while retaining a usable segment; (3) whether the cost of the project shown in the original application was based upon reasonable engineering estimates; and (4) whether the requested additional authorization is to pay for an expansion in the scope of work originally approved. [1994 c 179 § 27; 1969 ex.s. c 171 § 7.]

BOND ISSUE—TRANSPORTATION PROJECTS IN URBAN AREAS

47.26.500 Issuance authorized. In order to provide funds necessary to meet the urgent construction needs on state, county, and city transportation projects, there are hereby authorized for issuance general obligation bonds of the state of Washington in the sum of one hundred million dollars, which shall be issued and sold in such amounts and at such times as determined to be necessary by the state transportation improvement board. The amount of such bonds issued and sold under the provisions of RCW 47.26.500 through 47.26.507 in any biennium shall not exceed the amount of a specific appropriation therefor, from the proceeds of such bonds, for the construction of state, county, and city transportation projects. The issuance, sale, and retirement of the bonds shall be under the supervision and control of the state finance committee which, upon request being made by the board, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the board. [2000 2nd sp.s. c 6 § 1; 1994 c 179 § 28; 1993 c 440 § 1.]

47.26.501 Term—Signatures—Registration—Negotiable instruments. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer

under the seal of the state, either or both of which signatures may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in Seattle or New York City, as to principal alone, or as to both principal and interest under such rules as the state treasurer may adopt. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1993 c 440 § 2.]

47.26.502 Denominations—Manner and terms of sale—State investment. The bonds issued under RCW 47.26.500 through 47.26.507 shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued pursuant to this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. Bonds issued under the provisions of RCW 47.26.500 through 47.26.507 shall be legal investment for any of the funds of the state, except the permanent school fund. [1993 c 440 § 3.]

47.26.503 Use of proceeds. The money arising from the sale of the bonds shall be deposited in the state treasury to the credit of the transportation improvement account in the motor vehicle fund, and such money shall be available only for the construction and improvement of state, county, and city transportation projects, and for payment of the expense incurred in the printing, issuance, and sale of any such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1993 c 440 § 4.]

47.26.504 Statement of obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.26.500 through 47.26.507 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on such bonds

shall be first payable in the manner provided in RCW 47.26.500 through 47.26.507 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds. [1995 c 274 § 14; 1993 c 440 § 5.]

47.26.505 Funds for repayment. Any funds required to repay such bonds, or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the transportation improvement account in the motor vehicle fund under *RCW 46.68.090(1)(h), and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the transportation improvement account proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1999 sp.s. c 1 § 612. Prior: 1999 c 269 § 9; 1999 c 94 § 24; 1994 c 179 § 29; 1993 c 440 § 6.]

***Reviser's note:** RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(h) to subsection (2)(f).

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

47.26.506 Repayment procedure—Bond retirement account. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.26.505 the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments under RCW 47.26.500 through 47.26.507 when due, and shall notify the state treasurer of such estimated requirement. The state treasurer, subject to RCW 47.26.505, shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the transportation improvement board bond retirement account, maintained in the office of the state treasurer, which account shall be available for payment of principal and interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1997 c 456 § 24; 1993 c 440 § 7.]

Severability—1997 c 456: See RCW 43.99L.900.

Effective date—1997 c 456 §§ 9-43: See RCW 43.99M.901.

47.26.507 Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the transportation improvement board bond retirement account, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund [account] to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1999 c 268 § 3; 1993 c 440 § 8.]

47.26.900 Severability—1967 ex.s. c 83. If any provision of this 1967 amendatory act or the application thereof to any person, firm, or corporation or circumstance is held invalid, in whole or in part, such invalidity shall not affect other provisions of the act which can be given effect without the invalid provisions or application and to this end the provisions of this 1967 amendatory act are declared to be severable. [1967 ex.s. c 83 § 55.]

47.26.910 Effective dates—1967 ex.s. c 83. This 1967 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and sections 1 through 55 and section 56, renumbered "Sec. 62", shall take effect on the first day of the month following the approval of this act by the governor; sections 56 through 61 shall take effect on July 1, 1967 with respect to fees paid on or after July 1, 1967. Fees paid pursuant to RCW 46.16.070, 46.16.072, 46.16.075 or 46.16.120 prior to July 1, 1967 shall not be affected by this act. [1967 ex.s. c 83 § 62.]

47.26.930 Construction—1969 ex.s. c 171. The rule of strict construction shall have no application to this 1969 act or to the provisions of chapter 47.26 RCW, and they shall be liberally construed in order to carry out an effective, efficient and equitable program of financial assistance to urban area cities and counties for arterial roads and streets. [1969 ex.s. c 171 § 8.]

Chapter 47.28 RCW

CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

Sections

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47.28.010 Latitude in selecting route. Whenever the general route of any state highway shall be designated and laid out as running to or by way of certain designated points, without specifying the particular route to be followed to or by way of such points, the transportation commission shall determine the particular route to be followed by said state highway to or by way of said designated points, and shall be at liberty to select and adopt as a part of such state highway, the whole or any part of any existing public highway previously designated as a county road, primary road, or secondary road or now or hereafter classified as a county road. The commission need not select and adopt the entire routes for such state highways at one time, but may select and adopt parts of such routes from time to time as it deems advisable. Where a state highway is designated as passing by way of a certain point, this shall not require the commission to cause such state highway to pass through or touch such point but such designation is directional only and may be complied with by location in the general vicinity. The department of transportation is empowered to construct as a part of any state highway as designated and in addition to any portion meeting the limits of any incorporated city or town a bypass section either through or around any such incorporated city or town. [1977 ex.s. c 151 § 59; 1961 c 13 § 47.28.010. Prior: 1937 c 53 § 31; RRS § 6400-31.]

47.28.020 Width of right of way. From and after April 1, 1937, the width of one hundred feet is the necessary and proper right of way width for state highways unless the department, for good cause, adopts and designates a different width. This section shall not be construed to require the department to acquire increased right of way for any state highway in existence on such date. [1984 c 7 § 164; 1961 c 13 § 47.28.020. Prior: 1937 c 53 § 30; RRS § 6400-30; 1913 c 65 § 8; RRS § 6831.]

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

47.28.025 Description and plan of new or limited access highway—Recording. Whenever the department establishes the location, width, and lines of any new highway, or declares any such new highway as a limited access facility

and schedules the acquisition of the right of way for the highway or facility within the ensuing two years, it may cause the description and plan of any such highway to be made, showing the center line of the highway and the established width thereof, and attach thereto a certified copy of the resolution. Such description, plan, and resolution shall then be recorded in the office of the county auditor of the proper county. [1999 c 233 § 5; 1984 c 7 § 165; 1977 ex.s. c 225 § 1; 1961 c 13 § 47.28.025. Prior: 1955 c 161 § 1.]

Effective date—1999 c 233: See note following RCW 4.28.320.

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

47.28.026 Description and plan of new or limited access highway—Buildings and improvements prohibited, when. (1) No owner or occupier of lands, buildings, or improvements may erect any buildings or make any improvements within the limits of any such highway, the location, width, and lines of which have been established and recorded as provided in RCW 47.28.025. If any such erection and improvements are made, no allowances may be had therefor by the assessment of damages. No permits for improvements within the limits may be issued by any authority. The establishment of any highway location as set forth in RCW 47.28.025 is ineffective after one year from the filing thereof if no action to condemn or acquire the property within the limits has been commenced within that time.

(2) Unless and until the department causes a plan of a proposed new highway or limited access facility to be recorded in the office of the county auditor as authorized in RCW 47.28.025, nothing contained in RCW 47.28.025 or 47.28.026 may be deemed to restrict or restrain in any manner the improvement, development, or other use by owners or occupiers of lands, buildings, or improvements within the limits of any proposed new or limited access highway or any proposed relocated or widened highway. Because of the uncertainties of federal aid and the state level of funding of proposed construction or improvement of state highways, plans for such improvements approved by the department shall be deemed tentative until filed with the county auditor as authorized in RCW 47.28.025 or until the department commences action to condemn or otherwise acquire the right of way for the highway improvements. [1984 c 7 § 166; 1977 ex.s. c 225 § 2; 1961 c 13 § 47.28.026. Prior: 1955 c 161 § 2.]

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

47.28.030 Contracts—State forces—Monetary limits—Small businesses, minority, and women contractors—Rules. A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right of way purposes may be repaired or renovated pending the use of such right of way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof is [are] less than fifty thousand dollars and effective July 1, 2005, sixty thousand dollars: PROVIDED, That when delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. When the department

of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor. To enable a larger number of small businesses, and minority, and women contractors to effectively compete for department of transportation contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. The rules adopted under this section:

(1) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

(2) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, materialmen, mechanics, and subcontractors from the previous partial payment; and

(3) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39.19 RCW. [1999 c 15 § 1; 1984 c 194 § 1; 1983 c 120 § 15; 1977 ex.s. c 225 § 3; 1973 c 116 § 1; 1971 ex.s. c 78 § 1; 1969 ex.s. c 180 § 2; 1967 ex.s. c 145 § 40; 1961 c 233 § 1; 1961 c 13 § 47.28.030. Prior: 1953 c 29 § 1; 1949 c 70 § 1, part; 1943 c 132 § 1, part; 1937 c 53 § 41, part; Rem. Supp. 1949 § 6400-41, part.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.

Office of minority and women's business enterprises: Chapter 39.19 RCW.

47.28.035 Cost of project, defined. The cost of any project for the purposes of RCW 47.28.030 shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously. The department shall not permit the construction of any project by state forces by dividing a project into units of work or classes of work to give the appearance of compliance with RCW 47.28.030. [1984 c 194 § 2.]

47.28.040 Precontract preparation of maps, plans, and specifications—Filing. Before entering into any contract for the construction, alteration, repair, or improvement of any state highway the department shall cause the highway to be surveyed throughout the entire length of the proposed construction, alteration, repair, or improvement and cause to be prepared maps, plans, and specifications, together with an

estimate of the cost of the proposed work, and such information and directions as will enable a contractor to carry them out. The maps, plans, specifications, and directions shall be approved by the department and a copy thereof filed permanently in the department's office. [1984 c 7 § 167; 1961 c 13 § 47.28.040. Prior: 1937 c 53 § 32, part; RRS § 6400-32, part.]

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

47.28.050 Call for bids. Except as may be provided by rules and regulations adopted under RCW 47.28.030 as now or hereafter amended the department of transportation shall publish a call for bids for the construction of the highway according to the maps, plans, and specifications, once a week for at least two consecutive weeks, next preceding the day set for receiving and opening the bids, in not less than one trade paper of general circulation in the state. The call shall state the time, place, and date for receiving and opening the bids, give a brief description of the location and extent of the work, and contain such special provisions or specifications as the department deems necessary. When necessary to implement chapter 39.19 RCW and the rules adopted to implement that chapter, the department shall include in its call for bids provisions or specifications requiring bidders to comply with chapter 39.19 RCW and the rules adopted to implement it: PROVIDED, That when the estimated cost of any contract to be awarded is less than fifty thousand dollars, the call for bids need only be published in at least one paper of general circulation in the county where the major part of the work is to be performed: PROVIDED FURTHER, That when the estimated cost of a contract to be awarded is seven thousand five hundred dollars or less, including the cost of materials, supplies, engineering, and equipment, the department of transportation need not publish a call for bids: PROVIDED FURTHER, That after a bid call has been advertised for two consecutive weeks it may be postponed and the bids opened one week later. [1983 c 120 § 16; 1979 ex.s. c 69 § 1; 1977 c 65 § 1; 1973 c 116 § 2; 1969 ex.s. c 180 § 1; 1961 c 13 § 47.28.050. Prior: 1959 c 319 § 33; 1955 c 147 § 1; 1937 c 53 § 33; RRS § 6400-33.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.

Office of minority and women's business enterprises: Chapter 39.19 RCW.

47.28.060 Copy of map, plans, etc.—Charge. Any person, firm, or corporation is entitled to receive copies of the maps, plans, specifications, and directions for any work upon which call for bids has been published, upon request therefor and subsequent payment to the department of a reasonable sum as required by the department in the call for bids for each copy of such maps, plans, and specifications. Any money so received shall be certified by the department to the state treasurer and deposited to the credit of the motor vehicle fund. The department may deliver with or without charge informational copies of maps, plans, specifications, and directions at such places as it may designate. [1985 c 242 § 1; 1984 c 7 § 168; 1971 c 36 § 1; 1965 ex.s. c 64 § 1; 1961 c 13 § 47.28.060. Prior: 1937 c 53 § 34; RRS § 6400-34.]

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

47.28.070 Form of bid—Data required—Requirements—Refusal to furnish form—Appeal. Bid proposals upon any construction or improvement of any state highway shall be made upon contract proposal form supplied by the department and in no other manner. The department shall, before furnishing any person, firm, or corporation desiring to bid upon any work for which a call for bid proposals has been published with a contract proposal form, require from the person, firm, or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of the person, firm, or corporation in performing state highway, road, or other public work. The questionnaire and financial statement shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds, and shall be submitted once a year and at such other times as the department may require. Whenever the department is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement or whenever the department determines that the person, firm, or corporation does not meet all of the requirements set forth in this section it may refuse to furnish the person, firm, or corporation with a contract proposal form, and any bid proposal of the person, firm, or corporation must be disregarded. In order to obtain a contract proposal form, a person, firm, or corporation shall have all of the following requirements:

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

The refusal is conclusive unless appeal therefrom to the superior court of Thurston county is taken within five days, which appeal shall be heard summarily within ten days after it is taken and on five days' notice thereof to the department. [1984 c 7 § 169; 1967 ex.s. c 145 § 39; 1961 c 13 § 47.28.070. Prior: 1937 c 53 § 35; RRS § 6400-35.]

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

47.28.075 Financial information not open to public inspection. The department of transportation shall not be required to make available for public inspection and copying financial information supplied by any person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for highway construction or improvement as required by RCW 47.28.070. [1981 c 215 § 1.]

47.28.080 Withdrawal of bids—New bids—Time fixed in call controls. Any person, firm, or corporation proposing a bid for the construction or improvement of any state highway in response to a call for bids published therefor may withdraw the bid proposal without forfeiture and without prejudice to the right of the bidder to file a new bid proposal before the time fixed for the opening of the bid proposals. The request for the withdrawal shall be made in writing,

signed by the person proposing the bid or his duly authorized agent, and filed at the place and before the time fixed in the call for bids for receipt of the bid proposals. No bid proposal may be considered that has not been filed with the department before the time fixed for the receipt of bid proposals. In any provisions regarding the filing or withdrawing of bid proposals the time fixed for the receipt of bid proposals in the call for bid proposals as published shall control without regard for the time when the bid proposals are actually opened. [1985 c 242 § 2; 1984 c 7 § 170; 1961 c 13 § 47.28.080. Prior: 1937 c 53 § 36; RRS § 6400-36.]

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

47.28.090 Opening of bids and award of contract—

Deposit. At the time and place named in the call for bids the department of transportation shall publicly open and read the final figure in each of the bid proposals that have been properly filed and read only the unit prices of the three lowest bids, and shall award the contract to the lowest responsible bidder unless the department has, for good cause, continued the date of opening bids to a day certain, or rejected that bid. Any bid may be rejected if the bidder has previously defaulted in the performance of and failed to complete a written public contract, or has been convicted of a crime arising from a previous public contract. If the lowest responsible bidder fails to meet the provisions or specifications requiring compliance with chapter 39.19 RCW and the rules adopted to implement that chapter, the department may award the contract to the next lowest responsible bidder which does meet the provisions or specifications or may reject all bids and readvertise. All bids shall be under sealed cover and accompanied by deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the amount of the bid, and a bid shall not be considered unless the deposit is enclosed with it. [1985 c 242 § 3; 1983 c 120 § 17; 1971 ex.s. c 21 § 2; 1961 c 13 § 47.28.090. Prior: 1955 c 83 § 1; 1949 c 64 § 1; 1937 c 53 § 37; Rem. Supp. 1949 § 6400-37.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.

Office of minority and women's business enterprises: Chapter 39.19 RCW.

47.28.100 Failure or rejection of bidder. If the successful bidder fails to enter into the contract and furnish satisfactory bond as provided by law within twenty days from the award, exclusive of the day of the award, his or her deposit shall be forfeited to the state and deposited by the state treasurer to the credit of the motor vehicle fund, and the department may award the contract to the second lowest responsible bidder. If the second lowest responsible bidder fails to enter into the contract and furnish bond within twenty days after award to him or her, forfeiture of his or her deposit shall also be made, and the contract may be awarded to the third lowest responsible bidder, and in like manner until the contract and bond are executed by a responsible bidder to whom award is made, or further bid proposals are rejected, or the number of bid proposals are exhausted. If the contract is not executed or no contractor's bond provided within the time required, and there appear circumstances that are deemed to warrant an extension of time, the department may extend the time for execution of the contract or furnishing bond for not

to exceed twenty additional days. After awarding the contract the deposits of unsuccessful bidders shall be returned, but the department may retain the deposit of the next lowest responsible bidder or bidders as it desires until such time as the contract is entered into and satisfactory bond is provided by the bidder to whom the award is ultimately made. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

If in the opinion of the department the acceptance of the bid of the lowest responsible bidder or bidders, or on prior failure of the lowest responsible bidder or bidders the acceptance of the bid of the remaining lowest responsible bidder or bidders, will not be for the best interest of the state, it may reject all bids or all remaining bids and republish a call for bids in the same manner as for an original publication thereof. [1996 c 18 § 8; 1984 c 7 § 171; 1961 c 13 § 47.28.100. Prior: 1953 c 53 § 1; 1937 c 53 § 38; RRS § 6400-38.]

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

47.28.110 Sureties—Qualifications—Additional

sureties. At any time and as often as it may be deemed necessary, the department may require any or all sureties or any surety company to appear and qualify themselves upon any contractor's bond. Whenever the surety or sureties upon any contractor's bond become insufficient or are deemed by the department to have become insufficient, the department may demand in writing that the contracting person, firm, or corporation furnish such further contractor's bond or bonds or additional surety in an amount not exceeding that originally required as may be deemed necessary considering the extent of the work remaining to be done upon the contract. No further payments may be made on the contract until such additional surety as is required is furnished. [1984 c 7 § 172; 1961 c 13 § 47.28.110. Prior: 1937 c 53 § 39; RRS § 6400-39.]

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

47.28.120 Actions for labor and materials—Limitation

of action. Any contracting person, firm, or corporation performing any labor or furnishing any materials upon their contract or otherwise for public work or improvement under the direction of the department or any person claiming any right of action upon any such contract with the state of Washington or who claims a cause of action against the state of Washington arising out of any such contract must bring such suit in the proper court in Thurston county before the expiration of one hundred and eighty days from and after the final acceptance and the approval of the final estimate of such work by the department; otherwise the action is forever barred. [1984 c 7 § 173; 1961 c 13 § 47.28.120. Prior: 1937 c 53 § 40; RRS § 6400-40.]

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

47.28.140 Highway, public transportation improvements, flood damage prevention—Cooperative agreements.

When in the opinion of the governing authorities representing the department and any agency, instrumentality, municipal corporation, or political subdivision of the state of

Washington, any highway, road, or street will be benefited or improved by constructing, reconstructing, locating, relocating, laying out, repairing, surveying, altering, improving, or maintaining, or by the establishment adjacent to, under, upon, within, or above any portion of any such highway, road, or street of an urban public transportation system, by either the department or any agency, instrumentality, municipal corporation, or political subdivision of the state, and it is in the public interest to do so, the authorities may enter into cooperative agreements wherein either agrees to perform the work and furnish the materials necessary and pay the cost thereof, including necessary engineering assistance, which costs and expenses shall be reimbursed by the party whose responsibility it was to do or perform the work or improvement in the first instance. The work may be done by either day labor or contract, and the cooperative agreement between the parties shall provide for the method of reimbursement. In the case of some special benefit or improvement to a state highway derived from any project that assists in preventing or minimizing flood damages as defined in RCW 86.16.120 or from the construction of any public works project, including any urban public transportation system, the department may contribute to the cost thereof by making direct payment to the particular state department, agency, instrumentality, municipal corporation, or political subdivision on the basis of benefits received, but such payment shall be made only after a cooperative agreement has been entered into for a specified amount or on an actual cost basis prior to the commencement of the particular public works project. [1991 c 322 § 29; 1984 c 7 § 174; 1967 c 108 § 6; 1961 c 13 § 47.28.140. Prior: 1955 c 384 § 8.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

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

Urban public transportation system defined: RCW 47.04.082.

47.28.150 Underpasses, overpasses constructed with federal funds—Maintenance cost apportionment. Notwithstanding any of the provisions of RCW 81.53.090, where the cost of constructing an overpass or underpass which is part of the state highway system has been paid for in whole or in part by the use of federal funds, the state shall at its expense maintain the entire overpass structure and the approaches thereto, and the railroad company shall at its expense maintain the entire underpass structure, including the approaches thereto. The state shall at its expense maintain the roadway, and the railroad company shall at its expense maintain its roadbed and tracks on or under all such structures. [1961 c 13 § 47.28.150. Prior: 1959 c 319 § 34.]

47.28.170 Emergency protection and restoration of highways. (1) Whenever the department finds that as a consequence of accident, natural disaster, or other emergency, an existing state highway is in jeopardy or is rendered impassible in one or both directions and the department further finds that prompt reconstruction, repair, or other work is needed to preserve or restore the highway for public travel, the department may obtain at least three written bids for the work without publishing a call for bids, and the secretary of transportation may award a contract forthwith to the lowest responsible bidder.

The department shall notify any association or organization of contractors filing a request to regularly receive notification. Notification to an association or organization of contractors shall include: (a) The location of the work to be done; (b) the general anticipated nature of the work to be done; and (c) the date determined by the department as reasonable in view of the nature of the work and emergent nature of the problem after which the department will not receive bids.

(2) Whenever the department finds it necessary to protect a highway facility from imminent damage or to perform emergency work to reopen a highway facility, the department may contract for such work on a negotiated basis not to exceed force account rates for a period not to exceed thirty working days.

(3) The secretary shall review any contract exceeding two hundred thousand dollars awarded under subsection (1) or (2) of this section with the transportation commission at its next regularly scheduled meeting.

(4) Any person, firm, or corporation awarded a contract for work must be prequalified pursuant to RCW 47.28.070 and may be required to furnish a bid deposit or performance bond. [1990 c 265 § 1; 1984 c 7 § 175; 1971 ex.s. c 89 § 1.]

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

47.28.220 Compost products. (1) A contract awarded in whole or in part for the purchase of compost products as a soil cover or soil amendment to state highway rights of way shall specify that compost products be purchased in accordance with the following schedule:

(a) For the period July 1, 1996, through June 30, 1997, twenty-five percent of the total dollar amount purchased;

(b) For the period July 1, 1998, through June 30, 1999, fifty percent of the total dollar amount purchased. The percentages in this subsection apply to the materials' value and include services or other materials.

(2) In order to carry out the provisions of this section, the department of transportation shall develop and adopt bid specifications for compost products used in state highway construction projects.

(3)(a) For purposes of this section, "compost products" means mulch, soil amendments, ground cover, or other landscaping material derived from the biological or mechanical conversion of biosolids or cellulose-containing waste materials.

(b) For purposes of this section, "biosolids" means municipal sewage sludge or septic tank septage sludge that meets the requirements of chapter 70.95J RCW. [1996 c 198 § 4; 1992 c 174 § 14; 1991 c 297 § 14.]

Captions not law—1991 c 297: See RCW 43.19A.900.

47.28.241 Alternative delivery of construction services—Definitions. The definitions in this section apply throughout RCW 47.28.251 and 41.06.380 unless the context clearly requires otherwise.

(1) "Construction services" means those services that aid in the delivery of the highway construction program and include, but are not limited to, real estate services and construction engineering services.

(2) "Construction engineering services" include, but are not limited to, construction management, construction administration, materials testing, materials documentation, contractor payments and general administration, construction oversight, and inspection and surveying. [2003 c 363 § 102.]

Part headings not law—2003 c 363: "Part headings used in this act are not part of the law." [2003 c 363 § 308.]

Severability—2003 c 363: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 363 § 309.]

47.28.251 Alternative delivery of construction services—Financial incentives—Private contracting—Reports. (1) The department of transportation shall work with representatives of transportation labor groups to develop a financial incentive program to aid in retention and recruitment of employee classifications where problems exist and program delivery is negatively affected. The department's financial incentive program must be reviewed and approved by the legislature before it can be implemented. This program must support the goal of enhancing project delivery timelines as outlined in section 101, chapter 363, Laws of 2003. Upon receiving approval from the legislature, the department of personnel shall implement, as required, specific aspects of the financial incentive package, as developed by the department of transportation.

(2) Notwithstanding chapter 41.06 RCW, the department of transportation may acquire services from qualified private firms in order to deliver the transportation construction program to the public. Services may be acquired solely for augmenting the department's work force capacity and only when the department's transportation construction program cannot be delivered through its existing or readily available work force. The department of transportation shall work with representatives of transportation labor groups to develop and implement a program identifying those projects requiring contracted services while establishing a program as defined in subsection (1) of this section to provide the classified personnel necessary to deliver future construction programs. The procedures for acquiring construction engineering services from private firms may not be used to displace existing state employees nor diminish the number of existing classified positions in the present construction program. The acquisition procedures must be in accordance with chapter 39.80 RCW.

(3) Starting in December 2004, and biennially thereafter, the secretary shall report to the transportation committees of the legislature on the use of construction engineering services from private firms authorized under this section. The information provided to the committees must include an assessment of the benefits and costs associated with using construction engineering services, or other services, from private firms, and a comparison of public versus private sector costs. The secretary may act on these findings to ensure the most cost-effective means of service delivery. [2003 c 363 § 103.]

Finding—Intent—2003 c 363 § 103 and 104: "The legislature finds that there is a pressing need for additional transportation projects to meet the mobility needs of Washington's citizens. With major new investments approved to meet these pressing needs, additional work force assistance is necessary to ensure and enhance project delivery timelines. Recruiting and retaining a high quality work force, and implementing new and innovative

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procedures for delivering these transportation projects, is required to accomplish them on a timely basis that best serves the public. It is the intent of sections 103 and 104 of this act that no state employees will lose their employment as a result of implementing new and innovative project delivery procedures." [2003 c 363 § 101.]

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Chapter 47.30 RCW TRAILS AND PATHS

Sections

47.30.005	Definitions.
47.30.010	Recreational trail interference.
47.30.020	Facilities for nonmotorized traffic—Joint usage of rights of way.
47.30.030	Facilities for nonmotorized traffic—Expenditure of available funds.
47.30.040	Establishing paths and trails—Factors to be considered.
47.30.050	Expenditures for paths and trails—Minimum amount.
47.30.060	Expenditures deemed to be for highway purposes—Powers and duties of department—Restrictions on use of paths and trails.
47.30.070	Bicycle, equestrian, pedestrian paths as public highways.

Recreation trails system: Chapter 79A.35 RCW.

47.30.005 Definitions. For the purposes of this chapter, "trail" or "path" means a public way constructed primarily for and open to pedestrians, equestrians, or bicyclists, or any combination thereof, other than a sidewalk constructed as a part of a city street or county road for the exclusive use of pedestrians. The term "trail" or "path" also includes a widened shoulder of a highway, street, or road when the extra shoulder width is constructed to accommodate bicyclists consistent with a comprehensive plan or master plan for bicycle trails or paths adopted by a state or local governmental authority either prior to such construction or prior to January 1, 1980. [1979 ex.s. c 121 § 4.]

47.30.010 Recreational trail interference. (1) No limited access highway shall be constructed that will result in the severance or destruction of an existing recreational trail of substantial usage for pedestrians, equestrians or bicyclists unless an alternative recreational trail, satisfactory to the authority having jurisdiction over the trail being severed or destroyed, either exists or is reestablished at the time the limited access highway is constructed. If a proposed limited access highway will sever a planned recreational trail which is part of a comprehensive plan for trails adopted by a state or local governmental authority, and no alternative route for the planned trail exists which is satisfactory to the authority which adopted the comprehensive plan for trails, the state or local agency proposing to construct the limited access highway shall design the facility and acquire sufficient right of way to accommodate future construction of the portion of the trail which will properly lie within the highway right of way. Thereafter when such trail is developed and constructed by the authority having jurisdiction over the trail, the state or local agency which constructed the limited access highway shall develop and construct the portion of such trail lying within the right of way of the limited access highway.

(2) Where a highway other than a limited access highway crosses a recreational trail of substantial usage for pedes-

trians, equestrians, or bicyclists, signing sufficient to insure safety shall be provided.

(3) Where the construction or reconstruction of a highway other than a limited access highway would destroy the usefulness of an existing recreational trail of substantial usage for pedestrians, equestrians, or bicyclists or of a planned recreational trail for pedestrians, equestrians, or bicyclists incorporated into the comprehensive plans for trails of the state or any of its political subdivisions, replacement land, space, or facilities shall be provided and where such recreational trails exist at the time of taking, reconstruction of said recreational trails shall be undertaken. [1971 ex.s. c 130 § 1.]

47.30.020 Facilities for nonmotorized traffic—Joint usage of rights of way. Facilities for pedestrians, equestrians, or bicyclists shall be incorporated into the design of highways and freeways along corridors where such facilities do not exist upon a finding that such facilities would be of joint use and conform to the comprehensive plans of public agencies for the development of such facilities, will not duplicate existing or proposed routes, and that safety to both motorists and to pedestrians, equestrians, and bicyclists would be enhanced by the segregation of traffic.

In planning and design of all highways, every effort shall be made consistent with safety to promote joint usage of rights of way for trails and paths in accordance with the comprehensive plans of public agencies. [1971 ex.s. c 130 § 2.]

47.30.030 Facilities for nonmotorized traffic—Expenditure of available funds. Where an existing highway severs, or where the right of way of an existing highway accommodates a trail for pedestrians, equestrians, or bicyclists or where the separation of motor vehicle traffic from pedestrians, equestrians, or bicyclists will materially increase the motor vehicle safety, the provision of facilities for pedestrians, equestrians, or bicyclists which are a part of a comprehensive trail plan adopted by federal, state, or local governmental authority having jurisdiction over the trail is hereby authorized. The department of transportation, or the county or city having jurisdiction over the highway, road, or street, or facility is further authorized to expend reasonable amounts out of the funds made available to them, according to the provisions of RCW 46.68.090, as necessary for the planning, accommodation, establishment, and maintenance of such facilities. [1999 c 269 § 10; 1979 ex.s. c 121 § 1; 1974 ex.s. c 141 § 12; 1972 ex.s. c 103 § 2.]

Effective date—1999 c 269: See note following RCW 36.78.070.

Severability—1972 ex.s. c 103: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 103 § 8.]

47.30.040 Establishing paths and trails—Factors to be considered. Before establishing paths and trails, the following factors shall be considered:

- (1) Public safety;
- (2) The cost of such paths and trails as compared to the need or probable use;

(3) Inclusion of the trail in a plan for a comprehensive trail system adopted by a city or county in a state or federal trails plan. [1972 ex.s. c 103 § 3.]

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

47.30.050 Expenditures for paths and trails—Minimum amount. (1) The amount expended by a city, town, or county as authorized by RCW 47.30.030 shall never in any one fiscal year be less than 0.42 percent of the total amount of funds received from the motor vehicle fund according to RCW 46.68.090. However, this section does not apply to a city or town in any year in which the 0.42 percent equals five hundred dollars or less, or to a county in any year in which the 0.42 percent equals three thousand dollars or less. Also, a city, town, or county in lieu of expending the funds each year may credit the funds to a financial reserve or special fund, to be held for not more than ten years, and to be expended for the purposes required or permitted by RCW 47.30.030.

(2) In each fiscal year the department of transportation shall expend, as a minimum, for the purposes mentioned in RCW 47.30.030 a sum equal to three-tenths of one percent of all funds, both state and federal, expended for the construction of state highways in such year, or in order to more efficiently program trail improvements the department may defer any part of such minimum trail or path expenditures for a fiscal year for a period not to exceed four years after the end of such fiscal year. Any fiscal year in which the department expends for trail or path purposes more than the minimum sum required by this subsection, the amount of such excess expenditure shall constitute a credit which may be carried forward and applied to the minimum trail and path expenditure requirements for any of the ensuing four fiscal years.

(3) The department of transportation, a city, or a county in computing the amount expended for trails or paths under their respective jurisdictions may include the cost of improvements consistent with a comprehensive plan or master plan for bicycle trails or paths adopted by a state or local governmental authority either prior to such construction or prior to January 1, 1980. [1999 c 269 § 11; 1979 ex.s. c 121 § 2; 1972 ex.s. c 103 § 4.]

Effective date—1999 c 269: See note following RCW 36.78.070.

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way: RCW 36.81.121.

47.30.060 Expenditures deemed to be for highway purposes—Powers and duties of department—Restrictions on use of paths and trails. For the purposes of this chapter, the establishment of paths and trails and the expenditure of funds as authorized by RCW 47.30.030, as now or hereafter amended, shall be deemed to be for highway, road, and street purposes. The department of transportation shall, when requested, and subject to reimbursement of costs, provide technical assistance and advice to cities, towns, and counties in carrying out the purposes of RCW 47.30.030, as now or hereafter amended. The department shall recommend construction standards for paths and trails. The department shall provide a uniform system of signing paths and trails which shall apply to paths and trails under the jurisdiction of the department and of cities, towns, and counties. The depart-

ment and cities, towns, and counties may restrict the use of paths and trails under their respective jurisdictions to pedestrians, equestrians, and nonmotorized vehicles. [1979 ex.s. c 121 § 3; 1972 ex.s. c 103 § 5.]

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

47.30.070 Bicycle, equestrian, pedestrian paths as public highways. For purposes of 43 U.S.C. 912 and related provisions of federal law involving federally granted railroad rights of way, a bicycle, equestrian or pedestrian path shall be deemed to be a public highway under the laws of the state of Washington. [1993 c 224 § 14.]

Chapter 47.32 RCW

OBSTRUCTIONS ON RIGHT OF WAY

Sections

47.32.010	Order to remove obstructions—Removal by state.
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47.32.040	Complaint, contents.
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47.32.140	Railroad crossings, obstructions—Hearing.
47.32.150	Approach roads, other appurtenances—Permit.
47.32.160	Approach roads, other appurtenances—Rules—Construction, maintenance of approach roads.
47.32.170	Approach roads, other appurtenances—Removal of installations from right of way for default.

Fences: Chapter 16.60 RCW.

Mobile home or park model trailer movement permits and decals: RCW 46.44.170 through 46.44.175.

Removal of disabled vehicle: RCW 46.55.113.

47.32.010 Order to remove obstructions—Removal by state. Whenever the department determines and orders that it is necessary for the convenience and safety of public travel and the use of (or construction, alteration, repair, improvement, or maintenance of) any state highway to have the full width of right of way of any such state highway or of any portion of the right of way of any such state highway free from any and all obstructions, encroachments, and occupancy, other than pole lines, pipe lines, or other structures maintained thereon for public or quasi-public utilities by virtue of a valid franchise, and causes due notice of the order to be given as provided by law, the obstructions, encroachments, and means of occupancy, and any structure, building, improvement, or other means of occupancy of any of the right of way of the state highway not removed within the time allowed by law shall become an unlawful property and may be confiscated, removed, and sold or destroyed by the state of Washington according to procedure as provided in this chapter, without any right in anyone to make any claim therefor, either by reason of the removal thereof or otherwise. It is unlawful for any person to keep, maintain, or occupy any such unlawful structure. [1984 c 7 § 176; 1961 c 13 § 47.32.010. Prior: 1937 c 53 § 68; RRS § 6400-68.]

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

47.32.020 Notice of order, contents, posting—Return. Whenever the department determines that the right of way of any state highway or any portion of the right of way of any state highway shall be made free from any and all obstructions, encroachments, and occupancy it shall forthwith cause to be posted, by a competent person eighteen years of age or over upon any and all structures, buildings, improvements, and other means of occupancy of the state highway or portion thereof, other than property of public or quasi-public utilities, by virtue of a valid franchise, a notice bearing a copy of the order and dated as of the date of posting, to all whom it may concern to vacate the right of way and to remove all property from the right of way within ten days after the posting of the notice, exclusive of the date of posting. The department shall also require the filing of duplicate affidavits in proof of the postings, showing upon what structures, buildings, improvements, or other means of occupancy of the state highway or portions thereof, respectively, copies of the notice were posted and the date of each such posting, sworn to by the person making the posting. [1984 c 7 § 177; 1971 ex.s. c 292 § 46; 1961 c 13 § 47.32.020. Prior: 1937 c 53 § 69; RRS § 6400-69.]

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

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

47.32.030 Proceedings in rem authorized—Records certified. In case the property or any portion thereof described in the notice is not removed from the right of way within ten days after the date of the posting, exclusive of the date of posting, all such property upon the right of way of the state highway or portion thereof becomes unlawful, and the department shall commence proceedings in the name of the state of Washington for the removal thereof by court action. The department shall thereupon prepare two original copies of the order together with two copies each of the notice posted and of the affidavits in proof of posting thereof and duplicate copies of a certificate by the department describing with reasonable certainty and with due reference to the center line stationing of the state highway and to proper legal subdivisional points, each structure, building, improvement, encroachment, or other means of occupancy, other than pole lines, pipe lines, or other structures maintained for public and quasi-public utilities, on the state highway or portion thereof specified in the order that remain upon the right of way as aforesaid. Thereupon action shall be commenced in rem for the purpose of removal of all such unlawful property, in the superior court of the county in which the state highway or portion thereof containing the structures is situated, entitled and in the name of the state of Washington as plaintiff and describing each unlawful structure, building, improvement, encroachment, or other means of occupancy, which structures, buildings, improvements, encroachments, or other means of occupancy shall be briefly named as defendants. [1984 c 7 § 178; 1961 c 13 § 47.32.030. Prior: 1937 c 53 § 70; RRS § 6400-70; prior: 1925 ex.s. c 131 § 3; RRS § 6837-3.]

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

47.32.040 Complaint, contents. The complaint shall, in such action, describe the property unlawfully remaining upon the right of way of the state highway or portion thereof with reasonable certainty by reference to the certificate of the department, which shall be attached to and filed with the complaint, and pray that an order be entered for the removal from the right of way of the state highway or portion thereof of all the described property unlawfully thereon and the disposal thereof. [1984 c 7 § 179; 1961 c 13 § 47.32.040. Prior: 1937 c 53 § 71; RRS § 6400-71; prior: 1925 ex.s. c 131 § 4; RRS § 6837-4.]

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

47.32.050 Notice, action, service, contents—Proceedings void when. Service of such complaint shall be given by publication of notice thereof once a week for two successive weeks in a newspaper of general circulation in the county in which such action is commenced, which notice shall briefly state the objects of the action and contain a brief description of each structure, building, improvement, encroachment or other means of occupancy sought to be removed from the right of way of the state highway, describe such state highway or portion thereof by number and location and state the time and place when and where the action will come before the court or judge thereof; and a copy of such notice shall also be posted at least ten days before the date of hearing of such action upon each such structure, building, improvement, encroachment or other means of occupancy described therein. Posting may be made by any person qualified to serve legal process. Want of posting upon, or failure to describe any such structure, building, improvement, encroachment or other means of occupancy shall render subsequent proceedings void as to those not posted upon or described but all others described and posted upon shall be bound by the subsequent proceedings. [1961 c 13 § 47.32.050. Prior: 1937 c 53 § 72; RRS 6400-72; prior: 1925 ex.s. c 131 § 5; RRS § 6837-5.]

47.32.060 Hearing—Findings—Order—Appellate review. At the time and place appointed for hearing upon the complaint, which hearing shall be by summary proceedings, if the court or judge thereof finds that due notice has been given by posting and publication and that the order of the department was duly made, and is further satisfied and finds that the state highway or portion thereof described is legally a state highway having the width of right of way specified in the order and that the structure, buildings, improvements, or other means of occupancy of the state highway or portion thereof as stated in the certificate of the department do in fact encroach, or that any portion thereof encroach, upon the state highway right of way, the court or judge thereof shall thereupon make and enter an order establishing that each of the structures, buildings, improvements, and other means of occupancy specified in the order is unlawfully maintained within the right of way and is subject to confiscation and sale and that they be forthwith confiscated, removed from the right of way, and sold, and providing that six days after the entry of the order, a writ shall issue from the court directed to the sheriff of the county, commanding the sheriff to seize and remove from the right of way of the state highway each such structure, building, improvement, or other means of occu-

pancy specified in the order forthwith on receipt of a writ based on the order and to take and hold the property in his custody for a period of ten days, unless redelivered earlier as provided for by law, and if not then so redelivered to sell the property at public or private sale and to pay the proceeds thereof into the registry of the court within sixty days after the issuance of the writ, and further in such action, including costs of posting original notices of the department, the costs of posting and publishing notices of hearing as part thereof and any cost of removal, be paid by the clerk to the state treasurer and credited to the motor vehicle fund. The order shall be filed with the clerk of the court and recorded in the minutes of the court, and is final unless appellate review thereof is sought within five days after filing of the order. [1988 c 202 § 45; 1984 c 7 § 180; 1961 c 13 § 47.32.060. Prior: 1937 c 53 § 73; RRS § 6400-73; prior: 1925 ex.s. c 131 § 7; RRS § 6837-7.]

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

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

47.32.070 Writ, execution of—Return—Disposition of unsold property. Six days after filing of the order above provided for, if no review thereof be taken to the supreme court or the court of appeals of the state, the clerk of the court shall issue under seal of such court a writ directed to the sheriff of the county in which such court is held commanding him to remove, take into custody and dispose of the property described in such order and make returns thereof as provided for such writ by said order. On receipt of such writ it shall be the duty of such sheriff to obey the command thereof, proceed as therein directed and make return within the time fixed by such writ; and said sheriff shall be liable upon his official bond for the faithful discharge of such duties. Upon filing of such return the clerk of court shall make payments as provided for in the order of court. If by the sheriff's return any of the property seized and removed pursuant to such writ is returned as unsold and as of no sale value, and if the court or judge thereof be satisfied that such is the fact, the court or judge thereof may make further order directing the destruction of such property, otherwise directing the sheriff to give new notice and again offer the same for sale, when, if not sold, the same may on order of court be destroyed. [1971 c 81 § 115; 1961 c 13 § 47.32.070. Prior: 1937 c 53 § 74; RRS § 6400-74; prior: 1925 ex.s. c 131 § 8; RRS § 6837-8.]

47.32.080 Property reclaimed—Bond. At any time within ten days after the removal by virtue of such writ of any such property from the right of way of such state highway any person, firm, association or corporation claiming ownership or right of possession of any such property may have the right to demand and to receive the same from the sheriff upon making an affidavit that such claimant owns such property or is entitled to possession thereof, stating on oath the value thereof satisfactory to said sheriff, or which value shall be raised to a value satisfactory to said sheriff, which value shall be indorsed on said affidavit and signed both by said claimant and said sheriff before such sheriff shall be required to accept the bond hereinafter provided for, and deliver to the sheriff a bond with sureties in double the value of such property, conditioned that such claimant will appear in the superior court

of such county within ten days after the bond is accepted by the sheriff and make good such claim of title thereto and pay all accrued costs of service of notice to remove, all costs and disbursements to be assessed to such property and the costs of removal and custody thereof and will hold said sheriff and the state of Washington free from any and all claims on account of such property or will return such property or pay its value to said sheriff, and that such claimant will at all times thereafter keep such property off the right of way of the state highway in question. [1961 c 13 § 47.32.080. Prior: 1937 c 53 § 75; RRS § 6400-75; prior: 1925 ex.s. c 131 § 9; RRS § 6837-9.]

47.32.090 Sureties on bond—Hearing on claim. The sureties on such bond shall justify as in other cases if the sheriff requires it and in case they do not so justify when required, the sheriff shall retain and sell or dispose of the property; and if the sheriff does not require the sureties to justify, he shall stand good for their sufficiency. He shall date and indorse his acceptance upon the bond, and shall return the affidavit, bond and justification, if any, to the office of the clerk of such superior court, whereupon such clerk shall set the hearing thereof as a separate case for trial, in which such claimant shall be the plaintiff and the sheriff and the state of Washington defendants: PROVIDED, That no costs shall, in such case, be assessed against the sheriff or the state of Washington in the event the plaintiff should prevail. [1961 c 13 § 47.32.090. Prior: 1937 c 53 § 76; RRS § 6400-76; prior: 1925 ex.s. c 131 § 10; RRS § 6837-10.]

47.32.100 Procedure when claimant wins or loses. If the claimant makes good the claimant's title to or right to possession of the property, upon payment into the registry of the court of the costs of service or posting of original notice issued by the department with respect to the property, the cost of posting notice of hearing in the court and such proportion of the cost of publication of the notice as the court may fix and direct to be entered and the clerk's fees of filing the affidavit and bond as a separate action and of entry of judgment therein at the amounts provided for in civil actions, judgment shall be entered restoring the property to the claimant without any confirmation of title as to any other claimant thereto, relieving the sheriff from necessity of selling the property and making return thereon, and continuing the effect of the bond for a period of six years thereafter for the benefit of such adverse claimants to the property, if any, as may thereafter make claim to the property. If the claimant does not make good such claim of title to or right to possession of the property, judgment shall be rendered against the claimant and the sureties of the claimant for the value of the property as finally shown by the affidavit as above provided for, together with such fees for filing the affidavit and bond as a separate action and for entry of judgment therein and other costs and disbursements as taxed in any civil action including the statutory attorney fee as part thereof, for all of which execution may accordingly issue, and relieving the sheriff from the necessity of selling the property or making return thereon. [1984 c 7 § 181; 1961 c 13 § 47.32.100. Prior: 1937 c 53 § 77; RRS § 6400-77; prior: 1925 ex.s. c 131 § 11; RRS § 6837-11.]

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

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47.32.110 Merchandising structures—Permit—Removal. It is unlawful for any person to build, erect, establish, operate, maintain, or conduct along and upon the right of way of any state highway any platform, box, stand, or any other temporary or permanent device or structure used or to be used for the purpose of receiving, vending, or delivering any milk, milk cans, vegetables, fruits, merchandise, produce, or any other thing or commodity of any nature unless a permit therefor has first been obtained from the department. The department shall in each instance determine where any platform, box, stand, or any other temporary or permanent device or structure shall be permitted. Upon the existence of any such device or structure without a permit having been first obtained, it shall be considered an obstruction unlawfully upon the right of way of the state highway, and the department may proceed to effect its removal. [1984 c 7 § 182; 1961 c 13 § 47.32.110. Prior: 1937 c 53 § 78; RRS § 6400-78; 1927 c 309 § 48; RRS § 6362-48; 1923 c 181 § 10; RRS § 6358-1.]

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

47.32.120 Business places along highway. It is unlawful for any person to erect a structure or establishment or maintain a business, the nature of which requires the use by patrons or customers of property adjoining the structure or establishment unless the structure or establishment is located at a distance from the right of way of any state highway so that none of the right of way thereof is required for the use of the patrons or customers of the establishment. Any such structure erected or business maintained that makes use of or tends to invite patrons to use the right of way or any portion thereof of any state highway by occupying it while a patron is a public nuisance, and the department may fence the right of way of the state highway to prevent such unauthorized use thereof. [1984 c 7 § 183; 1961 c 13 § 47.32.120. Prior: 1937 c 53 § 79; RRS § 6400-79.]

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

47.32.130 Dangerous objects and structures as nuisances—Logs—Abatement—Removal. (1) Whenever there exists upon the right of way of any state highway or off the right of way thereof in sufficiently close proximity thereto, any structure, device, or natural or artificial thing that threatens or endangers the state highway or portion thereof, or that tends to endanger persons traveling thereon, or obstructs or tends to obstruct or constitutes a hazard to vehicles or persons traveling thereon, the structure, device, or natural or artificial thing is declared to be a public nuisance, and the department is empowered to take such action as may be necessary to effect its abatement. Any such structure, device, or natural or artificial thing considered by the department to be immediately or eminently dangerous to travel upon a state highway may be forthwith removed, and the removal in no event constitutes a breach of the peace or trespass.

(2) Logs dumped on any state highway roadway or in any state highway drainage ditch due to equipment failure or for any other reason shall be removed immediately. Logs remaining within the state highway right of way for a period of thirty days shall be confiscated and removed or disposed of as directed by the department. [1984 c 7 § 184; 1961 c 13 §

47.32.130. Prior: 1947 c 206 § 3; 1937 c 53 § 80; Rem. Supp. 1947 § 6400-80.]

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

Obstructing highway, public nuisance: RCW 9.66.010.

Placing dangerous substances or devices on highway: RCW 9.66.050, 46.61.645, 70.93.060.

47.32.140 Railroad crossings, obstructions—Hearing. Each railroad company shall keep its right of way clear of all brush and timber in the vicinity of a railroad grade crossing with a state highway for a distance of one hundred feet from the crossing in such manner as to permit a person upon the highway to obtain an unobstructed view in both directions of an approaching train. The department shall cause brush and timber to be cleared from the right of way of a state highway in the proximity of a railroad grade crossing for a distance of one hundred feet from the crossing in such manner as to permit a person upon the highway to obtain an unobstructed view in both directions of an approaching train. It is unlawful to erect or maintain a sign, signboard, or billboard, except official highway signs and traffic devices and railroad warning or operating signs, outside the corporate limits of any city or town within a distance of one hundred feet from the point of intersection of the highway and railroad grade crossing unless, after thirty days notice to the Washington utilities and transportation commission and the railroad operating the crossing, the department determines that it does not obscure the sight distance of a person operating a vehicle or train approaching the grade crossing.

When a person who has erected or who maintains such a sign, signboard, or billboard or when a railroad company permits such brush or timber in the vicinity of a railroad grade crossing with a state highway or permits the surface of a grade crossing to become inconvenient or dangerous for passage and who has the duty to maintain it, fails, neglects, or refuses to remove or cause to be removed such brush, timber, sign, signboard, or billboard, or maintain the surface of the crossing, the utilities and transportation commission upon complaint of the department or upon complaint of any party interested, or upon its own motion, shall enter upon a hearing in the manner now provided for hearings with respect to railroad-highway grade crossings, and make and enforce proper orders for the removal of the brush, timber, sign, signboard or billboard, or maintenance of the crossing. However, nothing in this section prevents the posting or maintaining of any legal notice or sign, signal, or traffic device required or permitted to be posted or maintained, or the placing and maintaining thereon of highway or road signs or traffic devices giving directions or distances for the information of the public when the signs are approved by the department. The department shall inspect highway grade crossings and make complaint of the violation of any provisions of this section. [1983 c 19 § 2; 1961 c 13 § 47.32.140. Prior: 1955 c 310 § 7; 1937 c 53 § 81; RRS § 6400-81; prior: 1923 c 129 §§ 1-6; RRS §§ 10510-1—10510-6.]

Railroad grade crossings, obstructions: RCW 36.86.100.

47.32.150 Approach roads, other appurtenances—Permit. No person, firm, or corporation may be permitted to build or construct on state highway rights of way any

approach road or any other facility, thing, or appurtenance not heretofore permitted by law, without first obtaining written permission from the department. [1984 c 7 § 185; 1961 c 13 § 47.32.150. Prior: 1947 c 201 § 1; Rem. Supp. 1947 § 6402-50.]

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

47.32.160 Approach roads, other appurtenances—Rules—Construction, maintenance of approach roads. The department is hereby authorized and empowered at its discretion to adopt reasonable rules governing the issuance of permits under RCW 47.32.150 for the construction of any approach road, facility, thing, or appurtenance, upon state highway rights of way. The rules shall be designed to achieve and preserve reasonable standards of highway safety and the operational integrity of the state highway facility. Any permit issued may contain such terms and conditions as may be prescribed. All such construction shall be under the supervision of the department and at the expense of the applicant. After completion of the construction of the particular approach road, facility, thing, or appurtenance, it shall be maintained at the expense of the applicant and in accordance with the directions of the department. [1987 c 227 § 1; 1984 c 7 § 186; 1961 c 13 § 47.32.160. Prior: 1947 c 201 § 2; Rem. Supp. 1947 § 6402-51.]

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

47.32.170 Approach roads, other appurtenances—Removal of installations from right of way for default. Upon failure of the applicant to construct or maintain the particular approach road, facility, thing, or appurtenance in accordance with the conditions of the permit and in accordance with the rules of the department, the department may, after the expiration of thirty days following transmittal of a written notice to the applicant, remove all installations upon the right of way at the expense of the applicant, which expense may be recovered from the applicant by the department for the state in any court of competent jurisdiction. [1984 c 7 § 187; 1961 c 13 § 47.32.170. Prior: 1947 c 201 § 3; Rem. Supp. 1947 § 6402-52.]

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

Chapter 47.36 RCW

TRAFFIC CONTROL DEVICES

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47.36.005 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(2) "Interstate system" means a state highway that is or becomes part of the national system of interstate and defense highways as described in section 103(d) of Title 23, United States Code.

(3) "Maintain" means to allow to exist.

(4) "Primary system" means a state highway that is or becomes part of the federal-aid primary system as described in section 103(b) of Title 23, United States Code.

(5) "Scenic system" means (a) a state highway within a public park, federal forest area, public beach, public recreation area, or national monument, (b) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic system, or (c) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025.

(6) "Motorist information sign panel" means a panel, rectangular in shape, located in the same manner as other official traffic signs readable from the main traveled ways, and consisting of:

(a) The words "GAS," "FOOD," "LODGING," "CAMPING," "RECREATION," or "TOURIST ACTIVITIES" and directional information; and

(b) One or more individual business signs mounted on the panel.

(7) "Business sign" means a separately attached sign mounted on the motorist information sign panel or roadside area information panel to show the brand or trademark and name, or both, of the motorist service available on the crossroad at or near the interchange. Nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants, and motels shall be used when applicable. The brand or trademark identification symbol used on the

business sign shall be reproduced with the colors and general shape consistent with customary use. Messages, trademarks, or brand symbols that interfere with, imitate, or resemble an official warning or regulatory traffic sign, signal, or device are prohibited.

(8) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(9) "Tourist-oriented directional sign" means a sign on a motorist information sign panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.

(10) "Qualified tourist-oriented business" means a lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

(11) "Adopt-a-highway sign" means a sign on a state highway right of way referring to the departments' adopt-a-highway litter control program. [1999 c 201 § 1; 1991 c 94 § 3.]

47.36.010 Restoration of United States survey markers. The department shall fix permanent monuments at the original positions of all United States government monuments at township corners, section corners, quarter section corners, meander corners, and witness markers, as originally established by the United States government survey whenever any such original monuments or markers fall within the right of way of any state highway, and aid in the reestablishment of any such corners, monuments, or markers destroyed or obliterated by the construction of any state highway by permitting inspection of the records in the department's office. [1984 c 7 § 188; 1961 c 13 § 47.36.010. Prior: 1937 c 53 § 42; RRS § 6400-42; 1931 c 117 § 1; RRS § 6830-1.]

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

47.36.020 Traffic control signals. The secretary of transportation shall adopt specifications for a uniform system of traffic control signals consistent with the provisions of this title for use upon public highways within this state. Such uniform system shall correlate with and so far as possible conform to the system current as approved by the American Association of State Highway Officials and as set out in the manual of uniform traffic control devices for streets and highways. [1977 ex.s. c 151 § 60; 1961 c 13 § 47.36.020. Prior: 1937 c 53 § 50; RRS § 6400-50; prior: 1927 c 309 § 6; RRS § 6362-6.]

47.36.030 Traffic control devices—Specifications to be furnished to counties and cities. The secretary of transportation shall have the power and it shall be its duty to adopt and designate a uniform state standard for the manufacture, display, erection, and location of all signs, signals, signboards, guideposts, and other traffic devices erected or to be erected upon the state highways of the state of Washington for the purpose of furnishing information to persons traveling

upon such state highways regarding traffic regulations, directions, distances, points of danger, and conditions requiring caution, and for the purpose of imposing restrictions upon persons operating vehicles thereon. Such signs shall conform as nearly as practicable to the manual of specifications for the manufacture, display, and erection of uniform traffic control devices for streets and highways and all amendments, corrections, and additions thereto. The department of transportation shall prepare plans and specifications of the uniform state standard of traffic devices so adopted and designated, showing the materials, colors, and designs thereof, and shall upon the issuance of any such plans and specifications or revisions thereof and upon request, furnish to the boards of county commissioners and the governing body of any incorporated city or town, a copy thereof. Signs, signals, signboards, guideposts, and other traffic devices erected on county roads shall conform in all respects to the specifications of color, design, and location approved by the secretary. Traffic devices hereafter erected within incorporated cities and towns shall conform to such uniform state standard of traffic devices so far as is practicable. The uniform system must allow local transit authority bus shelters located within the right of way of the state highway system to display and maintain commercial advertisements subject to applicable federal regulations, if any. [2003 c 198 § 3; 1977 ex.s. c 151 § 61; 1961 c 13 § 47.36.030. Prior: 1945 c 178 § 1, part; 1937 c 53 § 48, part; Rem. Supp. 1945 § 6400-48, part; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; 1917 c 78 § 1, part; RRS § 6303, part.]

47.36.040 Furnished by department, paid for by counties and cities. The department, upon written request, shall cause to be manufactured, painted, and printed, and shall furnish to any county legislative authority or the governing body of any incorporated city or town, directional signboards, guide boards, and posts of the uniform state standard of color, shape, and design for the erection and maintenance thereof by the county legislative authority or the governing body of any incorporated city or town upon the roads and streets within their respective jurisdictions. The directional signboards, guide boards, and posts shall be manufactured and furnished, as aforesaid, pursuant to written request showing the number of signs desired and the directional or guide information to be printed thereon. The department shall fix a charge for each signboard, guide board, and post manufactured and furnished as aforesaid, based upon the ultimate cost of the operations to the department, and the county legislative authority, from the county road fund, and the governing body of any incorporated city or town, from the street fund, shall pay the charges so fixed for all signboards, guide boards, and posts so received from the department. [1984 c 7 § 189; 1961 c 13 § 47.36.040. Prior: 1945 c 178 § 1, part; 1937 c 53 § 48, part; Rem. Supp. 1945 § 6400-48, part; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; 1917 c 78 § 1, part; RRS § 6303, part.]

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

47.36.050 Duty to erect traffic devices on state highways and railroad crossings. The department shall erect and maintain upon every state highway in the state of Wash-

ington suitable and proper signs, signals, signboards, guideposts, and other traffic devices according to the adopted and designated state standard of design, erection, and location, and in the manner required by law. The department shall erect and maintain upon all state highways appropriate stop signs, warning signs, and school signs. Any person, firm, corporation, or municipal corporation, building, owning, controlling, or operating a railroad that crosses any state highway at grade shall construct, erect, and maintain at or near each point of crossing, or at such point or points as will meet the approval of the department, a sign of the type known as the saw buck crossing sign with the lettering "railroad crossing" inscribed thereon and also a suitable inscription indicating the number of tracks. The sign must be of standard design that will comply with the plans and specifications furnished by the department. Additional safety devices and signs may be installed at any time when required by the utilities and transportation commission as provided by laws regulating railroad-highway grade crossings. [1984 c 7 § 190; 1961 c 13 § 47.36.050. Prior: 1937 c 53 § 49; RRS § 6400-49; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; RRS § 6303, part; 1919 c 146 § 1; 1917 c 78 § 2; RRS § 6304. FORMER PART OF SECTION: 1937 c 53 § 51 now in RCW 47.36.053.]

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

47.36.053 General duty to place and maintain traffic devices on state highways and railroad crossings. The department shall place and maintain such traffic devices conforming to the manual and specifications adopted upon all state highways as it deems necessary to carry out the provisions of this title or to regulate, warn, or guide traffic. [1984 c 7 § 191; 1961 c 13 § 47.36.053. Prior: 1937 c 53 § 51; RRS § 6400-51. Formerly RCW 47.36.050, part.]

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

47.36.060 Traffic devices on county roads and city streets. Local authorities in their respective jurisdictions shall place and maintain such traffic devices upon public highways under their jurisdiction as are necessary to carry out the provisions of the law or local traffic ordinances or to regulate, warn, or guide traffic. Cities and towns, which as used in this section mean cities and towns having a population of over fifteen thousand according to the latest federal census, shall adequately equip with traffic devices, streets that are designated as forming a part of the route of a primary or secondary state highway and streets which constitute connecting roads and secondary state highways to such cities and towns. The traffic devices, signs, signals, and markers shall comply with the uniform state standard for the manufacture, display, direction, and location thereof as designated by the department. The design, location, erection, and operation of traffic devices and traffic control signals upon such city or town streets constituting either the route of a primary or secondary state highway to the city or town or connecting streets to the primary or secondary state highways through the city or town shall be under the direction of the department, and if the city or town fails to comply with any such directions, the department shall provide for the design, location, erection, or operation thereof, and any cost incurred therefor shall be

charged to and paid from any funds in the motor vehicle fund of the state that have accrued or may accrue to the credit of the city or town, and the state treasurer shall issue warrants therefor upon vouchers submitted and approved by the department. [1984 c 7 § 192; 1961 c 13 § 47.36.060. Prior: 1955 c 179 § 4; 1939 c 81 § 1; 1937 c 53 § 52; RRS § 6400-52.]

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

47.36.070 Failure to erect signs, procedure. Whenever any person, firm, corporation, municipal corporation, or local authorities responsible for the erection and maintenance, or either, of signs at any railroad crossing or point of danger upon any state highway fails, neglects, or refuses to erect and maintain, or either, the sign or signs as required by law at highway-railroad grade crossings, the utilities and transportation commission shall upon complaint of the department or upon complaint of any party interested, or upon its own motion, enter upon a hearing in the manner provided by law for hearings with respect to railroad-highway grade crossings and make and enforce proper orders for the erection or maintenance of the signs, or both. [1984 c 7 § 193; 1961 c 13 § 47.36.070. Prior: 1937 c 53 § 54; RRS § 6400-54.]

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

47.36.080 Signs at railroad crossings. Wherever it is considered necessary or convenient the department may erect approach and warning signs upon the approach of any state highway to a highway-railroad grade crossing situated at a sufficient distance therefrom to make the warning effective. The department may further provide such additional or other highway-railroad grade crossing markings as may be considered to serve the interests of highway safety. [1984 c 7 § 194; 1961 c 13 § 47.36.080. Prior: 1937 c 53 § 57; RRS § 6400-57.]

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

47.36.090 Cooperation with United States on road markers. Standard federal road markers shall be placed on state highways in the manner requested by the department of transportation of the United States. The department of transportation of the state of Washington is authorized and empowered to cooperate with the several states and with the federal government in promoting, formulating, and adopting a standard and uniform system of numbering or designating state highways of an interstate character and in promoting, formulating, and adopting uniform and standard specifications for the manufacture, display, erection, and location of road markers and signs, for the information, direction, and control of persons traveling upon public highways. [1984 c 7 § 195; 1961 c 13 § 47.36.090. Prior: 1937 c 53 § 55; RRS § 6400-55; prior: 1925 c 24 § 1; RRS § 6303-1.]

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

47.36.095 Highway designation system—Signs. The department is hereby authorized to establish a continuing system for the designating of state highways and branches or portions thereof, heretofore established by the legislature of the state of Washington, to give designations to such state

highways and branches, or portions thereof, in accord with that system, and to install signs in accord therewith on such state highways and branches, or portions thereof. The system may be changed from time to time and shall be extended to new state highways and branches, or portions thereof, as they are hereafter established by the legislature. [1984 c 7 § 196; 1967 ex.s. c 145 § 43; 1963 c 24 § 1.]

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

Classification of highways: RCW 47.04.020.

47.36.097 Highway designation system—Filing. Designations or redesignations assigned under the system by the department pursuant to RCW 47.36.095 as each is made, shall be filed with the secretary of state and with the auditor of each county. Thereafter such highways shall be so designated for all purposes. [1984 c 7 § 197; 1967 ex.s. c 145 § 46.]

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

47.36.100 Directional, caution, and stop signs. Directional signs showing distance and direction to points of importance may be placed at all crossings and intersections of primary and secondary state highways. The department may place such directional signs as it deems necessary upon any city streets designated by it as forming a part of the route of any primary or secondary state highway through any incorporated city or town. Caution and warning signs or signals shall be placed wherever practicable on all primary and secondary state highways in a manner provided by law. Stop signs shall be placed, erected, and maintained by the department as follows: Upon all county roads at the point of intersection with any arterial primary or secondary state highway; upon all primary and secondary state highways at the point of intersection with any county road that has been designated by the department as an arterial having preference over the traffic on the state highway; and upon at least one state highway at the intersection of two state highways. [1984 c 7 § 198; 1967 ex.s. c 145 § 38; 1961 c 13 § 47.36.100. Prior: 1947 c 206 § 1; 1937 c 53 § 56; Rem. Supp. 1947 § 6400-56.]

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

47.36.110 Stop signs, "Yield" signs—Duties of persons using highway. In order to provide safety at intersections on the state highway system, the department may require persons traveling upon any portion of such highway to stop before entering the intersection. For this purpose there may be erected a standard stop sign as prescribed in the state department of transportation's "Manual on Uniform Traffic Control Devices for Streets and Highways." All persons traveling upon the highway shall come to a complete stop at such a sign, and the appearance of any sign so located is sufficient warning to a person that he is required to stop. A person stopping at such a sign shall proceed through that portion of the highway in a careful manner and at a reasonable rate of speed not to exceed twenty miles per hour. It is unlawful to fail to comply with the directions of any such stop sign. When the findings of a traffic engineering study show that the condition of an intersection is such that vehicles may safely enter the major artery without stopping, the department or local authorities in their respective jurisdictions shall install and

maintain a "Yield" sign. [1984 c 7 § 199; 1963 ex.s. c 3 § 49; 1961 c 13 § 47.36.110. Prior: 1955 c 146 § 6; 1937 c 53 § 59; RRS § 6400-59.]

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

Arterial highways designated—Stopping on entering: RCW 46.61.195.

47.36.120 City limit signs. The department shall erect wherever it deems necessary upon state highways at or near their point of entrance into cities and towns, signs of the standard design designating the city or town limits of the cities or towns. [1984 c 7 § 200; 1961 c 13 § 47.36.120. Prior: 1937 c 53 § 58; RRS § 6400-58.]

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

47.36.130 Meddling with signs prohibited. No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic control signal, traffic device or railroad sign or signal, or any inscription, shield, or insignia thereon, or any other part thereof. [1961 c 13 § 47.36.130. Prior: 1937 c 53 § 53; RRS § 6400-53.]

Defacing, injuring, or destroying signs: RCW 46.61.080.

Imitation of signs: RCW 46.61.075.

Structures concealing signs prohibited: RCW 46.61.075.

Unlawful erection of traffic devices: RCW 46.61.075.

47.36.141 Bus shelters—Advertising. (1) Local transit authority bus shelters within the right of way of the state highway system may display and maintain commercial advertisements subject to applicable federal regulations, if any. Pursuant to RCW 47.12.120, the department may lease state right of way air space to local transit authorities for this purpose, unless there are significant safety concerns regarding the placement of certain advertisements.

(2) Advertisements posted on a local transit authority's bus shelter may not exceed twenty-four square feet on each side of the panel. Panels may not be placed on the roof of the shelter or on the forward side of the shelter facing oncoming traffic. [2003 c 198 § 1.]

47.36.180 Forbidden devices—Penalty. (1) It is unlawful to erect or maintain at or near a city street, county road, or state highway any structure, sign, or device:

(a) Visible from a city street, county road, or state highway and simulating any directional, warning, or danger sign or light likely to be mistaken for such a sign or bearing any such words as "danger," "stop," "slow," "turn," or similar words, figures, or directions likely to be construed as giving warning to traffic;

(b) Visible from a city street, county road, or state highway and displaying any red, green, blue, or yellow light or intermittent or blinking light or rotating light identical or similar in size, shape, and color to that used on any emergency vehicle or road equipment or any light otherwise likely to be mistaken for a warning, danger, directional, or traffic control signal or sign;

(c) Visible from a city street, county road, or state highway and displaying any lights tending to blind persons operating vehicles upon the highway, city street, or county road, or any glaring light, or any light likely to be mistaken for a

vehicle upon the highway or otherwise to be so mistaken as to constitute a danger; or

(d) Visible from a city street, county road, or state highway and flooding or intending to flood or directed across the roadway of the highway with a directed beam or diffused light, whether or not the flood light is shielded against directing its flood beam toward approaching traffic on the highway, city street, or county road.

(2) Any structure or device erected or maintained contrary to the provisions of this section is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the owner thereof that it constitutes a public nuisance and must be removed, and if the owner fails to do so, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town may abate the nuisance.

(3) If the owner fails to remove any structure or device within fifteen days after being notified to remove the structure or device as provided in this section, he or she is guilty of a misdemeanor. [2003 c 53 § 257; 1984 c 7 § 201; 1961 c 13 § 47.36.180. Prior: 1957 c 204 § 1; 1937 c 53 § 62; RRS § 6400-62.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

47.36.200 Signs or flagmen at thoroughfare work sites—Penalty. (1) When construction, repair, or maintenance work is conducted on or adjacent to a public highway, county road, street, bridge, or other thoroughfare commonly traveled and when the work interferes with the normal and established mode of travel on the highway, county road, street, bridge, or thoroughfare, the location shall be properly posted by prominently displayed signs or flagmen or both. Signs used for posting in such an area shall be consistent with the provisions found in the state of Washington "Manual on Uniform Traffic Control Devices for Streets and Highways" obtainable from the department of transportation.

(2) If the construction, repair, or maintenance work includes or uses grooved pavement, abrupt lane edges, steel plates, or gravel or earth surfaces, the construction, repair, or maintenance zone must be posted with signs stating the condition, as required by current law, and in addition, must warn motorcyclists of the potential hazard. For the purposes of this subsection, the department shall adopt by rule a uniform sign or signs for this purpose, including at least the following language, "MOTORCYCLES USE EXTREME CAUTION."

(3) Any contractor, firm, corporation, political subdivision, or other agency performing such work shall comply with this section.

(4) Each driver of a motor vehicle used in connection with such construction, repair, or maintenance work shall obey traffic signs posted for, and flaggers stationed at such location in the same manner and under the same restrictions as is required for the driver of any other vehicle.

(5) A violation of or a failure to comply with this section is a misdemeanor. Each day upon which there is a violation, or there is a failure to comply, constitutes a separate violation. [2003 c 355 § 1; 2003 c 53 § 258; 1984 c 7 § 202; 1961 c 13 § 47.36.200. Prior: 1957 c 95 § 1.]

Reviser's note: This section was amended by 2003 c 53 § 258 and by 2003 c 355 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 355: "This act takes effect January 1, 2004." [2003 c 355 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

47.36.250 Dangerous road conditions requiring special tires, chains, or traction equipment—Signs or devices—Penalty. (1) If the department or its delegate determines at any time for any part of the public highway system that the unsafe conditions of the roadway require particular tires, tire chains, or traction equipment in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of such equipment for all persons using such public highway:

(a) Traction advisory - oversize vehicles prohibited.

(b) Traction advisory - oversize vehicles prohibited. Vehicles over 10,000 GVW - chains required.

(c) Traction advisory - oversize vehicles prohibited. All vehicles - chains required, except all wheel drive.

(2) Any equipment that may be required by this section shall be approved by the state patrol as authorized under RCW 46.37.420.

(3) The department shall place and maintain signs and other traffic control devices on the public highways that indicate the tire, tire chain, or traction equipment recommendation or requirement determined under this section. Such signs or traffic control devices shall in no event prohibit the use of studded tires from November 1st to April 1st, but when the department determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to all types of tires including studded tires. The Washington state patrol or the department may specify different recommendations or requirements for four wheel drive vehicles in gear.

(4) Failure to obey a requirement indicated under this section is a traffic infraction under chapter 46.63 RCW subject to a penalty of five hundred dollars including all statutory assessments. [2003 c 356 § 1; 2003 c 53 § 259; 1987 c 330 § 747; 1984 c 7 § 203; 1975 1st ex.s. c 255 § 1; 1969 ex.s. c 7 § 2.]

Reviser's note: This section was amended by 2003 c 53 § 259 and by 2003 c 356 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

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

Restrictions as to tire equipment, metal studs: RCW 46.37.420.

47.36.260 Signs indicating proper lane usage. The department shall erect signs on multilane highways indicating proper lane usage. [1986 c 93 § 6.]

Keep right except when passing, etc: RCW 46.61.100.

(2004 Ed.)

47.36.270 Regional shopping center directional signs.

Regional shopping center directional signs shall be erected and maintained on state highway right of way if they meet each of the following criteria:

(1) There shall be at least five hundred thousand square feet of retail floor space available for lease at the regional shopping center;

(2) The regional shopping center shall contain at least three major department stores that are owned by a national or regional retail chain organization;

(3) The shopping center shall be located within one mile of the roadway;

(4) The center shall generate at least nine thousand daily one-way vehicle trips to the center;

(5) There is sufficient space available for installation of the directional sign as specified in the Manual On Uniform Traffic Control Devices;

(6) Supplemental follow-through directional signing is required at key decision points to direct motorists to the shopping center if it is not clearly visible from the point of exit from the main traveled way.

The department shall collect from the regional shopping center a reasonable fee based upon the cost of erection and maintenance of the directional sign. [1987 c 469 § 1.]

47.36.280 Pavement marking standards. The department of transportation shall, by January 1, 1992, adopt minimum pavement marking standards for the area designating the limits of the vehicle driving lane along the right edge for arterials that do not have curbs or sidewalks and are inside urbanized areas. In preparing the standards, the department of transportation shall take into consideration all types of pavement markings, including flat, raised, and recessed markings, and their effect on pedestrians, bicycle, and motor vehicle safety.

The standards shall provide that a jurisdiction shall conform to these requirements, at such time thereafter that it undertakes to (1) renew or install permanent markings on the existing or new roadway, and (2) remove existing nonconforming raised pavement markers at the time the jurisdiction prepares to resurface the roadway, or earlier, at its option. These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a variance to the standard.

For the purposes of this section, "urbanized area" means an area designated as such by the United States bureau of census and having a population of more than fifty thousand. Other jurisdictions that install pavement marking material on the right edge of the roadway shall do so in a manner not in conflict with the minimum state standard. [1991 c 214 § 4.]

47.36.290 State park directional signs. Directional signs for state parks within fifteen miles of an interstate highway shall be erected and maintained on the interstate highway by the department despite the existence of additional directional signs on primary or scenic system highways in closer proximity to such state parks. [1985 c 376 § 7. Formerly RCW 47.42.160.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.36.300 Supplemental directional signs—Erection by local governments. (1) The legislative authority of any county, city, or town may erect, or permit the erection of, supplemental directional signs directing motorists to motorist service businesses qualified for motorist information sign panels pursuant to RCW 47.36.310 or 47.36.320 in any location on, or adjacent to, the right of way of any roads or streets within their jurisdiction.

(2) Appropriate fees may be charged to cover the cost of issuing permits, installation, or maintenance of such signs.

(3) Supplemental signs and their locations shall comply with all applicable provisions of this chapter, the Manual on Uniform Traffic Control Devices, and such rules as may be adopted by the department. [1999 c 201 § 2; 1986 c 114 § 3. Formerly RCW 47.42.052.]

47.36.310 Motorist information signs—Interstate highways—Contents, placement, fees. The department is authorized to erect and maintain motorist information sign panels within the right of way of the interstate highway system to give the traveling public specific information as to gas, food, lodging, camping, or tourist-oriented business available on a crossroad at or near an interchange. Motorist information sign panels shall include the words "GAS," "FOOD," "LODGING," "CAMPING," or "TOURIST ACTIVITIES" and directional information and may contain one or more individual business signs maintained on the panel. Motorist information sign panels are authorized within the corporate limits of cities and towns and areas zoned for commercial or industrial uses at locations where there is adequate distance between interchanges to ensure compliance with the Manual on Uniform Traffic Control Devices. The erection and maintenance of motorist information sign panels shall also conform to the Manual on Uniform Traffic Control Devices and rules adopted by the state department of transportation. A motorist service or tourist-oriented business located within one mile of an interstate highway shall not be permitted to display its name, brand, or trademark on a motorist information sign panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building measured to the bottom of the on-premise sign. The restriction for on-premise signs does not apply if the sign is not visible from the highway. The department may, on a case-by-case basis, waive the height restriction when an on-premise sign is visible from the rural interstate system. The department shall charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance, and may charge reasonable fees to recover costs for the erection and maintenance of the motorist information sign panels. [1999 c 201 § 3; 1987 c 469 § 3; 1986 c 114 § 1; 1985 c 142 § 1; 1984 c 7 § 223; 1974 ex.s. c 80 § 2. Formerly RCW 47.42.046.]

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

47.36.320 Motorist information signs, tourist-oriented directional signs—Primary and scenic roads—Contents, placement, fees. The department is authorized to erect and maintain motorist information sign panels within the right of way of noninterstate highways to give the traveling

public specific information as to gas, food, lodging, recreation, or tourist-oriented businesses accessible by way of highways intersecting the noninterstate highway. The motorist information sign panels are permitted only at locations within the corporate limits of cities and towns and areas zoned for commercial or industrial uses where there is adequate distance between interchanges to ensure compliance with the Manual on Uniform Traffic Control Devices. Motorist information sign panels shall include the words "GAS," "FOOD," "LODGING," "RECREATION," or "TOURIST ACTIVITIES" and directional information and may contain one or more individual business signs maintained on the panel. The erection and maintenance of motorist information sign panels along noninterstate highways shall also conform to the Manual on Uniform Traffic Control Devices and rules adopted by the state department of transportation. A motorist service or tourist-oriented business located within one mile of a noninterstate highway shall not be permitted to display its name, brand, or trademark on a motorist information sign panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building measured to the bottom of the on-premise sign.

The department shall adopt rules for the erection and maintenance of tourist-oriented directional signs with the following restrictions:

(1) Where installed, they shall be placed in advance of the "GAS," "FOOD," "LODGING," or "RECREATION" motorist information sign panels previously described in this section;

(2) Signs shall not be placed to direct a motorist to an activity visible from the main traveled roadway;

(3) Premises on which the qualified tourist-oriented business is located must be within fifteen miles of the state highway except as provided in RCW 47.36.330(3) (b) and (c), and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway.

The department shall charge reasonable fees for the display of individual business signs to defray the costs of their installation and maintenance, and may charge reasonable fees for the erection and maintenance of the motorist information sign panels. [1999 c 213 § 1; 1999 c 201 § 4; 1986 c 114 § 2; 1985 c 376 § 4; 1985 c 142 § 2; 1984 c 7 § 224; 1974 ex.s. c 80 § 4. Formerly RCW 47.42.047.]

Reviser's note: This section was amended by 1999 c 201 § 4 and by 1999 c 213 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Legislative intent—1985 c 376: See note following RCW 47.42.020.

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

47.36.325 Motorist information signs—Private contractors. (1) When exercising its authority to erect and maintain motorist information sign panels under RCW 47.36.310 and 47.36.320, the department shall contract with a private contractor for a term of ten years. The contractor selected by the department must be incorporated, and must maintain an office, in this state.

(2) The contractor, at no cost to the department, is solely responsible for marketing, administration, financial management, sign fabrication, installation, and maintenance and is subject to the provisions of this chapter otherwise applicable to the department. The contractor may set the market rate to be charged to businesses advertising on the motorist informational [information] signs.

(3) A contract entered into between the department and a contractor must require the contractor to administer, fabricate, install, and maintain community historical signs authorized for placement by the department at no cost to the department.

(4) In [The] department may set the contractual terms it deems necessary to guarantee the performance of the contract. The department shall periodically monitor the performance of the contract.

(5) In letting a contract under this section the department shall comply with purchasing guidelines adopted by the general services administration. [2002 c 321 § 1.]

47.36.330 Motorist information signs—Maximum number and distance. (1) Not more than six business signs may be permitted on motorist information sign panels authorized by RCW 47.36.310 and 47.36.320.

(2) The maximum distance that eligible service facilities may be located on either side of an interchange or intersection to qualify for a business sign are as follows:

(a) On interstate highways, gas, food, or lodging activities shall be located within three miles. Camping or tourist-oriented activities shall be within five miles.

(b) On noninterstate highways, gas, food, lodging, recreation, or tourist-oriented activities shall be located within five miles.

(3)(a) If no eligible services are located within the distance limits prescribed in subsection (2) of this section, the distance limits shall be increased until an eligible service of a type being considered is reached, up to a maximum of fifteen miles.

(b) The department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible service.

(c) The department may erect and maintain signs on a route up to a maximum of twenty miles if it qualifies as an eligible service and is within a distressed area under the criteria of chapter 43.165 RCW. [1999 c 213 § 2; 1999 c 201 § 5; 1985 c 142 § 3. Formerly RCW 47.42.0475.]

Reviser's note: This section was amended by 1999 c 201 § 5 and by 1999 c 213 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

47.36.340 Motorist information signs—Lodging. To be eligible for placement of a business sign on a motorist information sign panel a lodging activity shall:

(1) Be licensed or approved by the department of social and health services or county health authority;

(2) Provide adequate sleeping and bathroom accommodations available for rental on a daily basis; and

(3) Provide public telephone facilities. [1999 c 201 § 6; 1985 c 376 § 8. Formerly RCW 47.42.170.]

(2004 Ed.)

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.36.350 Motorist information signs—Installation time. The department shall ensure that motorist information sign panels are installed within nine months of receiving the request for installation. [1999 c 201 § 7; 1991 c 94 § 5.]

47.36.400 Adopt-a-highway signs. The department may install adopt-a-highway signs, with the following restrictions:

(1) Signs shall be designed by the department and may only include the words "adopt-a-highway litter control facility" or "adopt-a-highway litter control next XX miles" and the name of the litter control area sponsor. The sponsor's name shall not be displayed more predominantly than the remainder of the sign message. Trademarks or business logos may be displayed;

(2) Signs may be placed along interstate, primary, and scenic system highways;

(3) Signs may be erected at other state-owned transportation facilities in accordance with RCW 47.40.100(1);

(4) For each litter control area designated by the department, one sign may be placed visible to traffic approaching from each direction;

(5) Signs shall be located so as not to detract from official traffic control signs installed pursuant to the manual on uniform traffic control devices adopted by the department;

(6) Signs shall be located so as not to restrict sight distance on approaches to intersections or interchanges;

(7) The department may charge reasonable fees to defray the cost of manufacture, installation, and maintenance of adopt-a-highway signs. [1998 c 180 § 1; 1991 c 94 § 4.]

Chapter 47.38 RCW

ROADSIDE AREAS—SAFETY REST AREAS

Sections

47.38.010	Rules governing use and control of rest areas, historic sites, viewpoints, etc.—Penalties.
47.38.020	Limitations on use of rest areas.
47.38.040	Information centers.
47.38.050	Recreational vehicle sanitary disposal systems.
47.38.060	Dedication of rest areas.

Acquisition of property for safety rest areas, buffers, viewpoints, historic sites: RCW 47.12.250.

47.38.010 Rules governing use and control of rest areas, historic sites, viewpoints, etc.—Penalties. (1) Pursuant to chapter 34.05 RCW, the department and the Washington state patrol shall jointly adopt rules governing the conduct and the safety of the traveling public relating to the use and control of rest areas and other areas as designated in RCW 47.12.250. Nothing herein may be construed as limiting the powers of the department as provided by law.

(2) Except as otherwise provided in this section, any person violating this section or any rule or regulation adopted pursuant to this section is guilty of a misdemeanor.

(3)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 260; 1993 c 116 § 1; 1984 c 7 § 204; 1967 ex.s. c 145 § 29.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

Roadside areas—Safety rest areas, provisions of scenic and recreational highway act concerning: Chapter 47.39 RCW.

47.38.020 Limitations on use of rest areas. Except where specifically authorized by the department, it is unlawful for any person or persons to stop, stand, or park any vehicle, including but not limited to trailers, campers, and motorcycles, for more than eight hours, or for any person or persons to camp or to maintain a camp, tent, or other sleeping accommodation or facility, in any rest area or safety rest area within the limits of the right of way of interstate highways or other state highways or in other areas of state or interstate highways as designated in RCW 47.12.250. This section does not apply to disabled vehicles. [1984 c 7 § 205; 1967 ex.s. c 145 § 30.]

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

47.38.040 Information centers. In order to provide information in the specific interest of the traveling public, the department may establish information centers at safety rest areas and permit maps, informational directories, and advertising pamphlets to be made available there for the purpose of informing the public of places of interest within the state and providing such other information as the department deems desirable. [1984 c 7 § 206; 1967 ex.s. c 145 § 32.]

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

47.38.050 Recreational vehicle sanitary disposal systems. The department of transportation shall construct and maintain recreational vehicle sanitary disposal systems in the following safety rest areas lying along highways which are a part of the interstate highway system:

(1) Gee Creek safety rest area, northbound and southbound on Interstate 5 in Clark county;

(2) Sea-Tac safety rest area, northbound on Interstate 5 in King county;

(3) Silver Lake safety rest area, southbound on Interstate 5 in Snohomish county;

(4) Winchester Wasteway safety rest area, eastbound and westbound on Interstate 90 in Grant county;

(5) Sprague safety rest area, eastbound on Interstate 90 in Lincoln county;

(6) Selah Creek safety rest area, northbound and southbound on Interstate 82 in Yakima county;

(7) Indian John Hill safety rest area, eastbound and westbound on Interstate 90 in Kittitas county;

(8) Smokey Point safety rest area, northbound and southbound on Interstate 5 in Snohomish county;

(9) Schrag safety rest area, westbound on Interstate 90 in Adams county. [1996 c 237 § 3; 1980 c 60 § 1.]

Effective date—1980 c 60: "This act shall take effect July 1, 1980." [1980 c 60 § 4.]

47.38.060 Dedication of rest areas. The transportation commission may designate interstate safety rest areas, as appropriate, as locations for memorial signs to prisoners of war and those missing in action. The commission shall adopt policies for the placement of memorial signs on interstate safety rest areas and may disapprove any memorial sign that it determines to be inappropriate or inconsistent with the policies. The policies shall include, but are not limited to, guidelines for the size and location of and inscriptions on memorial signs. The secretary shall adopt rules for administering this program. Nonprofit associations may have their name identified on a memorial sign if the association bears the cost of supplying and maintaining the memorial sign. [1996 c 172 § 1.]

Chapter 47.39 RCW

SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

Sections

47.39.010	System created—Standards.
47.39.020	Designation of portions of existing highways as part of system.
47.39.030	Development and maintenance of system by department of transportation and parks and recreation commission—Allocation of costs.
47.39.040	Planning and design standards established by department of community, trade, and economic development.
47.39.050	Planning and design standards—Facilities and factors considered.
47.39.060	Designation of system on maps or other descriptive material.
47.39.069	Designation and removal criteria.
47.39.075	Corridor management plan.
47.39.080	Funding priorities—Signage.
47.39.090	Consultation with other agencies and parties—Identification of tourist routes.
47.39.100	Removal of designation.
47.39.900	Short title.
47.39.910	Severability—1967 ex.s. c 85.

47.39.010 System created—Standards. There is hereby created a scenic and recreational highway system. Highways in this system shall be developed and maintained in accordance with general standards for state highways of comparable classification and usage.

Recognizing that the Transportation Equity Act for the 21st Century establishes a national "scenic byway" program that could benefit state and local roadways, the Washington state scenic byway designation program is revised to address state and local transportation routes. Byways in this program must be designated and maintained in accordance with the criteria developed by the department under this chapter. However, a highway so designated under RCW 47.39.069 does not become part of the scenic and recreational highway system unless approved by the legislature. [1999 c 218 § 1; 1967 ex.s. c 85 § 1.]

Effective date—1999 c 218: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 1999]." [1999 c 218 § 9.]

47.39.020 Designation of portions of existing highways as part of system. The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an

easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin; also

Beginning at the junction with state route number 17, in the vicinity of Coulee City, thence easterly to the junction with state route number 155;

(2) State route number 3, beginning at a junction with state route number 101 in the vicinity of Shelton, thence northeasterly and northerly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number 4, beginning at the junction with state route number 101, thence easterly through Cathlamet to Coal Creek road, approximately .5 miles west of the Longview city limits;

(4) State route number 6, beginning at the junction with state route number 101 in Raymond, thence easterly to the junction with state route number 5, in the vicinity of Chehalis;

(5) State route number 7, beginning at the junction with state route number 12 in Morton, thence northerly to the junction with state route number 507;

(6) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(7) State route number 9, beginning at the junction with state route number 530 in Arlington, thence northerly to the end of the route at the Canadian border;

(8) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(9) State route number 11, beginning at the junction with state route number 5 in the vicinity of Burlington, thence in a northerly direction to the junction with state route number 5;

(10) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynoochee river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at a junction with state route number 5, thence easterly by way of Morton, Randle, and Packwood to the junction with state route number 410, approximately 3.5 miles west of Naches; also

Beginning at the junction with state route number 124 in the vicinity of the Tri-Cities, thence easterly through Wallula and Touchet to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(11) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(12) State route number 17, beginning at a junction with state route number 395 in the vicinity of Mesa, thence northerly to the junction with state route number 97 in the vicinity of Brewster;

(13) State route number 19, the Chimacum-Beaver Valley road, beginning at the junction with state route number 104, thence northerly to the junction with state route number 20;

(14) State route number 20, beginning at the junction with state route number 101 to the ferry zone in Port Townsend; also

Beginning at the Keystone ferry slip on Whidbey Island, thence northerly and easterly to a junction with state route number 153 southeast of Twisp; also

Beginning at the junction of state route number 97 in the vicinity of Okanogan, thence westerly across the Okanogan river to the junction with state route number 215; also

Beginning at a junction with state route number 97 near Tonasket, thence easterly and southerly to a junction with state route number 2 at Newport;

(15) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

(16) State route number 26, beginning at the Whitman county boundary line, thence easterly by way of the vicinities of La Crosse and Dusty to a junction with state route number 195 in the vicinity of Colfax;

(17) State route number 27, beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly by way of the vicinities of Palouse and Garfield to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly to the vicinity of Tekoa;

(18) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

(19) State route number 82, beginning at the junction with state route number 395 south of the Tri-Cities area, thence southerly to the end of the route at the Oregon border;

(20) State route number 90, beginning at the junction with East Sunset Way in the vicinity east of Issaquah, thence easterly to Thorp road 9.0 miles west of Ellensburg;

(21) State route number 97, beginning at the Oregon border, in a northerly direction through Toppenish and Wapato to the junction with state route number 82 at Union Gap; also

Beginning at the junction with state route number 10, 2.5 miles north of Ellensburg, in a northerly direction to the junction with state route number 2, 4.0 miles east of Leavenworth; also

Beginning at the junction of state route number 153 in the vicinity south of Pateros, thence northerly by way of the vicinities of Brewster, Okanogan, Omak, Riverside, Tonasket, and Oroville to the international boundary line;

(22) State route number 97 alternate, beginning at the junction with state route number 2 in the vicinity of Monitor, thence northerly to the junction with state route number 97, approximately 5.0 miles north of Chelan;

(23) State route number 101, beginning at the Astoria-Megler bridge, thence north to Fowler street in Raymond; also

Beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the junction with state route number 5 in the vicinity of Olympia;

(24) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the Kingston ferry crossing;

(25) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and

northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

(26) State route number 109, beginning at a junction with state route number 101 in Hoquiam to a junction with state route number 101 in the vicinity of Queets;

(27) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

(28) State route number 116, beginning at the junction with the Chimacum-Beaver Valley road, thence in an easterly direction to Fort Flagler State Park;

(29) State route number 119, beginning at the junction with state route number 101 at Hoodspport, thence northwesterly to the Mount Rose development intersection;

(30) State route number 122, Harmony road, between the junction with state route number 12 near Mayfield dam and the junction with state route number 12 in Mossyrock;

(31) State route number 123, beginning at the junction with state route number 12 in the vicinity of Morton, thence northerly to the junction with state route number 410;

(32) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

(33) State route number 141, beginning at the junction with state route number 14 in Bingen, thence northerly to the end of the route at the Skamania county line;

(34) State route number 142, beginning at the junction with state route number 14 in Lyle, thence northeasterly to the junction with state route number 97, .5 miles from Goldendale;

(35) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

(36) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northerly and westerly to the junction with state route number 215;

(37) State route number 194, beginning at the Port of Almota to the junction with state route number 195 in the vicinity of Pullman;

(38) State route number 195, beginning at the Washington-Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Colton, Pullman, Colfax, Steptoe, and Rosalia to the Whitman county boundary line;

(39) State route number 202, beginning at the junction with state route number 522, thence in an easterly direction to the junction with state route number 90 in the vicinity of North Bend;

(40) State route number 211, beginning at the junction with state route number 2, thence northerly to the junction with state route number 20 in the vicinity of Usk;

(41) State route number 215, beginning at the junction of state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak;

(42) State route number 231, beginning at the junction with state route number 23, in the vicinity of Sprague, thence in a northerly direction to the junction with state route number 2, approximately 2.5 miles west of Reardan;

(43) State route number 261, beginning at the junction with state route number 12 in the vicinity of Delaney, thence northwesterly to the junction with state route number 260;

(44) State route number 262, beginning at the junction with state route number 26, thence northeasterly to the junction with state route number 17 between Moses Lake and Othello;

(45) State route number 271, beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia;

(46) State route number 272, beginning at the junction with state route number 195 in Colfax, thence easterly to the Idaho state line, approximately 1.5 miles east of Palouse;

(47) State route number 305, beginning at the Winslow ferry dock to the junction with state route number 3 approximately 1.0 mile north of Poulsbo;

(48) State route number 395, beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

(49) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

(50) State route number 410, beginning 4.0 miles east of Enumclaw, thence in an easterly direction to the junction with state route number 12, approximately 3.5 miles west of Naches;

(51) State route number 501, beginning at the junction with state route number 5 in the vicinity of Vancouver, thence northwesterly on the New Lower River road around Vancouver Lake;

(52) State route number 503, beginning at the junction with state route number 500, thence northerly by way of Battle Ground and Yale to the junction with state route number 5 in the vicinity of Woodland;

(53) State route number 504, beginning at a junction with state route number 5 at Castle Rock, to the end of the route on Johnston Ridge, approximately milepost 52;

(54) State route number 505, beginning at the junction with state route number 504, thence northwesterly by way of Toledo to the junction with state route number 5;

(55) State route number 508, beginning at the junction with state route number 5, thence in an easterly direction to the junction with state route number 7 in Morton;

(56) State route number 525, beginning at the ferry toll booth on Whidbey Island to a junction with state route number 20 east of the Keystone ferry slip;

(57) State route number 542, beginning at the junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

(58) State route number 547, beginning at the junction with state route number 542 in Kendall, thence northwesterly to the junction with state route number 9 in the vicinity of the Canadian border;

(59) State route number 706, beginning at the junction with state route number 7 in Elbe, in an easterly direction to the end of the route at Mt. Rainier National Park;

(60) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

(61) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road. [2003 c 55 § 1; 1993 c 430 § 7; 1992 c 26 § 2; 1991 c 342 § 54; 1990 c 240 § 3; 1975 c 63 § 8; 1973 1st ex.s. c 151 § 10; 1971 ex.s. c 73 § 29; 1970 ex.s. c 51 § 177; 1969 ex.s. c 281 § 6; 1967 ex.s. c 85 § 2.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Legislative finding—1990 c 240: "The legislature finds that scenic and recreational highways are designated because of a need to develop management plans that will protect and preserve the scenic and recreational resources from loss through inappropriate development. Protection of scenic and recreational resources includes managing land use outside normal highway rights of way. The legislature recognizes that scenic and recreational highways are typically located in areas that are natural in character, along watercourses or through mountainous areas, or in areas with a view of such scenery." [1990 c 240 § 1.]

47.39.030 Development and maintenance of system by department of transportation and parks and recreation commission—Allocation of costs. (1) The department shall pay from motor vehicle funds appropriated for construction of state highways, the following costs of developing and constructing scenic and recreational highways: (a) Acquisition of the right of way necessary for state highway purposes; (b) construction of the portion of the highway designed primarily for motor vehicle travel; (c) exit and entrance roadways providing access to scenic observation points; (d) safety rest areas; (e) roadside landscaping within the portion of the highway right of way acquired by the department for state highway purposes; (f) the uniform signs and markers designating the various features and facilities of the scenic and recreational highways; and (g) any additional costs of constructing and developing the scenic and recreational highways, including property acquisition adjacent to highways as authorized by RCW 47.12.250, for which the department shall receive reimbursement from the federal government or any other source.

(2) The parks and recreation commission shall pay the costs of developing and constructing the scenic and recreational highways not provided for in subsection (1) of this section from any funds appropriated for such purposes.

(3) The costs of maintaining the scenic and recreational highway system shall be allocated between the department and the parks and recreation commission in the same manner that costs of developing and constructing such highways are allocated in subsections (1) and (2) of this section.

(4) The city, town, county, regional transportation planning organization, federal agency, federally recognized tribe, or any other such party that nominates a roadway not located on a state-owned right of way for designation as a scenic byway shall bear all costs relating to the nomination and designation of the byway, such as costs for developing, maintaining, planning, designing, and constructing the scenic byway. [1999 c 218 § 2; 1984 c 7 § 207; 1967 ex.s. c 85 § 3.]

Effective date—1999 c 218: See note following RCW 47.39.010.

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

Safety rest areas: Chapter 47.38 RCW.

47.39.040 Planning and design standards established by department of community, trade, and economic development. The establishment of planning and design standards for items provided for in RCW 47.39.050 shall be coordinated by the department of community, trade, and economic development. The department of transportation, parks and recreation commission, and any other departments or commissions whose interests are affected shall prepare, submit, and file with the department of community, trade, and economic development standards relating to the scenic and recreational highway system. If varying planning and design standards are filed, the department of community, trade, and economic development shall consult with the submitting agencies on the merits of the several proposals and, based upon such consultation, establish a set of standards. Pursuant to the planning and design standards so established, the department of transportation and the parks and recreation commission shall develop the highways and areas adjacent thereto to accomplish the purposes of this chapter, but the department shall retain exclusive authority over the highway right of way.

Responsibility for construction and maintenance is hereby established between the department and the parks and recreation commission with the department responsible for activities financed with funds provided for under RCW 47.39.030(1) and the parks and recreation commission responsible for activities financed from other sources of funds. By mutual consent, responsibility for development and/or maintenance may be transferred between the two agencies. [1995 c 399 § 122; 1985 c 6 § 16; 1984 c 7 § 208; 1967 ex.s. c 85 § 4.]

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

Department of community, trade, and economic development: Chapter 43.330 RCW.

47.39.050 Planning and design standards—Facilities and factors considered. Planning and design standards established for highways falling within the scenic and recreational highways system may include, but shall not be limited to, provision for the following:

- (1) Hiking, bicycle, and bridle trails, including regulations for their use;
- (2) Campsites and shelters;
- (3) Boat launching sites;
- (4) Access trails to lakes, rivers and streams, and easements along their shores;
- (5) Safety rest areas;
- (6) Historic and geologic interpretative facilities;
- (7) Scenic observation facilities;
- (8) Roadside landscaping, restoration and aesthetic enhancement;
- (9) Specifically delineated highway corridors and means for the preservation of natural beauty, historic sites, or viewpoints;
- (10) A uniform system of signs and markers designating the various features and facilities of the scenic and recreational highway systems. [1967 ex.s. c 85 § 5.]

47.39.060 Designation of system on maps or other descriptive material. The department and the parks and recreation commission may include, where appropriate, on any maps, or in any relevant descriptive material they may prepare at state expense, references to those portions of highways designated in RCW 47.39.020, and may include those designated byways by appropriate color or code designation. [1999 c 218 § 3; 1984 c 7 § 209; 1967 ex.s. c 85 § 6.]

Effective date—1999 c 218: See note following RCW 47.39.010.

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

47.39.069 Designation and removal criteria. (1) The department, in consultation with the department of community, trade, and economic development, the department of natural resources, the parks and recreation commission, affected cities, towns, and counties, federally recognized tribes, regional transportation planning organizations, Washington-based automobile clubs, statewide bicycling organizations, and other interested parties, shall develop by December 31, 1999, criteria for assessing scenic byways and heritage tour routes and an appropriate method of nomination and application for the designation and removal of the designation of the byways. Factors the department may take into consideration, but is not limited by, are: (a) Scenic quality of the byway; (b) natural aspects, such as geological formations, water bodies, vegetation, and wildlife; (c) historic elements; (d) cultural features such as the arts, crafts, music, customs, or traditions of a distinct group of people; (e) archaeological features; (f) recreational activities; (g) roadway safety including accommodations for bicycle and pedestrian travel, tour buses, and automobiles; (h) scenic byway and local and regional byway management plans; and (i) local public involvement and support for the byway.

(2) The criteria developed in subsection (1) of this section must not impose nor require regulation of privately owned lands or property rights.

(3) Any person may nominate a roadway, path, or trail for inclusion in the scenic byway program. The department shall assess nominations in accordance with the criteria developed under subsection (1) of this section. The department shall submit its recommendations for scenic byway and heritage tour route designations to the commission for its approval and official designation of the roadway, path, or trail as a scenic byway or a heritage tour route. All decisions made by the commission relating to scenic byway and heritage tour route designations are final.

(4) The department shall apply the criteria in subsection (1) of this section to state highways that are currently not a part of the designated scenic and recreational highway system. The department shall respond to local requests for route evaluation as defined in subsection (3) of this section.

(5) Once the commission has designated a roadway as a scenic byway, the department may submit an individual nomination to the Federal Highway Administration for its consideration of whether the roadway qualifies to be designated as a national scenic byway or an All-American Roadway. [1999 c 218 § 4.]

Effective date—1999 c 218: See note following RCW 47.39.010.

47.39.075 Corridor management plan. The department shall participate with local communities to develop a corridor management plan for a state highway nominated to be part of the scenic byway program. Local, regional, or other governmental bodies shall develop a corridor management plan for nominated routes that are under their jurisdiction. [1999 c 218 § 5.]

Effective date—1999 c 218: See note following RCW 47.39.010.

47.39.080 Funding priorities—Signage. Recognizing that the Transportation Equity Act for the 21st Century establishes a national "Scenic Byways" grant program and a new apportionment program called "Transportation Enhancement Activities," the department of transportation shall place high priority on obtaining funds from those sources for further development of a scenic and recreational highways program, including enhancement projects on the designated scenic and recreational highway system. The department shall consider the use of the designated system by bicyclists and pedestrians in connection with nonmotorized routes in the state trail plan, and the state bicycle plan which are also eligible for TEA-21 funding. Appropriate signage may be used at intersections of nonmotorized and motorized systems to demonstrate the access, location, and the interconnectivity of various modes of travel for transportation and recreation. For the purposes of leveraging national scenic byway planning grant funds, the commission may designate eligible state highways as scenic byways on an interim basis. [1999 c 218 § 6; 1993 c 430 § 8.]

Effective date—1999 c 218: See note following RCW 47.39.010.

47.39.090 Consultation with other agencies and parties—Identification of tourist routes. In developing the scenic and recreational highways program, the department shall consult with the department of community, trade, and economic development, the department of natural resources, the parks and recreation commission, affected cities, towns, and counties, regional transportation planning organizations, statewide bicycling organizations, and other interested parties. The scenic and recreational highways program may identify entire highway loops or similar tourist routes that could be developed to promote tourist activity and provide concurrent economic growth while protecting the scenic and recreational quality surrounding state highways. [1995 c 399 § 123; 1993 c 430 § 9.]

47.39.100 Removal of designation. (1) The commission may remove the designation of a route if it no longer possesses the intrinsic qualities or fails to meet the criteria that supported its designation.

(2) The department shall determine whether a roadway designated as a national scenic byway or an All-American Roadway is being properly maintained in accordance with the roadway's byway management plan, including preserving the intrinsic qualities that originally supported the designation. When the department determines that the intrinsic qualities of a national scenic byway or All-American Roadway have not been maintained sufficiently to retain its designation, the department shall notify the party responsible for maintaining the designation of the finding and allow the party an opportunity, under federal regulations, for corrective

action before formal removal of the designation of the roadway.

(3) Local, regional, or other governmental bodies may notify the commission of the removal of a designated route if they determine it no longer meets the designation criteria, or community support for the designation no longer exists, or it no longer possesses the intrinsic qualities that supported its original designation.

(4) State or local removal of a designated route will result in discontinued state support of the designated route and can include, but is not limited to, state matching assistance for grant applications, the removal of signs directly related to the byway, free promotional information in the state-owned safety rest areas, and inclusion in maps, brochures, and electronic media. [1999 c 218 § 7.]

Effective date—1999 c 218: See note following RCW 47.39.010.

47.39.900 Short title. RCW 47.39.010 through 47.39.910 shall constitute a new chapter in Title 47 RCW and shall be known and may be cited as the "Scenic and Recreational Highway Act of 1967." [1967 ex.s. c 85 § 7.]

47.39.910 Severability—1967 ex.s. c 85. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 85 § 8.]

Chapter 47.40 RCW ROADSIDE IMPROVEMENT AND BEAUTIFICATION

Sections

47.40.010	Improvement and beautification a highway purpose.
47.40.020	Use of funds authorized.
47.40.030	Permit to private persons.
47.40.040	Application for permit, contents.
47.40.050	Survey—Report—Permit.
47.40.060	Agreement to maintain project.
47.40.070	Damaging project unlawful.
47.40.080	Penalty for destroying native flora on state lands, highways, parks.
47.40.090	Glass bottles along highways—Collection and removal.
47.40.100	State adopt-a-highway program.
47.40.105	Local adopt-a-highway programs.

City streets, parkways, boulevards, etc.: Title 35 RCW.

State parks and recreation commission may plant trees along highway: RCW 79A.05.030.

Withdrawal of public lands abutting highway: RCW 79A.05.105.

47.40.010 Improvement and beautification a highway purpose. The planting and cultivating of any shrubs, trees, hedges or other domestic or native ornamental growth, the improvement of roadside facilities and view points, and the correction of unsightly conditions, upon the right of way of any state highway is hereby declared to be a proper state highway purpose. [1961 c 13 § 47.40.010. Prior: 1937 c 53 § 88; RRS § 6400-88.]

47.40.020 Use of funds authorized. Whenever funds are available for the planting or cultivation of any shrubs, trees, hedges, or other domestic or native ornamental growth, the improvement of roadside facilities and view points, the

correction of unsightly conditions upon the right of way of any state highway, and for roadside development and beautification, the department is empowered to expend such funds, either independently or in conjunction with the funds of any county, political subdivision, or any person, firm, corporation, association, or organization. [1984 c 7 § 210; 1961 c 13 § 47.40.020. Prior: 1937 c 53 § 89; RRS § 6400-89.]

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

47.40.030 Permit to private persons. Any person, firm, corporation, association, or organization owning lands abutting upon any state highway and desiring to plant, cultivate, and grow any hedge, shade trees, or ornamental trees or shrubs along the right of way thereof, or to clear and cultivate a portion of the state highway right of way for the purpose of growing crops and destroying noxious weeds, or any person, firm, corporation, association, or organization interested in public improvement and desiring to improve and beautify any state highway right of way or any portion thereof by planting, cultivating, or growing any hedge or shade or ornamental trees or cultivate along or upon the right of way thereof, may upon application to the department, be granted a permit therefor as provided by law. [1984 c 7 § 211; 1961 c 13 § 47.40.030. Prior: 1937 c 53 § 90; RRS § 6400-90; prior: 1927 c 242 § 1; RRS § 6437-1.]

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

47.40.040 Application for permit, contents. Each application for a permit to plant, cultivate and grow any hedge, shade or ornamental trees or shrubbery along or upon the right of way of any state highway or improve such right of way shall be in writing, signed by the applicant, and shall describe the state highway or portion thereof along or upon the right of way of which permit to plant, cultivate, grow or improve is sought, by name, number, or other reasonable description, and the lands bordering thereon by governmental subdivisions, and shall state the names, places or residence and post office addresses of the applicant or applicants owning the land abutting upon such state highway or the name of the person, firm, corporation, association or organization applying for the permit and the names of its officers and their places of residence and their post office addresses, and shall state definitely the purpose for which the permit is sought, giving a description of the kind of hedge, or variety of shrubbery or trees desired to be planted or the kinds of crops to be grown, or improvement to be made, with a diagram illustrating the location and number of hedges, trees or shrubs or the area of cultivation desired or plans of the improvement proposed to be made. [1961 c 13 § 47.40.040. Prior: 1937 c 53 § 91; RRS § 6400-91; prior: 1927 c 242 § 2; RRS § 6437-2.]

47.40.050 Survey—Report—Permit. Upon the filing of such application, the department shall cause a survey of the state highway to be made with reference to the application and a report of the findings and recommendations as to the granting of the permit, and if it appears to the satisfaction of the department that the use of a portion of the state highway for the purpose set out in the application will not interfere with the use of the state highway for public travel and will beautify and improve the state highway, a permit may be

granted and issued to the applicant to plant, cultivate, and grow any hedge, shade or ornamental trees, shrubbery, or crops, or make such improvement along or upon the right of way of such portion of the state highway as is definitely described in the permit, and to construct and maintain such temporary and substantial fence on and along the portion of the right of way of the state highway described in the permit as is specified in the permit. The permit shall specify the exact location of all hedges, shade or ornamental trees, or shrubbery to be planted and grown, or the area to be cultivated under the permit, or the area to be improved to which specified location the person, firm, corporation, association, or organization receiving the permit shall specifically conform. The department may in its discretion refuse to issue the permit, and any such permit that is granted is revocable at the will of the department and nothing in this title may be construed as in anywise affecting the title of the state to the lands included in the state highway, or the right to use the lands for state highway purposes, or to remove or destroy any of such hedges, trees, shrubbery, or crops for the purpose of construction, alteration, repair, improvement, or maintenance of the state highway, or for any other purpose and at any time. [1984 c 7 § 212; 1961 c 13 § 47.40.050. Prior: 1937 c 53 § 92; RRS § 6400-92; prior: 1927 c 242 § 3, part; RRS § 6437, part.]

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

47.40.060 Agreement to maintain project. If any such permit is granted, the department shall enter into an agreement with the person, firm, corporation, association, or organization agreeing that such roadside development or beautification shall be maintained and kept up by the state through the department or by the person, firm, corporation, association, or organization. If any such person, firm, corporation, association, or organization so agreeing fails or neglects to maintain the roadside development or beautification, the department is empowered to do so, and the expense thereof shall be a charge against the person, firm, corporation, association, or organization. [1984 c 7 § 213; 1961 c 13 § 47.40.060. Prior: 1937 c 53 § 93; RRS § 6400-93; prior: 1927 c 242 § 3, part; RRS § 6437-3, part.]

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

47.40.070 Damaging project unlawful. It is unlawful for any person to injure, destroy, or remove any hedge, shade or ornamental trees, shrubbery, or crops, planted, cultivated, and grown or improvement made upon or along any portion of any state highway under permit from the department or otherwise, or to injure, destroy, or remove any fence erected under any such permit or otherwise. However, nothing in this section may be construed to prevent any person with the department to do so or the officers of the state charged with the duty of constructing and maintaining any such state highway, from removing any hedges, trees, shrubbery, or crops planted or improvements or fences built under permit, where in their judgment they interfere with or are detrimental to, the use of the state highway for public travel, or such removal is necessary for the construction, alteration, repair, improvement, or maintenance of the state highway. [1984 c 7 § 214;

1961 c 13 § 47.40.070. Prior: 1937 c 53 § 94; RRS § 6400-94; prior: 1927 c 242 § 4; RRS § 6437-4.]

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

47.40.080 Penalty for destroying native flora on state lands, highways, parks. Any person who shall break or cut from any lands owned by the state of Washington or shall cut down, remove, destroy or uproot any rhododendron, evergreen, huckleberry, native dogwood or any other native tree, shrub, fern, herb, bulb or wild plants, or any part thereof, within three hundred feet of the center line of any state or county road, or who shall cut down, remove or destroy any flowering or ornamental tree or shrub, or any native flowering plant, fern, herb or bulb, either perennial or annual, situate, growing or being on any public street or highway, state or city park, in the state of Washington, unless such person be engaged in the work of constructing or repairing such highway or street under authority and direction of the legally constituted public officials being charged by law with the duty of constructing or repairing such highways or streets, state or city parks, shall be guilty of a misdemeanor. [1961 c 13 § 47.40.080. Prior: 1933 c 133 § 1; 1925 ex.s. c 59 § 1; RRS § 2787-1.]

47.40.090 Glass bottles along highways—Collection and removal. The department and any other governmental subdivision shall, with the staff, equipment, and material under their control, or by contract with others, take all necessary actions to collect and remove any or all glass bottles or glass containers along the right of way of any public road or public highway. [1984 c 7 § 215; 1969 ex.s. c 281 § 48.]

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

Deposit of unwholesome substance: RCW 9.66.050.

Removal of glass after accident: RCW 46.61.645.

Throwing glass on highway: RCW 46.61.645, 70.93.060.

47.40.100 State adopt-a-highway program. (1) The department of transportation shall establish a statewide adopt-a-highway program. The purpose of the program is to provide volunteers and businesses an opportunity to contribute to a cleaner environment, enhanced roadsides, and protection of wildlife habitats. Participating volunteers and businesses shall adopt department-designated sections of state highways, rest areas, park and ride lots, intermodal facilities, and any other facilities the department deems appropriate, in accordance with rules adopted by the department. The department may elect to coordinate a consortium of participants for adopt-a-highway projects.

The adopt-a-highway program shall include, at a minimum, litter control for the adopted section, and may include additional responsibilities such as planting and maintaining vegetation, controlling weeds, graffiti removal, and any other roadside improvement or clean-up activities the department deems appropriate. The department shall not accept adopt-a-highway proposals that would have the effect of terminating classified employees or classified employee positions.

(2) A volunteer group or business choosing to participate in the adopt-a-highway program must submit a proposal to the department. The department shall review the proposal for

consistency with departmental policy and rules. The department may accept, reject, or modify an applicant's proposal.

(3) The department shall seek partnerships with volunteer groups and businesses to facilitate the goals of this section. The department may solicit funding for the adopt-a-highway program that allows private entities to undertake all or a portion of financing for the initiatives. The department shall develop guidelines regarding the cash, labor, and in-kind contributions to be performed by the participants.

(4) An organization whose name: (a) Endorses or opposes a particular candidate for public office, (b) advocates a position on a specific political issue, initiative, referendum, or piece of legislation, or (c) includes a reference to a political party shall not be eligible to participate in the adopt-a-highway program.

(5) In administering the adopt-a-highway program, the department shall:

(a) Provide a standardized application form, registration form, and contractual agreement for all participating groups. The forms shall notify the prospective participants of the risks and responsibilities to be assumed by the department and the participants;

(b) Require all participants to be at least fifteen years of age;

(c) Require parental consent for all minors;

(d) Require at least one adult supervisor for every eight minors;

(e) Require one designated leader for each participating organization, unless the department chooses to coordinate a consortium of participants;

(f) Assign each participating organization a section or sections of state highway, or other state-owned transportation facilities, for a specified period of time;

(g) Recognize the efforts of a participating organization by erecting and maintaining signs with the organization's name on both ends of the organization's section of highway;

(h) Provide appropriate safety equipment. Safety equipment issued to participating groups must be returned to the department upon termination of the applicable adopt-a-highway agreement;

(i) Provide safety training for all participants;

(j) Pay any and all premiums or assessments required under RCW 51.12.035 to secure medical aid benefits under chapter 51.36 RCW for all volunteers participating in the program;

(k) Require participating businesses to pay all employer premiums or assessments required to secure medical aid benefits under chapter 51.36 RCW for all employees or agents participating in the program;

(l) Maintain records of all injuries and accidents that occur;

(m) Adopt rules that establish a process to resolve any question of an organization's eligibility to participate in the adopt-a-highway program;

(n) Obtain permission from property owners who lease right of way before allowing an organization to adopt a section of highway on such leased property; and

(o) Establish procedures and guidelines for the adopt-a-highway program.

(6) Nothing in this section affects the rights or activities of, or agreements with, adjacent landowners, including the

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use of rights of way and crossings, nor impairs these rights and uses by the placement of signs. [1995 c 106 § 1; 1990 c 258 § 5.]

Legislative findings and intent—1990 c 258: "The legislature finds that despite the efforts of the department of transportation, the department of ecology, and the ecology youth corps to pick up litter along state highways, roadside litter in Washington state has increased by thirty-six percent since 1983. The legislature further finds that in twenty-seven states, volunteer organizations are able to give of their time and energy, demonstrate commitment to a clean environment, and discourage would-be litterers by keeping sections of highway litter free because those states have established programs to encourage and recognize such voluntary efforts. Therefore, it is the legislature's intent to establish an "adopt-a-highway" litter control program as a partnership between citizen volunteers and the state to reduce roadside litter and build civic pride in a litter-free Washington." [1990 c 258 § 4.]

47.40.105 Local adopt-a-highway programs. Local government legislative authorities may enact local "adopt-a-highway sign" programs which are not inconsistent with state or federal law. [1990 c 258 § 3.]

Legislative findings and intent—1990 c 258: See note following RCW 47.40.100.

Chapter 47.41 RCW

JUNKYARDS ADJACENT TO INTERSTATE AND PRIMARY HIGHWAYS

Sections

47.41.010	Legislative declaration—Purpose.
47.41.020	Definitions.
47.41.030	Junkyards adjacent to highways prohibited—Exceptions.
47.41.040	Screening or removal of junkyard.
47.41.050	Administrative rules—Review of action.
47.41.060	Other laws not affected.
47.41.070	Violations—Penalty—Abatement as public nuisance.
47.41.080	Agreements with United States secretary of transportation.
47.41.900	Severability—1971 ex.s. c 101.

Vehicle wreckers: Chapter 46.80 RCW.

47.41.010 Legislative declaration—Purpose. For the purpose of promoting the public safety, health, welfare, convenience, and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and federal-aid primary systems within this state. The legislature hereby finds and declares that junkyards which do not conform to the requirements of this chapter are public nuisances. [1971 ex.s. c 101 § 1.]

47.41.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(2) "Automobile graveyard" means any establishment or place of business that is maintained, used, or operated by storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(3) "Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or opera-

tion of an automobile graveyard, and the term includes garbage dumps and sanitary fills.

(4) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated or as may hereafter be so designated by the department and approved by the United States secretary of transportation under Title 23 United States Code.

(5) "Federal-aid primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the department and approved by the United States secretary of transportation as the federal-aid primary system pursuant to the provisions of Title 23 United States Code.

(6) "Department" means the Washington state department of transportation. [1984 c 7 § 216; 1971 ex.s. c 101 § 2.]

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

47.41.030 Junkyards adjacent to highways prohibited—Exceptions. No person may establish, operate, or maintain a junkyard any portion of which is within one thousand feet of the nearest edge of the right of way of any interstate or federal-aid primary highway, except the following:

(1) Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the system or otherwise removed from sight;

(2) Those located within areas which are zoned for industrial use under authority of law;

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by rules adopted by the department and approved by the United States secretary of transportation; and

(4) Those which are not visible from the main-traveled way of the system. [1984 c 7 § 217; 1971 ex.s. c 101 § 3.]

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

47.41.040 Screening or removal of junkyard. Before July 1, 1971, the department shall determine whether or not the topography of the land adjoining the highway will permit adequate screening of any junkyard lawfully in existence located outside of a zoned industrial area or an unzoned industrial area as defined under RCW 47.41.030 on August 9, 1971, that is within one thousand feet of the nearest edge of the right of way and visible from the main traveled way of any highway on the interstate and primary system and whether screening of the junkyard would be economically feasible. Within thirty days thereafter the department shall notify by certified mail the record owner of the land upon which the junkyard is located, or the operator thereof, of its determination.

If it is economically feasible to screen the junkyard, the department shall screen the junkyard so that it will not be visible from the main-traveled way of the highway. The department is authorized to acquire by gift, purchase, exchange, or condemnation such lands or interest in lands as may be required for these purposes.

If it is not economically feasible to screen the junkyard, the department shall acquire by purchase, gift, or condemnation an interest in the real property used for junkyard pur-

poses that is visible from the main traveled way of the highway, restricting any owner of the remaining interest to use of the real estate for purposes other than a junkyard. In addition to compensation for the real property interest, the operator of a junkyard shall receive the actual reasonable expenses in moving his business personal property to a location within the same general area where a junkyard may be lawfully established, operated, and maintained. This section shall be interpreted as being in addition to all other rights and remedies of a junkyard owner or operator and shall not be interpreted as a limitation on or alteration of the law of compensation in eminent domain. [1984 c 7 § 218; 1971 ex.s. c 101 § 4.]

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

47.41.050 Administrative rules—Review of action.

The department shall adopt rules for the administration of this chapter consistent with the policy of this chapter and the national policy set forth in 23 U.S.C. Sec. 136, and the regulations promulgated thereunder by the United States secretary of transportation. Proceedings for review of any action taken by the department pursuant to this chapter shall be instituted by filing a petition only in the superior court of Thurston county. [1984 c 7 § 219; 1971 ex.s. c 101 § 5.]

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

47.41.060 Other laws not affected. Nothing in this chapter shall be construed to permit a person to maintain any junkyard that is otherwise prohibited by statute or by the resolution or ordinance of any county, city, or town, nor to abrogate or affect the lawful provisions of any statute, ordinance, regulation, or resolution which are more restrictive than the provisions of this chapter. [1971 ex.s. c 101 § 6.]

47.41.070 Violations—Penalty—Abatement as public nuisance. (1) If the owner of the land upon which any such junkyard is located, or the operator thereof, as the case may be, fails to comply with the notice or remove any such junk within the time provided in this chapter after being so notified, he or she is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling compliance with this chapter. Each day the junkyard is maintained in a manner so as not to comply with this chapter constitutes a separate offense.

(2) If the operator of the junkyard or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the property upon which it is located with a notice that the junkyard constitutes a public nuisance and that the junk thereon must be removed as provided in this chapter. If the notice is not complied with, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and remove the junk, and for that purpose may enter upon private property without incurring liability for doing so. [2003 c 53 § 261; 1984 c 7 § 220; 1971 ex.s. c 101 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

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

47.41.080 Agreements with United States secretary of transportation. The department is authorized to enter into agreements with the United States secretary of transportation as provided in Title 23 United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and to take action in the name of the state to comply with the terms of the agreement. [1984 c 7 § 221; 1971 ex.s. c 101 § 8.]

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

47.41.900 Severability—1971 ex.s. c 101. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 101 § 9.]

Chapter 47.42 RCW

**HIGHWAY ADVERTISING CONTROL ACT—
SCENIC VISTAS ACT**

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47.42.010 Declaration of purpose. The control of signs in areas adjacent to state highways of this state is hereby declared to be necessary to promote the public health, safety, welfare, convenience and enjoyment of public travel, to protect the public investment in the interstate system and other state highways, and to attract visitors to this state by conserving the natural beauty of areas adjacent to the inter-

state system, and of scenic areas adjacent to state highways upon which they travel in great numbers, and to insure that information in the specific interest of the traveling public is presented safely and effectively. [1961 c 96 § 1.]

47.42.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Department" means the Washington state department of transportation.

(2) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(3) "Interstate system" means any state highway which is or does become part of the national system of interstate and defense highways as described in section 103(d) of title 23, United States Code.

(4) "Maintain" means to allow to exist.

(5) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual or individuals.

(6) "Primary system" means any state highway which is or does become part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(7) "Scenic system" means (a) any state highway within any public park, federal forest area, public beach, public recreation area, or national monument, (b) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic system, or (c) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025 or located within areas zoned by the governing county for predominantly commercial and industrial uses, and having development visible to the highway, as determined by the department.

(8) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing that is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway.

(9) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code, or if unzoned or zoned for general uses by a county or municipal code, that area occupied by three or more separate and distinct commercial or industrial activities, or any combination thereof, within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, or storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which the activities are located. Measurements shall be along or parallel to the edge of the main traveled way of the highway. The following shall not be considered commercial or industrial activities:

(a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;

(b) Transient or temporary activities;

- (c) Railroad tracks and minor sidings;
- (d) Signs;
- (e) Activities more than six hundred and sixty feet from the nearest edge of the right of way;
- (f) Activities conducted in a building principally used as a residence.

If any commercial or industrial activity that has been used in defining or delineating an unzoned area ceases to operate for a period of six continuous months, any signs located within the former unzoned area become nonconforming and shall not be maintained by any person.

(10) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(11) "Temporary agricultural directional sign" means a sign on private property adjacent to state highway right of way to provide directional information to places of business offering for sale seasonal agricultural products on the property where the sale is taking place. [1993 c 430 § 10; 1991 c 94 § 1; 1990 c 258 § 1; 1987 c 469 § 2; 1985 c 376 § 2; 1984 c 7 § 222; 1977 ex.s. c 258 § 1; 1974 ex.s. c 80 § 1; 1971 ex.s. c 62 § 1; 1961 c 96 § 2.]

Legislative findings and intent—1990 c 258: See note following RCW 47.40.100.

Legislative intent—1985 c 376: "It is the intent of the legislature that state highway information and directional signs provide appropriate guidance to all motorists traveling throughout the state. Such guidance should include the identity, location, and types of recreational, cultural, educational, entertainment, or unique or unusual commercial activities whose principle source of visitation is derived from motorists not residing in the immediate locale of the activity. Such informational and directional signs shall comply with Title 23, United States Code and the rules adopted by the department under RCW 47.42.060." [1985 c 376 § 1.]

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

47.42.025 Exclusions from scenic system. The following sections of the scenic and recreational highway system are excluded from the scenic system as defined in subsection (7) of RCW 47.42.020:

- (1) Beginning on state route number 101 at the junction with Airport Road north of Shelton, thence north to a point two thousand feet north of Airport Road.
- (2) Beginning on state route number 101 at the junction with Mill Creek Road south of Forks, thence north two and four-tenths miles to the Calawah River bridge.
- (3) Beginning on state route number 105 at a point one-half mile southwest of the boundary of Aberdeen, thence northeast to the boundary of Aberdeen.
- (4) Beginning on state route number 17 at a point nine-tenths of a mile west of Grape Drive in the vicinity of Moses Lake, thence easterly to a junction of Grape Drive.
- (5) Beginning on state route number 12 at a point one-half mile south of the south boundary of Dayton, thence northerly to the south boundary of Dayton.
- (6) Beginning on state route number 14 one-half mile west of the west boundary of Bingen, thence east to a point one-half mile east of the east boundary of Bingen. [1971 ex.s. c 62 § 2.]

47.42.030 Signs visible from interstate, primary, or scenic systems restricted. Except as permitted under this chapter, no person shall erect or maintain a sign which is visible from the main traveled way of the interstate system, the primary system, or the scenic system. In case a highway or a section of highway is both a part of the primary system and the scenic system, only those signs permitted along the scenic system shall be erected or maintained. [1971 ex.s. c 62 § 3; 1961 c 96 § 3.]

47.42.040 Permissible signs classified. It is declared to be the policy of the state that no signs which are visible from the main traveled way of the interstate system, primary system, or scenic system shall be erected or maintained except the following types:

- (1) Directional or other official signs or notices that are required or authorized by law including signs with the Crime Stoppers name, logo, and telephone number;
- (2) Signs advertising the sale or lease of the property upon which they are located;
- (3) Signs advertising activities conducted on the property on which they are located;
- (4) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, and the national standards promulgated thereunder by the secretary of commerce or the secretary of transportation, advertising activities being conducted at a location within twelve miles of the point at which such signs are located: PROVIDED, That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;
- (5) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, and the regulations promulgated thereunder by the secretary of commerce or the secretary of transportation, designed to give information in the specific interest of the traveling public: PROVIDED, That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;
- (6) Signs lawfully in existence on October 22, 1965, determined by the commission, subject to the approval of the United States secretary of transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of chapter 47.42 RCW;
- (7) Public service signs, located on school bus stop shelters, which:
 - (a) Identify the donor, sponsor, or contributor of said shelters;
 - (b) Contain safety slogans or messages which occupy not less than sixty percent of the area of the sign;
 - (c) Contain no other message;
 - (d) Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or

ordinance, and at places approved by the city, county, or state agency controlling the highway involved; and

(e) Do not exceed thirty-two square feet in area. Not more than one sign on each shelter may face in any one direction.

Subsection (7) of this section notwithstanding, the department of transportation shall adopt regulations relating to the appearance of school bus shelters, the placement, size, and public service content of public service signs located thereon, and the prominence of the identification of the donors, sponsors, or contributors of the shelters;

(8) Temporary agricultural directional signs, with the following restrictions:

(a) Signs shall be posted only during the period of time the seasonal agricultural product is being sold;

(b) Signs shall not be placed adjacent to the interstate highway system unless the sign qualifies as an on-premise sign;

(c) Signs shall not be placed within an incorporated city or town;

(d) Premises on which the seasonal agricultural products are sold must be within fifteen miles of the state highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway;

(e) Signs must be located so as not to restrict sight distances on approaches to intersections;

(f) The department shall establish a permit system and fee schedule and rules for the manufacturing, installation, and maintenance of these signs in accordance with the policy of this chapter;

(g) Signs in violation of these provisions shall be removed in accordance with the procedures in RCW 47.42.080;

Only signs of types 1, 2, 3, 7, and 8 may be erected or maintained within view of the scenic system. Signs of types 7 and 8 may also be erected or maintained within view of the federal aid primary system. [2001 c 107 § 1; 1991 c 94 § 2; 1990 c 258 § 2; 1985 c 376 § 3; 1979 c 69 § 1; 1975 1st ex.s. c 271 § 1; 1971 ex.s. c 62 § 4; 1961 c 96 § 4.]

Legislative findings and intent—1990 c 258: See note following RCW 47.40.100.

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.42.045 Number of signs—Spacing—Tourist facility, business or agricultural signs. (1) Not more than one type 3 sign visible to traffic proceeding in any one direction on an interstate system, primary system outside an incorporated city or town or commercial or industrial area, or scenic system highway may be permitted more than fifty feet from the advertised activity;

(2) A type 3 sign, other than one along any portion of the primary system within an incorporated city or town or within any commercial or industrial area, permitted more than fifty feet from the advertised activity pursuant to subsection (1) of this section shall not be erected or maintained a greater distance from the advertised activity than one of the following options selected by the owner of the business being advertised:

(a) One hundred fifty feet measured along the edge of the protected highway from the main entrance to the activity advertised (when applicable);

(b) One hundred fifty feet from the main building of the advertised activity; or

(c) Fifty feet from a regularly used parking lot maintained by and contiguous to the advertised activity.

(3) In addition to signs permitted by subsections (1) and (2) of this section, the commission may adopt regulations permitting one type 3 sign visible to traffic proceeding in any one direction on an interstate, primary or scenic system highway on premises which, on June 25, 1976, are used wholly or in part as an operating business, farm, ranch or orchard which sign bears only the name of the business, farm, ranch or orchard and a directional arrow or short directional message. Regulations adopted under this subsection shall prohibit the erection or maintenance of such type 3 signs on narrow strips of land a substantial distance from but connected with a business, farm, ranch or orchard. Signs permitted under this subsection shall not exceed fifty square feet in area.

(4) The commission with advice from the parks and recreation commission shall adopt specifications for a uniform system of official tourist facility directional signs to be used on the scenic system highways. Official directional signs shall be posted by the commission to inform motorists of types of tourist and recreational facilities available off the scenic system which are accessible by way of public or private roads intersecting scenic system highways. [1975-'76 2nd ex.s. c 55 § 2; 1974 ex.s. c 154 § 1; 1974 ex.s. c 138 § 1; 1971 ex.s. c 62 § 5.]

47.42.048 State and local prohibitions. Nothing in this chapter shall be construed to permit a person to erect or maintain a sign that is otherwise prohibited by statute or by the resolution or ordinance of any county, city or town of the state of Washington. [1974 ex.s. c 80 § 3.]

47.42.050 Information signs by governmental units. Information signs may be erected and maintained by the state, any county, city, or town. [1961 c 96 § 5.]

47.42.055 Roadside area information panels or displays. The department is authorized to erect roadside area information panels or displays adjacent to the state highway system within this state. The department may contract with private persons for the erection and operation of the information panels or displays. Compensation to the contractors shall be derived solely from the reasonable fees that the contractors will be permitted to charge participating businesses for making and exhibiting business signs and displays and for rendering services to tourists. [1985 c 376 § 5; 1984 c 7 § 225; 1977 ex.s. c 258 § 2.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

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

47.42.060 Rules for signs visible from interstate and scenic systems—Judicial review. The department shall adopt rules for the erection and maintenance of signs that are visible from the main traveled way of the interstate system and the scenic system and that are permitted by this chapter and other rules for the administration of this chapter consistent with the policy of this chapter and the national policy set forth in section 131, title 23, United States Code as codified

and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342 and the regulations promulgated thereunder by the secretary of commerce or the secretary of transportation. Proceedings for review of any action taken by the department pursuant to this chapter shall be instituted by filing a petition only in the superior court of Thurston county. [1984 c 7 § 226; 1971 ex.s. c 62 § 6; 1961 c 96 § 6.]

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

47.42.062 Signs visible from primary system in commercial and industrial areas—Requirements, restrictions, and prohibitions. Signs within six hundred and sixty feet of the nearest edge of the right of way which are visible from the main traveled way of the primary system within commercial and industrial areas and whose size, lighting, and spacing are consistent with the customary use of property for the effective display of outdoor advertising as set forth in this section may be erected and maintained: PROVIDED, That this section shall not serve to restrict type 3 signs located along any portion of the primary system within an incorporated city or town or within any commercial or industrial area.

(1) General: Signs shall not be erected or maintained which (a) imitate or resemble any official traffic sign, signal, or device; (b) are erected or maintained upon trees or painted or drawn upon rocks or other natural features and which are structurally unsafe or in disrepair; or (c) have any visible moving parts.

(2) Size of signs:

(a) The maximum area for any one sign shall be six hundred seventy-two square feet with a maximum height of twenty-five feet and maximum length of fifty feet inclusive of any border and trim but excluding the base or apron, supports and other structural members: PROVIDED, That cut-outs and extensions may add up to twenty percent of additional sign area.

(b) For the purposes of this subsection, double-faced, back-to-back, or V-type signs shall be considered as two signs.

(c) Signs which exceed three hundred twenty-five square feet in area may not be double-faced (abutting and facing the same direction).

(3) Spacing of signs:

(a) Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.

(b) On limited access highways established pursuant to chapter 47.52 RCW no two signs shall be spaced less than one thousand feet apart, and no sign may be located within three thousand feet of the center of an interchange, a safety rest area, or information center, or within one thousand feet of an intersection at grade. Double-faced signs shall be prohibited. Not more than a total of five sign structures shall be permitted on both sides of the highway per mile.

(c) On noncontrolled access highways inside the boundaries of incorporated cities and towns not more than a total of four sign structures on both sides of the highway within a space of six hundred sixty feet shall be permitted with a min-

imum of one hundred feet between sign structures. In no event, however, shall more than four sign structures be permitted between platted intersecting streets or highways. On noncontrolled access highways outside the boundaries of incorporated cities and towns minimum spacing between sign structures on each side of the highway shall be five hundred feet.

(d) For the purposes of this subsection, a back-to-back sign and a V-type sign shall be considered one sign structure.

(e) Official signs, and signs advertising activities conducted on the property on which they are located shall not be considered in determining compliance with the above spacing requirements. The minimum space between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply to signs located on the same side of the highway.

(4) Lighting: Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the state. [1975 1st ex.s. c 271 § 3; 1974 ex.s. c 154 § 2; 1974 ex.s. c 138 § 2; 1971 ex.s. c 62 § 7.]

47.42.063 Signs visible from primary system in commercial and industrial areas—Preexisting signs—Permissible signs—Spacing. (1) Signs within six hundred and sixty feet of the nearest edge of the right of way lawfully erected and maintained which are visible from the main traveled way of the primary system within commercial and industrial areas on June 1, 1971 shall be permitted to remain and be maintained.

(2) Signs within six hundred and sixty feet of the nearest edge of the right of way which are visible from the main traveled way of the primary system within commercial and industrial areas whose size, lighting, and spacing are consistent with customary use as set forth in RCW 47.42.062 may be erected and maintained. Signs lawfully erected and maintained on June 1, 1971 shall be included in the determination of spacing requirements for additional signs. [1975 1st ex.s. c 271 § 4; 1971 ex.s. c 62 § 8.]

47.42.065 Signs viewable from other highways or streets—Requirements. Notwithstanding any other provision of chapter 47.42 RCW, signs may be erected and maintained more than six hundred and sixty feet from the nearest

edge of the right of way which are visible from the main traveled way of the interstate system, primary system, or scenic system when designed and oriented to be viewed from highways or streets other than the interstate system, primary system, or the scenic system and the advertising or informative contents of which may not be clearly comprehended by motorists using the main traveled way of the interstate system, primary system or scenic system. [1975 1st ex.s. c 271 § 5; 1971 ex.s. c 62 § 9.]

47.42.070 State and local prohibitions. Nothing in this chapter shall be construed to permit a person to erect or maintain any sign that is otherwise prohibited by statute or by the resolution or ordinance of any county, city, or town of the state of Washington. [1961 c 96 § 7.]

47.42.080 Public nuisance—Abatement—Penalty. (1) Any sign erected or maintained contrary to the provisions of this chapter or rules adopted hereunder that is designed to be viewed from the interstate system, the primary system, or the scenic system is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the permittee or, if there is no permittee, the owner of the property on which the sign is located, by certified mail at his last known address, that it constitutes a public nuisance and must comply with the chapter or be removed.

(2) If the permittee or owner, as the case may be, fails to comply with the chapter or remove any such sign within fifteen days after being notified to remove the sign he is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling removal of the sign. Each day the sign is maintained constitutes a separate offense.

(3) If the permittee or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the sign and property upon which it is located with a notice that the sign constitutes a public nuisance and must be removed. If the sign is not removed within fifteen days after such posting, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and destroy the sign, and for that purpose may enter upon private property without incurring liability for doing so.

(4) Nothing in this section may be construed to affect the provisions contained in RCW 47.42.102 requiring the payment of compensation upon the removal of any signs compensable under state law.

(5) Any sign erected or maintained on state highway right of way contrary to this chapter or rules adopted under it is a public nuisance, and the department is authorized to remove any such sign without notice. [1985 c 376 § 6; 1984 c 7 § 227; 1975-'76 2nd ex.s. c 55 § 1; 1971 ex.s. c 62 § 10; 1961 c 96 § 8.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

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

47.42.090 Revocation of permit. If any person is convicted of a violation of this chapter, or any rule adopted hereunder, the department may revoke any permit issued to that person under this chapter. [1984 c 7 § 228; 1961 c 96 § 9.]

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

47.42.100 Preexisting signs—Moratorium. (1) No sign lawfully erected in a protected area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to March 11, 1961, within a commercial or industrial zone within the boundaries of any city or town, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control but which does not comply with the provisions of this chapter or any regulations promulgated hereunder, shall be maintained by any person after March 11, 1965.

(2) No sign lawfully erected in a protected area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to March 11, 1961, other than within a commercial or industrial zone within the boundaries of a city or town as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control but which does not comply with the provisions of this chapter or any regulations promulgated hereunder, shall be maintained by any person after three years from March 11, 1961.

(3) No sign lawfully erected in a scenic area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to the effective date of the designation of such area as a scenic area shall be maintained by any person after three years from the effective date of the designation of any such area as a scenic area.

(4) No sign visible from the main traveled way of the interstate system, the primary system (other than type 3 signs along any portion of the primary system within an incorporated city or town or within a commercial or industrial area), or the scenic system which was there lawfully maintained immediately prior to May 10, 1971, but which does not comply with the provisions of chapter 47.42 RCW as now or hereafter amended, shall be maintained by any person (a) after three years from May 10, 1971, or (b) with respect to any highway hereafter designated by the legislature as a part of the scenic system, after three years from the effective date of the designation. Signs located in areas zoned by the governing county for predominantly commercial or industrial uses, that do not have development visible to the highway, as determined by the department, and that were lawfully installed after May 10, 1971, visible to any highway now or hereafter designated by the legislature as part of the scenic system, shall be allowed to be maintained. [1993 c 430 § 11; 1974 ex.s. c 154 § 3; 1974 ex.s. c 138 § 3; 1971 ex.s. c 62 § 11; 1963 ex.s. c 3 § 55; 1961 c 96 § 10.]

47.42.102 Compensation for removal of signs—Authorized—Applicability. (1) Except as otherwise provided in subsection (3) of this section, just compensation shall be paid upon the removal of any sign (pursuant to the provisions of chapter 47.42 RCW), lawfully erected under state law, which is visible from the main traveled way of the interstate system or the primary system.

(2) Such compensation shall be paid for the following:

(a) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(3) In no event, however, shall compensation be paid for the taking or removal of signs adjacent to the interstate system and the scenic system which became subject to removal pursuant to chapter 96, Laws of 1961 as amended by section 55, chapter 3, Laws of 1963 ex. sess. prior to May 10, 1971. [1975 1st ex.s. c 271 § 2; 1971 ex.s. c 62 § 12.]

47.42.103 Compensation for removal—Action determining amount—Payment—State's share. (1) Compensation as required by RCW 47.42.102 shall be paid to the person or persons entitled thereto for the removal of such signs. If no agreement is reached on the amount of compensation to be paid, the department may institute an action by summons and complaint in the superior court for the county in which the sign is located to obtain a determination of the compensation to be paid. If the owner of the sign is unknown and cannot be ascertained after diligent efforts to do so, the department may remove the sign upon the payment of compensation only to the owner of the real property on which the sign is located. Thereafter the owner of the sign may file an action at any time within one year after the removal of the sign to obtain a determination of the amount of compensation he should receive for the loss of the sign. If either the owner of the sign or the owner of the real property on which the sign is located cannot be found within the state, service of the summons and complaint on such person for the purpose of obtaining a determination of the amount of compensation to be paid may be by publication in the manner provided by RCW 4.28.100.

(2) If compensation is determined by judicial proceedings, the sum so determined shall be paid into the registry of the court to be disbursed upon removal of the sign by its owner or by the owner of the real property on which the sign is located. If the amount of compensation is agreed upon, the department may pay the agreed sum into escrow to be released upon the removal of the sign by its owner or the owner of the real property on which the sign is located.

(3) The state's share of compensation shall be paid from the motor vehicle fund, or if a court having jurisdiction enters a final judgment declaring that motor vehicle funds may not be used, then from the general fund. [1984 c 7 § 229; 1971 ex.s. c 62 § 13.]

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

47.42.104 Compensation for removal—Federal share—Acceptance. The department may accept any allotment of funds by the United States, or any agency thereof, appropriated to carry out the purposes of section 131 of title 23, United States Code, as now or hereafter amended. The department shall take such steps as may be necessary from time to time to obtain from the United States, or the appropriate agency thereof, funds allotted and appropriated, pursuant to section 131, for the purpose of paying the federal share of

the just compensation to be paid to sign owners and owners of real property under the terms of subsection (g) of section 131 and RCW 47.42.102, 47.42.103, and 47.42.104. [1984 c 7 § 230; 1971 ex.s. c 62 § 14.]

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

47.42.105 Unavailability of federal share. No sign, display, or device shall be required to be removed if the federal share of the just compensation to be paid upon the removal of such sign, display, or device is not available to make such payment. [1971 ex.s. c 62 § 15.]

47.42.107 Compensation for removal under local authority. (1) Just compensation shall be paid upon the removal of any existing sign pursuant to the provisions of any resolution or ordinance of any county, city, or town of the state of Washington by such county, city, or town if:

(a) Such sign was lawfully in existence on May 10, 1971 (the effective date of the Scenic Vistas Act of 1971); or

(b) Such sign was erected subsequent to May 10, 1971 (the effective date of the Scenic Vistas Act of 1971), in compliance with existing state and local law.

(2) Such compensation shall be paid in the same manner as specified in RCW 47.42.102(2) for the following:

(a) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon. [1977 ex.s. c 141 § 1.]

Severability—1977 ex.s. c 141: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 141 § 2.]

47.42.110 Agreements for federal aid. The department is authorized to enter into agreements (and such supplementary agreements as may be necessary) consistent with this chapter, with the secretary of commerce or the secretary of transportation authorized under section 131(b) of title 23, United States Code, as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, in order that the state may become eligible for increased federal aid as provided for in section 131 of title 23, United States Code, as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342. [1984 c 7 § 231; 1971 ex.s. c 62 § 16; 1961 c 96 § 11.]

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

47.42.120 Permits—Fees—Renewal—Permissible acts—Revocation. Notwithstanding any other provisions of this chapter, no sign except a sign of type 1 or 2 or those type 3 signs that advertise activities conducted upon the properties where the signs are located, may be erected or maintained without a permit issued by the department. Application for a permit shall be made to the department on forms furnished by it. The forms shall contain a statement that the owner or lessee of the land in question has consented thereto. The application shall be accompanied by a fee established by department rule to be deposited with the state treasurer to the credit

of the motor vehicle fund. Permits shall be for the remainder of the calendar year in which they are issued, and accompanying fees shall not be prorated for fractions of the year. Permits must be renewed annually through a certification process established by department rule. Advertising copy may be changed at any time without the payment of an additional fee. Assignment of permits in good standing is effective only upon receipt of written notice of assignment by the department. A permit may be revoked after hearing if the department finds that any statement made in the application or annual certification process was false or misleading, or that the sign covered is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this chapter, if the false or misleading information has not been corrected and the sign has not been brought into compliance with this chapter or rules adopted under it within thirty days after written notification. [1999 c 276 § 1; 1984 c 7 § 232; 1971 ex.s. c 62 § 17; 1961 c 96 § 12.]

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

47.42.130 Permit identification number. Every permit issued by the department shall be assigned a separate identification number, and each permittee shall fasten to each sign a weatherproof label, not larger than sixteen square inches, that shall be furnished by the department and on which shall be plainly visible the permit number. The permittee shall also place his or her name in a conspicuous position on the front or back of each sign. The failure of a sign to have such a label affixed to it is prima facie evidence that it is not in compliance with the provisions of this chapter. [1999 c 276 § 2; 1984 c 7 § 233; 1961 c 96 § 13.]

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

47.42.140 Scenic areas designated. The following portions of state highways are designated as a part of the scenic system:

(1) State route number 2 beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin.

(2) State route number 7 beginning at a junction with state route number 706 at Elbe, thence in a northerly direction to a junction with state route number 507 south of Spanaway.

(3) State route number 11 beginning at the Blanchard overcrossing, thence in a northerly direction to the limits of Larabee state park (north line of section 36, township 37 north, range 2 east).

(4) State route number 12 beginning at Kosmos southeast of Morton, thence in an easterly direction across White pass to the Oak Flat junction with state route number 410 northwest of Yakima.

(5) State route number 90 beginning at the westerly junction with West Lake Sammamish parkway in the vicinity of Issaquah, thence in an easterly direction by way of North Bend and Snoqualmie pass to a junction with state route number 970 at Cle Elum.

(6) State route number 97 beginning at a junction with state route number 970 at Virden, thence via Blewett pass to a junction with state route number 2 in the vicinity of Peshastin.

(7) State route number 106 beginning at the junction with state route number 101 in the vicinity of Union, thence northeasterly to the junction with state route number 3 in the vicinity of Belfair.

(8) State route number 123 beginning at a junction with state route number 12 at Ohanapecosh junction in the vicinity west of White pass, thence in a northerly direction to a junction with state route number 410 at Cayuse junction in the vicinity west of Chinook pass.

(9) State route number 165 beginning at the northwest entrance to Mount Rainier national park, thence in a northerly direction to a junction with state route number 162 east of the town of South Prairie.

(10) State route number 206, Mt. Spokane Park Drive, beginning at the junction with state route number 2 near the north line section 3, township 26 N, range 43 E, thence northeasterly to a point in section 28, township 28 N, range 45 E at the entrance to Mt. Spokane state park.

(11) State route number 305, beginning at the ferry slip at Winslow on Bainbridge Island, thence northwesterly by way of Agate Pass bridge to a junction with state route number 3 approximately four miles northwest of Poulsbo.

(12) State route number 410 beginning at the crossing of Scatter creek approximately six miles east of Enumclaw, thence in an easterly direction by way of Chinook pass to a junction of state route number 12 and state route number 410.

(13) State route number 706 beginning at a junction with state route number 7 at Elbe thence in an easterly direction to the southwest entrance to Mount Rainier national park.

(14) State route number 970 beginning at a junction with state route number 90 in the vicinity of Cle Elum thence via Teanaway to a junction with state route number 97 in the vicinity of Virden. [1993 c 430 § 12; 1992 c 26 § 3; 1975 c 63 § 9; 1974 ex.s. c 138 § 4. Prior: 1971 ex.s. c 73 § 28; 1971 ex.s. c 62 § 18; 1961 c 96 § 14. Cf. 1974 ex.s. c 154 § 4.]

47.42.900 Severability—1961 c 96. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 96 § 16.]

47.42.901 Severability—1963 ex.s. c 3. If any provision of *section 55 of this amendatory act shall be held to be invalid or shall be held to invalidate any provision of chapter 96, Laws of 1961 (chapter 47.42 RCW), then that provision of this amendatory act shall be of no force and effect and the provisions of chapter 96, Laws of 1961 (chapter 47.42 RCW) shall continue in effect. [1963 ex.s. c 3 § 56.]

***Reviser's note:** The reference to "section 55 of this amendatory act" is to the 1963 amendment of RCW 47.42.100.

47.42.902 Severability—1971 ex.s. c 62. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 62 § 20.]

47.42.910 Short title—1961 c 96. This chapter shall be known and may be cited as the highway advertising control act of 1961. [1961 c 96 § 17.]

47.42.911 Short title—1971 ex.s. c 62. This chapter may be cited as the "Scenic Vistas Act." [1999 c 276 § 3; 1971 ex.s. c 62 § 19.]

47.42.920 Federal requirements—Conflict and accord. If the secretary of the United States department of transportation finds any part of this chapter to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [1985 c 142 § 4.]

Chapter 47.44 RCW

FRANCHISES ON STATE HIGHWAYS

Sections

47.44.010	Wire and pipe line and tram and railway franchises—Application—Rules on hearing and notice.
47.44.020	Grant of franchise—Conditions—Hearing.
47.44.030	Removal of facilities—Notice—Reimbursement, when.
47.44.031	Removal of facilities—Limitation.
47.44.040	Franchises across joint bridges.
47.44.050	Permit for short distances.
47.44.060	Penalties.
47.44.070	Franchises to use toll facility property.
47.44.081	Exception—Leases for deployment of personal wireless service facilities.
47.44.150	Measure of damages.

47.44.010 Wire and pipe line and tram and railway franchises—Application—Rules on hearing and notice.

(1) The department of transportation may grant franchises to persons, associations, private or municipal corporations, the United States government, or any agency thereof, to use any state highway for the construction and maintenance of water pipes, flume, gas, oil or coal pipes, telephone, telegraph and electric light and power lines and conduits, trams or railways, and any structures or facilities that are part of an urban public transportation system owned or operated by a municipal corporation, agency, or department of the state of Washington other than the department of transportation, and any other such facilities. In order to minimize the disruption to traffic and damage to the roadway, the department is encouraged to develop a joint trenching policy with other affected jurisdictions so that all permittees and franchisees requiring access to ground under the roadway may do so at one time.

(2) All applications for the franchise must be made in writing and subscribed by the applicant, and describe the state highway or portion thereof over which franchise is desired and the nature of the franchise. The application must also include the identification of all jurisdictions affected by the franchise and the names of other possible franchisees who should receive notice of the application for a franchise.

(3) The department of transportation shall adopt rules providing for a hearing or an opportunity for a hearing with reasonable public notice thereof with respect to any franchise application involving the construction and maintenance of utilities or other facilities within the highway right of way which the department determines may (a) during construction, significantly disrupt the flow of traffic or use of driveways or other facilities within the right of way, or (b) during or following construction, cause a significant and adverse effect upon the surrounding environment. [2001 c 201 § 5; 1980 c 28 § 1; 1975 1st ex.s. c 46 § 1; 1967 c 108 § 7; 1963 c 70 § 1; 1961 ex.s. c 21 § 26; 1961 c 13 § 47.44.010. Prior: 1943 c 265 § 2; 1937 c 53 § 83; Rem. Supp. 1943 § 6400-83.]

Urban public transportation system defined: RCW 47.04.082.

47.44.020 Grant of franchise—Conditions—Hearing.

(1) If the department of transportation deems it to be for the public interest, the franchise may be granted in whole or in part, with or without hearing under such regulations and conditions as the department may prescribe, with or without compensation, but not in excess of the reasonable cost for investigating, handling, and granting the franchise. The department may require that the utility and appurtenances be so placed on the highway that they will, in its opinion, least interfere with other uses of the highway.

(2) If a hearing is held, it must be conducted by the department, and may be adjourned from time to time until completed. The applicant may be required to produce all facts pertaining to the franchise, and evidence may be taken for and against granting it.

(3) The facility must be made subject to removal when necessary for the construction, alteration, repair, or improvement of the highway and at the expense of the franchise holder, except that the state shall pay the cost of the removal whenever the state is entitled to receive proportionate reimbursement therefor from the United States in the cases and in the manner set forth in RCW 47.44.030. Renewal upon expiration of a franchise must be by application.

(4) A person constructing or operating such a utility on a state highway is liable to any person injured thereby for any damages incident to the work of installation or the continuation of the occupancy of the highway by the utility, and except as provided above, is liable to the state for all necessary expenses incurred in restoring the highway to a permanent suitable condition for travel. A person constructing or operating such a utility on a state highway is also liable to the state for all necessary expenses incurred in inspecting the construction and restoring the pavement or other related transportation equipment or facilities to a permanent condition suitable for travel and operation in accordance with requirements set by the department. Permit and franchise holders are also financially responsible to the department for trenching work not completed within the contractual period and for compensating for the loss of useful pavement life caused by trenching. No franchise may be granted for a longer period than fifty years, and no exclusive franchise or privilege may be granted.

(5) The holder of a franchise granted under this section is financially responsible to the department for trenching work not completed within the period of the permit and for com-

pensating for the loss of useful pavement life caused by trenching. In the case of common trenching operations, liability under this subsection will be assessed equally between the franchisees. The assessed parties may thereafter pursue claims of contribution or indemnity in accord with such fault as may be determined by arbitration or other legal action. [2001 c 201 § 6; 1980 c 28 § 2; 1975 1st ex.s. c 46 § 2; 1961 c 13 § 47.44.020. Prior: 1959 c 330 § 1; 1937 c 53 § 84; RRS § 6400-84.]

47.44.030 Removal of facilities—Notice—Reimbursement, when. If the department deems it necessary that a facility be removed from the highway for the safety of persons traveling thereon or for construction, alteration, improvement, or maintenance purposes, it shall give notice to the franchise holder to remove the facility at his or her expense and as the department orders. However, notwithstanding any contrary provision of law or of any existing or future franchise held by a public utility, the department shall pay or reimburse the owner for relocation or removal of any publicly, privately, or cooperatively owned public utility facilities when necessitated by the construction, reconstruction, relocation, or improvement of a highway that is part of the national system of interstate and defense highways for each item of cost for which the state is entitled to be reimbursed by the United States in an amount equal to at least ninety percent thereof under the provisions of section 123 of the federal aid highway act of 1958 and any other subsequent act of congress under which the state is entitled to be reimbursed by the United States in an amount equal to at least ninety percent of the cost of relocation of utility facilities on the national system of interstate and defense highways. [1984 c 7 § 234; 1961 c 13 § 47.44.030. Prior: 1959 c 330 § 2; 1937 c 53 § 85; RRS § 6400-85.]

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

47.44.031 Removal of facilities—Limitation. The provisions of RCW 47.44.030 authorizing the department to pay or reimburse the owner of a utility apply only to relocation or removal of utility facilities required by state construction contracts which are advertised for bids by the department after June 30, 1959. [1984 c 7 § 235; 1961 c 13 § 47.44.031. Prior: 1959 c 330 § 3.]

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

47.44.040 Franchises across joint bridges. Whenever any bridge exists on the route of any state highway and crosses any stream, body of water, gulch, navigable water, swamp, or other topographical formation constituting the boundary of this state or the boundary of a county, city, or town of this state and the bridge is owned or operated by this state jointly with any such county, city, or town, or with any municipal corporation of this state, or with such other state or with any county, city, or town of such other state, the department is empowered to join with the proper officials of the county, city, or town, or the municipal corporation of this state or of such other state or of such county, city, or town of such other state in granting franchises to persons or private or municipal corporations for the construction and maintenance on the bridge of water pipes, flumes, gas pipes, telephone,

telegraph, and electric light and power lines and conduits, trams and railways, and any structures or facilities that are part of an urban public transportation system owned or operated by a municipal corporation, agency, or department of the state of Washington other than the department, or any other such facilities. All such franchises shall be granted in the same manner as provided for the granting of like franchises on state highways. Any revenue accruing to the state of Washington from the franchises shall be paid to the state treasurer and deposited to the credit of the fund from which this state's share of the cost of joint operation of the bridge is paid. [1984 c 7 § 236; 1967 c 108 § 8; 1961 c 13 § 47.44.040. Prior: 1937 c 53 § 86; RRS § 6400-86.]

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

Urban public transportation system defined: RCW 47.04.082.

47.44.050 Permit for short distances. (1) The department may grant a permit to construct or maintain on, over, across, or along any state highway any water, gas, telephone, telegraph, light, power, or other such facilities when they do not extend along the state highway for a distance greater than three hundred feet. The department may require such information as it deems necessary in the application for any such permit, and may grant or withhold the permit within its discretion. Any permit granted may be canceled at any time, and any facilities remaining upon the right of way of the state highway after thirty days written notice of the cancellation are an unlawful obstruction and may be removed in the manner provided by law.

(2) The holder of a permit granted under this section is financially responsible to the department for trenching work not completed within the period of the permit and for compensating for the loss of useful pavement life caused by trenching. In the case of common trenching operations, liability under this subsection will be assessed equally between the permit holders. The assessed parties may thereafter pursue claims of contribution or indemnity in accord with such fault as may be determined by arbitration or other legal action. [2001 c 201 § 7; 1984 c 7 § 237; 1961 c 13 § 47.44.050. Prior: 1943 c 265 § 3; 1937 c 53 § 87; Rem. Supp. 1943 § 6400-87.]

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

47.44.060 Penalties. (1) Any person, firm, or corporation who constructs or maintains on, over, across, or along any state highway any water pipe, flume, gas pipe, telegraph, telephone, electric light, or power lines, or tram or railway, or any other such facilities, without having first obtained and having at all times in full force and effect a franchise or permit to do so in the manner provided by law is guilty of a misdemeanor. Each day of violation is a separate and distinct offense.

(2) Any person, firm, or corporation who constructs or maintains on, over, across, or along any state highway any water pipe, flume, gas pipe, telegraph, telephone, electric light or power lines, or tram or railway, or any other such facilities, without having first obtained and having at all times in full force and effect a franchise or permit to do so in the manner provided by law is liable for a civil penalty of one hundred dollars per calendar day beginning forty-five days from the date notice is given and until application is made for

a franchise or permit or until the facility is removed as required by notice. The state shall give notice by certified mail that a franchise or permit is required or the facility must be removed and shall include in the notice sufficient information to identify the portion of right of way in question. Notice is effective upon delivery.

(3) If a person, firm or corporation does not apply for a permit or franchise within forty-five days of notice given in accordance with subsection (2) of this section or the state determines that the facility constructed or maintained without a permit or franchise would not be granted a permit or franchise, the state may order the facility to be removed within such time period as the state may specify. If the facility is not removed, the state, in addition to any other remedy, may remove the facility at the expense of the owner. [1989 c 224 § 1; 1961 c 13 § 47.44.060. Prior: 1943 c 265 § 1; 1937 c 53 § 82; Rem. Supp. 1943 § 6400-82.]

47.44.070 Franchises to use toll facility property.
See RCW 47.56.256.

47.44.081 Exception—Leases for deployment of personal wireless service facilities. This chapter does not apply to leases issued for the deployment of personal wireless service facilities as provided in RCW 47.04.045. [2003 c 244 § 3.]

47.44.150 Measure of damages. In any action for damages against the state of Washington, its agents, contractors, or employees by reason of damages to a utility or other facility located on a state highway, the damages are limited to the cost of repair of the utility or facility and are recoverable only in those instances where the utility or facility is authorized to be located on the state highway. However, the state is subject to the penalties provided in RCW 19.122.070 (1) and (2) only if the state has failed to give a notice meeting the requirements of RCW 19.122.030 to utilities or facilities that are authorized to be located on the state highway. [1989 c 196 § 1.]

Chapter 47.46 RCW PUBLIC-PRIVATE TRANSPORTATION INITIATIVES

Sections

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47.46.180	Legislative oversight committee.

47.46.900 Effective date—1993 c 370.

47.46.010 Finding. The legislature finds and declares: It is essential for the economic, social, and environmental well-being of the state and the maintenance of a high quality of life that the people of the state have an efficient transportation system.

The ability of the state to provide an efficient transportation system will be enhanced by a public-private sector program providing for private entities to undertake all or a portion of the study, planning, design, development, financing, acquisition, installation, construction or improvement, operation, and maintenance of transportation systems and facility projects.

A public-private initiatives program will provide benefits to both the public and private sectors. Public-private initiatives provide a sound economic investment opportunity for the private sector. Such initiatives will provide the state with increased access to property development and project opportunities, financial and development expertise, and will supplement state transportation revenues, allowing the state to use its limited resources for other needed projects.

The public-private initiatives program, to the fullest extent possible, should encourage and promote business and employment opportunities for Washington state citizens.

The public-private initiatives program shall be implemented in cooperation, consultation, and with the support of the affected communities and local jurisdictions.

The secretary of transportation should be permitted and encouraged to test the feasibility of building privately funded transportation systems and facilities or segments thereof through the use of innovative agreements with the private sector. The secretary of transportation should be vested with the authority to solicit, evaluate, negotiate, and administer public-private agreements with the private sector relating to the planning, construction, upgrading, or reconstruction of transportation systems and facilities.

Agreements negotiated under a public-private initiatives program will not bestow on private entities an immediate right to construct and operate the proposed transportation facilities. Rather, agreements will grant to private entities the opportunity to design the proposed facilities, demonstrate public support for proposed facilities, and complete the planning processes required in order to obtain a future decision by the department of transportation and other state and local lead agencies on whether the facilities should be permitted and built.

Agreements negotiated under the public-private initiatives program should establish the conditions under which the private developer may secure the approval necessary to develop and operate the proposed transportation facilities; create a framework to attract the private capital necessary to finance their development; ensure that the transportation facilities will be designed, constructed, and operated in accordance with applicable local, regional, state, and federal laws and the applicable standards and policies of the department of transportation; and require a demonstration that the proposed transportation facility has the support of the affected communities and local jurisdictions.

The legislature finds that the Puget Sound congestion pricing project, selected under this chapter, raises major

transportation policy, economic, and equity concerns. These relate to the integrity of the state's high-occupancy vehicle program; the cost-effective movement of freight and goods; the diversion of traffic to local streets and arterials; and possible financial hardship to commuters. The legislature further finds that these potential economic and social impacts require comprehensive legislative review prior to advancement of the project and directs that the secretary not proceed with the implementation of the project without prior approval of the legislature.

The department of transportation should be encouraged to take advantage of new opportunities provided by federal legislation under section 1012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). That section establishes a new program authorizing federal participation in construction or improvement or improvement of publicly or privately owned toll roads, bridges, and tunnels, and allows states to leverage available federal funds as a means for attracting private sector capital. [1995 2nd sp.s. c 19 § 1; 1993 c 370 § 1.]

Effective date—1995 2nd sp.s. c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 16, 1995]." [1995 2nd sp.s. c 19 § 5.]

47.46.011 Finding—Intent—2002 c 114. The legislature finds that greater flexibility to provide state financing for projects developed under chapter 47.46 RCW will result in better use of public resources, lower financing costs, and potential savings to taxpayers. The legislature intends to: Clarify the ability of the department of transportation to use public and private financing for projects selected and developed under chapter 47.46 RCW; provide the department with specific means of state financing where that financing is in the public's best interest; provide citizens living in the impacted areas a statutory mechanism to review proposed toll rates and provide input before adoption of toll schedules by the toll authority; and prevent unreasonable delay of critical transportation projects that are essential for public safety and welfare. [2002 c 114 § 1.]

Captions not law—2002 c 114: "Captions used in this act do not constitute any part of the law." [2002 c 114 § 26.]

47.46.020 Definition. As used in this chapter, "transportation systems and facilities" means capital-related improvements and additions to the state's transportation infrastructure, including but not limited to highways, roads, bridges, vehicles, and equipment, marine-related facilities, vehicles, and equipment, park and ride lots, transit stations and equipment, transportation management systems, and other transportation-related investments. [1993 c 370 § 2.]

47.46.030 Demonstration projects—Selection—Public involvement. (1) The secretary or a designee shall solicit proposals from, and negotiate and enter into agreements with, private entities to undertake as appropriate, together with the department and other public entities, all or a portion of the study, planning, design, construction, operation, and maintenance of transportation systems and facilities, using in whole or in part public or private sources of financing.

The public-private initiatives program may develop up to six demonstration projects. Each proposal shall be weighed on its own merits, and each of the six agreements shall be negotiated individually, and as a stand-alone project.

(2) If project proposals selected prior to September 1, 1994, are terminated by the public or private sectors, the department shall not select any new projects, including project proposals submitted to the department prior to September 1, 1994, and designated by the transportation commission as placeholder projects, after June 16, 1995, until June 30, 1997.

The department, in consultation with the legislative transportation committee, shall conduct a program and fiscal audit of the public-private initiatives program for the biennium ending June 30, 1997. The department shall submit a progress report to the legislative transportation committee on the program and fiscal audit by June 30, 1996, with preliminary and final audit reports due December 1, 1996, and June 30, 1997, respectively.

The department shall develop and submit a proposed public involvement plan to the 1997 legislature to identify the process for selecting new potential projects and the associated costs of implementing the plan. The legislature must adopt the public involvement plan before the department may proceed with any activity related to project identification and selection. Following legislative adoption of the public involvement plan, the department is authorized to implement the plan and to identify potential new projects.

The public involvement plan for projects selected after June 30, 1997, shall, at a minimum, identify projects that: (a) Have the potential of achieving overall public support among users of the projects, residents of communities in the vicinity of the projects, and residents of communities impacted by the projects; (b) meet a state transportation need; (c) provide a significant state benefit; and (d) provide competition among proposers and maximum cost benefits to users. Prospective projects may include projects identified by the department or submitted by the private sector.

Projects that meet the minimum criteria established under this section and the requirements of the public involvement plan developed by the department and approved by the legislature shall be submitted to the Washington state transportation commission for its review. The commission, in turn, shall submit a list of eligible projects to the legislative transportation committee for its consideration. Forty-five days after the submission to the legislative transportation committee of the list of eligible projects, the secretary is authorized to solicit proposals for the eligible project.

(3) Prior to entering into agreements with private entities under the requirements of RCW 47.46.040 for any project proposal selected before September 1, 1994, or after June 30, 1997, except as provided for in subsections (12) and (13) of this section, the department shall require an advisory vote as provided under subsections (5) through (10) of this section.

(4) The advisory vote shall apply to project proposals selected prior to September 1, 1994, or after June 30, 1997, that receive public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project collected and submitted in accordance with the dates established in subsections (12) and (13) of this section. The advi-

sory vote shall be on the preferred alternative identified under the requirements of chapter 43.21C RCW and, if applicable, the national environmental policy act, 42 U.S.C. 4321 et seq. The execution by the department of the advisory vote process established in this section is subject to the prior appropriation of funds by the legislature for the purpose of conducting environmental impact studies, a public involvement program, local involvement committee activities, traffic and economic impact analyses, engineering and technical studies, and the advisory vote.

(5) In preparing for the advisory vote, the department shall conduct a comprehensive analysis of traffic patterns and economic impact to define the geographical boundary of the project area that is affected by the imposition of tolls or user fees authorized under this chapter. The area so defined is referred to in this section as the affected project area. In defining the affected project area, the department shall, at a minimum, undertake: (a) A comparison of the estimated percentage of residents of communities in the vicinity of the project and in other communities impacted by the project who could be subject to tolls or user fees and the estimated percentage of other users and transient traffic that could be subject to tolls or user fees; (b) an analysis of the anticipated traffic diversion patterns; (c) an analysis of the potential economic impact resulting from proposed toll rates or user fee rates imposed on residents, commercial traffic, and commercial entities in communities in the vicinity of and impacted by the project; (d) an analysis of the economic impact of tolls or user fees on the price of goods and services generally; and (e) an analysis of the relationship of the project to state transportation needs and benefits.

(6)(a) After determining the definition of the affected project area, the department shall establish a committee comprised of individuals who represent cities and counties in the affected project area; organizations formed to support or oppose the project; and users of the project. The committee shall be named the public-private local involvement committee, and be known as the local involvement committee.

(b) The members of the local involvement committee shall be: (i) An elected official from each city within the affected project area; (ii) an elected official from each county within the affected project area; (iii) two persons from each county within the affected project area who represent an organization formed in support of the project, if the organization exists; (iv) two persons from each county within the affected project area who represent an organization formed to oppose the project, if the organization exists; and (v) four public members active in a statewide transportation organization. If the committee makeup results in an even number of committee members, there shall be an additional appointment of an elected official from the county in which all, or the greatest portion of the project is located.

(c) City and county elected officials shall be appointed by a majority of the members of the city or county legislative authorities of each city or county within the affected project area, respectively. The county legislative authority of each county within the affected project area shall identify and validate organizations officially formed in support of or in opposition to the project and shall make the appointments required under this section from a list submitted by the chair of the organizations. Public members shall be appointed by the gov-

ernor. All appointments to the local involvement committee shall be made and submitted to the department of transportation no later than January 1, 1996, for projects selected prior to September 1, 1994, and no later than thirty days after the affected project area is defined for projects selected after June 30, 1997. Vacancies in the membership of the local involvement committee shall be filled by the appointing authority under (b)(i) through (v) of this subsection for each position on the committee.

(d) The local involvement committee shall serve in an advisory capacity to the department on all matters related to the execution of the advisory vote.

(e) Members of the local involvement committee serve without compensation and may not receive subsistence, lodging expenses, or travel expenses.

(7) The department shall conduct a minimum thirty-day public comment period on the definition of the geographical boundary of the project area. The department, in consultation with the local involvement committee, shall make adjustments, if required, to the definition of the geographical boundary of the affected project area, based on comments received from the public. Within fourteen calendar days after the public comment period, the department shall set the boundaries of the affected project area in units no smaller than a precinct as defined in *RCW 29.01.120.

(8) The department, in consultation with the local involvement committee, shall develop a description for selected project proposals. After developing the description of the project proposal, the department shall publish the project proposal description in newspapers of general circulation for seven calendar days in the affected project area. Within fourteen calendar days after the last day of the publication of the project proposal description, the department shall transmit a copy of the map depicting the affected project area and the description of the project proposal to the county auditor of the county in which any portion of the affected project area is located.

(9) The department shall provide the legislative transportation committee with progress reports on the status of the definition of the affected project area and the description of the project proposal.

(10) Upon receipt of the map and the description of the project proposal, the county auditor shall, within thirty days, verify the precincts that are located within the affected project area. The county auditor shall prepare the text identifying and describing the affected project area and the project proposal using the definition of the geographical boundary of the affected project area and the project description submitted by the department and shall set an election date for the submission of a ballot proposition authorizing the imposition of tolls or user fees to implement the proposed project within the affected project area, which date may be the next succeeding general election to be held in the state, or at a special election, if requested by the department. The text of the project proposal must appear in a voter's pamphlet for the affected project area. The department shall pay the costs of publication and distribution. The special election date must be the next date for a special election provided under *RCW 29.13.020 that is at least sixty days but, if authorized under *RCW 29.13.020, no more than ninety days after the receipt of the final map and project description by the auditor. The

department shall pay the cost of an election held under this section.

(11) Notwithstanding any other provision of law, the department may contract with a private developer of a selected project proposal to conduct environmental impact studies, a public involvement program, and engineering and technical studies funded by the legislature. For projects subject to this subsection, the department shall not enter into an agreement under RCW 47.46.040 prior to the advisory vote on the preferred alternative.

(12) Subsections (5) through (10) of this section shall not apply to project proposals selected prior to September 1, 1994, that have no organized public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project, collected and submitted after September 1, 1994, and by thirty calendar days after June 16, 1995.

(13) Subsections (5) through (10) of this section shall not apply to project proposals selected after June 30, 1997, that have no organized public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project, collected and submitted by ninety calendar days after project selection. [2002 c 114 § 3; 1996 c 280 § 1; 1995 2nd sp.s. c 19 § 2; 1993 c 370 § 3.]

***Reviser's note:** RCW 29.01.120 and 29.13.020 were recodified as RCW 29A.04.121 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Effective date—1996 c 280: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1996]." [1996 c 280 § 2.]

Effective date—1995 2nd sp.s. c 19: See note following RCW 47.46.010.

47.46.040 Demonstration projects—Terms of agreements—Public participation. (1) The secretary or a designee shall consult with legal, financial, and other experts within and outside state government in the negotiation and development of the agreements.

(2) Agreements may provide for private ownership of the projects during the construction period. After completion and final acceptance of each project or discrete segment thereof, the agreement may provide for state ownership of the transportation systems and facilities and lease to the private entity unless the state elects to provide for ownership of the facility by the private entity during the term of the agreement.

The state may lease each of the demonstration projects, or applicable project segments, to the private entities for operating purposes for up to fifty years.

(3) The department may exercise any power possessed by it to facilitate the development, construction, financing operation, and maintenance of transportation projects under this section. Agreements for maintenance services entered into under this section shall provide for full reimbursement for services rendered by the department or other state agencies. Agreements for police services for projects, involving state highway routes, developed under agreements shall be entered into with the Washington state patrol. The agreement

for police services shall provide that the state patrol will be reimbursed for costs on a comparable basis with the costs incurred for comparable service on other state highway routes. The department may provide services for which it is reimbursed, including but not limited to preliminary planning, environmental certification, and preliminary design of the demonstration projects.

(4) The plans and specifications for each project constructed under this section shall comply with the department's standards for state projects. A facility constructed by and leased to a private entity is deemed to be a part of the state highway system for purposes of identification, maintenance, and enforcement of traffic laws and for the purposes of applicable sections of this title. Upon reversion of the facility to the state, the project must meet all applicable state standards. Agreements shall address responsibility for reconstruction or renovations that are required in order for a facility to meet all applicable state standards upon reversion of the facility to the state.

(5) For the purpose of facilitating these projects and to assist the private entity in the financing, development, construction, and operation of the transportation systems and facilities, the agreements may include provisions for the department to exercise its authority, including the lease of facilities, rights of way, and airspace, exercise of the power of eminent domain, granting of development rights and opportunities, granting of necessary easements and rights of access, issuance of permits and other authorizations, protection from competition, remedies in the event of default of either of the parties, granting of contractual and real property rights, liability during construction and the term of the lease, authority to negotiate acquisition of rights of way in excess of appraised value, and any other provision deemed necessary by the secretary.

(6) The agreements entered into under this section may include provisions authorizing the state to grant necessary easements and lease to a private entity existing rights of way or rights of way subsequently acquired with public or private financing. The agreements may also include provisions to lease to the entity airspace above or below the right of way associated or to be associated with the private entity's transportation facility. In consideration for the reversion rights in these privately constructed facilities, the department may negotiate a charge for the lease of airspace rights during the term of the agreement for a period not to exceed fifty years. If, after the expiration of this period, the department continues to lease these airspace rights to the private entity, it shall do so only at fair market value. The agreement may also provide the private entity the right of first refusal to undertake projects utilizing airspace owned by the state in the vicinity of the public-private project.

(7) Agreements under this section may include any contractual provision that is necessary to protect the project revenues required to repay the costs incurred to study, plan, design, finance, acquire, build, install, operate, enforce laws, and maintain toll highways, bridges, and tunnels and which will not unreasonably inhibit or prohibit the development of additional public transportation systems and facilities. Agreements under this section must secure and maintain liability insurance coverage in amounts appropriate to protect the project's viability and may address state indemnification of

the private entity for design and construction liability where the state has approved relevant design and construction plans.

(8) Agreements entered into under this section shall include a process that provides for public involvement in decision making with respect to the development of the projects.

(9)(a) In carrying out the public involvement process required in subsection (8) of this section, the private entity shall proactively seek public participation through a process appropriate to the characteristics of the project that assesses and demonstrates public support among: Users of the project, residents of communities in the vicinity of the project, and residents of communities impacted by the project.

(b) The private entity shall conduct a comprehensive public involvement process that provides, periodically throughout the development and implementation of the project, users and residents of communities in the affected project area an opportunity to comment upon key issues regarding the project including, but not limited to: (i) Alternative sizes and scopes; (ii) design; (iii) environmental assessment; (iv) right of way and access plans; (v) traffic impacts; (vi) tolling or user fee strategies and tolling or user fee ranges; (vii) project cost; (viii) construction impacts; (ix) facility operation; and (x) any other salient characteristics.

(c) If the affected project area has not been defined, the private entity shall define the affected project area by conducting, at a minimum: (i) A comparison of the estimated percentage of residents of communities in the vicinity of the project and in other communities impacted by the project who could be subject to tolls or user fees and the estimated percentage of other users and transient traffic that could be subject to tolls or user fees; (ii) an analysis of the anticipated traffic diversion patterns; (iii) an analysis of the potential economic impact resulting from proposed toll rates or user fee rates imposed on residents, commercial traffic, and commercial entities in communities in the vicinity of and impacted by the project; (iv) an analysis of the economic impact of tolls or user fees on the price of goods and services generally; and (v) an analysis of the relationship of the project to state transportation needs and benefits.

The agreement may require an advisory vote by users of and residents in the affected project area.

(d) In seeking public participation, the private entity shall establish a local involvement committee or committees comprised of residents of the affected project area, individuals who represent cities and counties in the affected project area, organizations formed to support or oppose the project, if such organizations exist, and users of the project. The private entity shall, at a minimum, establish a committee as required under the specifications of RCW 47.46.030(6)(b) (ii) and (iii) and appointments to such committee shall be made no later than thirty days after the project area is defined.

(e) Local involvement committees shall act in an advisory capacity to the department and the private entity on all issues related to the development and implementation of the public involvement process established under this section.

(f) The department and the private entity shall provide the legislative transportation committee and local involvement committees with progress reports on the status of the

public involvement process including the results of an advisory vote, if any occurs.

(10) Nothing in this chapter limits the right of the secretary and his or her agents to render such advice and to make such recommendations as they deem to be in the best interests of the state and the public. [2002 c 114 § 16; 2001 c 64 § 14; 1995 2nd sp.s. c 19 § 3; 1993 c 370 § 4.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Effective date—1995 2nd sp.s. c 19: See note following RCW 47.46.010.

47.46.050 Financial arrangements. (1) The department may enter into agreements using federal, state, and local financing in connection with the projects, including without limitation, grants, loans, and other measures authorized by section 1012 of ISTEA, and to do such things as necessary and desirable to maximize the funding and financing, including the formation of a revolving loan fund to implement this section.

(2) Agreements entered into under this section may authorize the private entity to lease the facilities within a designated area or areas from the state and to impose user fees or tolls within the designated area to allow a reasonable rate of return on investment, as established through a negotiated agreement between the state and the private entity. The negotiated agreement shall determine a maximum development fee and, where appropriate, a maximum rate of return on investment, based on project and financing characteristics. If the negotiated rate of return on investment or development fee is not affected, the private entity may establish and modify toll rates and user fees.

(3) Agreements that include a maximum rate of return may establish "incentive" rates of return beyond the negotiated maximum rate of return on investment. The incentive rates of return shall be designed to provide financial benefits to the affected public jurisdictions and the private entity, given the attainment of various safety, performance, or transportation demand management goals. The incentive rates of return shall be negotiated in the agreement.

(4) Agreements shall require that over the term of the ownership or lease the user fees or toll revenues be applied only to payment of:

(a) The capital outlay costs for the project, including the costs associated with planning, design, development, financing, construction, improvement, operations, toll collection, maintenance, and administration of the project;

(b) The reimbursement to the state for all costs associated with an election as required under RCW 47.46.030, the costs of project review and oversight, and technical and law enforcement services;

(c) The establishment of a fund to assure the adequacy of maintenance expenditures; and

(d) A reasonable return on investment to the private entity. A negotiated agreement shall not extend the term of the ownership or lease beyond the period of time required for payment of the private entity's capital outlay costs for the project under this subsection. [2002 c 114 § 17; 1995 2nd sp.s. c 19 § 4; 1993 c 370 § 5.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Effective date—1995 2nd sp.s. c 19: See note following RCW 47.46.010.

47.46.060 Deferral of taxes—Application—Repayment.

(1) Any person, including the department of transportation and any private entity or entities, may apply for deferral of taxes on the site preparation for, the construction of, the acquisition of any related machinery and equipment which will become a part of, and the rental of equipment for use in the state route number 16 corridor improvements project under this chapter. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the project.

(3) The department of transportation or a private entity granted a tax deferral under this section shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax. The project is operationally complete under this section when the collection of tolls is commenced for the state route number 16 improvements covered by the deferral.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the department of transportation or a private entity granted a deferral under this section.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the private entity. Transfer of ownership does not terminate the deferral.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section. [2002 c 114 § 18; 1998 c 179 § 4.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Finding—1998 c 179: See note following RCW 35.21.718.

47.46.070 Use of state bonds on certain projects. (1) To the extent that the legislature specifically appropriates funding for a project developed under this chapter using the proceeds of bonds issued by the state, an agreement for the design or construction of the project entered into by the sec-

retary must incorporate provisions that are consistent with the use of the state financing provided by the appropriation.

(2) The secretary shall amend existing agreements or execute new agreements to comply with subsection (1) of this section.

(3) If the secretary is unable to reach agreement with other parties on contractual provisions providing for state financing, the secretary shall not enter into an agreement, or shall take no action with respect to an agreement, or shall exercise termination provisions, whichever option in the secretary's determination will result in the lowest net cost to the state. [2002 c 114 § 4.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.080 State toll facilities authorized for projects.

The department may provide for the establishment and construction of state toll bridge facilities upon any public highways of this state together with approaches to them under agreements entered into under this chapter to develop such facilities. A state toll bridge facility authorized under this section includes, but is not limited to, the construction of an additional toll bridge, including approaches, adjacent to and within two miles of an existing bridge, the imposition of tolls on both bridges, and the operation of both bridges as one toll facility. [2002 c 114 § 5.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.090 Citizen advisory committee—Tolls. (1) A citizen advisory committee must be created for any project developed under this chapter that imposes toll charges for use of a transportation facility. The governor shall appoint nine members to the committee, all of whom must be permanent residents of the affected project area, as that term is used in RCW 47.46.030.

(2) The citizen advisory committee shall serve in an advisory capacity to the commission on all matters related to the imposition of tolls. Members of the committee shall serve without compensation.

(3) No toll charge may be imposed or modified unless the citizen advisory committee has been given at least twenty days to review and comment on any proposed toll charge schedule. In setting toll rates, the commission shall give consideration to any recommendations of the citizen advisory committee. [2002 c 114 § 6.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.100 Tolls—Setting—Lien on. (1) The commission shall fix the rates of toll and other charges for all toll bridges built under this chapter that are financed primarily by bonds issued by the state. Subject to RCW 47.46.090, the commission may impose and modify toll charges from time to time as conditions warrant.

(2) In establishing toll charges, the commission shall give due consideration to any required costs for operating and maintaining the toll bridge or toll bridges, including the cost of insurance, and to any amount required by law to meet the redemption of bonds and interest payments on them.

(3) The toll charges must be imposed in amounts sufficient to:

(a) Provide annual revenue sufficient to provide for annual operating and maintenance expenses, except as provided in RCW 47.56.245;

(b) Make payments required under RCW 47.56.165 and 47.46.140, including insurance costs and the payment of principal and interest on bonds issued for any particular toll bridge or toll bridges; and

(c) Repay the motor vehicle fund under RCW 47.46.110, 47.56.165, and 47.46.140.

(4) The bond principal and interest payments, including repayment of the motor vehicle fund for amounts transferred from that fund to provide for such principal and interest payments, constitute a first direct and exclusive charge and lien on all tolls and other revenues from the toll bridge concerned, subject to operating and maintenance expenses. [2002 c 114 § 7.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.105 Tolls—Collection. (1) Tolls may be collected by any system that identifies the correct toll and collects the payment. Systems may include manual cash collection, electronic toll collection, and photo monitoring systems.

(a) "Electronic toll collection system" means a system of collecting tolls or charges that is capable of charging the account of the toll patron the appropriate toll or charge by electronic transmission from the motor vehicle to the toll collection system, which information is used to charge the appropriate toll or charge to the patron's account. The department shall adopt rules that allow an open standard for automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits. The rules must also allow for multiple vendors providing electronic payment devices or transponders as technology permits.

(b) "Photo monitoring system" means a vehicle sensor installed to work in conjunction with an electronic toll collection system in a toll facility that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated within a toll facility.

(c) No photograph, digital photograph, microphotograph, videotape, or other recorded image may be used for any purpose other than toll enforcement, nor retained longer than necessary to verify that tolls are paid, or to enforce toll evasion violations.

(2) The department shall adopt rules to govern toll collection. [2004 c 230 § 2.]

47.46.110 Tolls—Term, use. (1) The commission shall retain toll charges on any existing and future facilities constructed under this chapter and financed primarily by bonds issued by the state until:

(a) All costs of investigation, financing, acquisition of property, and construction advanced from the motor vehicle

fund have been fully repaid, except as provided in subsection (2)(b) of this section;

(b) Obligations incurred in constructing that facility have been fully paid; and

(c) The motor vehicle fund is fully repaid under RCW 47.46.140.

(2) This section does not:

(a) Prohibit the use of toll revenues to fund maintenance, operations, or management of facilities constructed under this chapter except as prohibited by RCW 47.56.245;

(b) Require repayment of funds specifically appropriated as a nonreimbursable state financial contribution to a project.

(3) Notwithstanding the provisions of subsection (2)(a) of this section, upon satisfaction of the conditions enumerated in subsection (1) of this section:

(a) The facility must be operated as a toll-free facility; and

(b) The operation, maintenance, upkeep, and repair of the facility must be paid from funds appropriated for the use of the department for the construction and maintenance of the primary state highways of the state of Washington. [2002 c 114 § 8.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.120 Toll increases in excess of fiscal growth factor. Pursuant to RCW 43.135.055, the legislature authorizes the transportation commission to increase bridge tolls in excess of the fiscal growth factor. [2002 c 114 § 9.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.130 Use of state bond proceeds. Proceeds of the sale of bonds issued by the state for projects constructed under this chapter must be deposited in the state treasury to the credit of a special account designated for those purposes. Those proceeds must be expended only for the purposes enumerated in this chapter, for payment of the expense incurred in the issuance and sale of any such bonds, and to repay the motor vehicle fund for any sums advanced to pay the cost of surveys, location, design, development, right-of-way, and other activities related to the financing and construction of the bridge and its approaches. [2002 c 114 § 10.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.140 Repayment of motor vehicle fund from toll charges. Toll charges must be used to repay the motor vehicle fund consistent with RCW 47.56.165 for any amounts transferred from the motor vehicle fund to the highway bond retirement fund under RCW 47.10.847 to provide for bond retirement and interest on bonds issued for the Tacoma Narrows public-private initiative project. Toll charges must remain on any facility financed by bonds issued by the state for a length of time necessary to repay the motor vehicle fund for any amounts expended from that fund for the design, development, right-of-way, financing, construction, maintenance, repair, or operation of the toll facility or for amounts transferred from the motor vehicle fund to the highway bond retirement fund under RCW 47.10.847 to provide for bond

retirement and interest on bonds issued for the Tacoma Narrows public-private initiative project. Funds specifically appropriated as a nonreimbursable state financial contribution to the project do not require repayment. [2002 c 114 § 12.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.150 Alteration not a new proposal. If a proposal is or has been selected for the design, development, construction, maintenance, or operation of transportation systems or facilities under this chapter, subsequent agreements may be made to implement portions of the proposal that modify the proposal or that do not incorporate all the features of the proposal. Any such modified agreement does not require the solicitation or consideration of additional proposals for all or any portion of the services rendered under that modified agreement. Modified agreements may provide for the reimbursement of expenses and fees incurred under earlier agreements. [2002 c 114 § 13.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.160 Applicable rules and statutes. All projects designed, constructed, and operated under this chapter must comply with all applicable rules and statutes in existence at the time the agreement is executed, including but not limited to the following provisions: Chapter 39.12 RCW, this title, *RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and 49 C.F.R. Part 21. [2002 c 114 § 14.]

***Reviser's note:** RCW 41.06.380 was repealed by 2002 c 354 § 403, effective July 1, 2005.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.170 Application of RCW 47.46.040 and 47.46.050. RCW 47.46.040 and 47.46.050 apply only to those agreements that include private sources of financing in whole or in part. [2002 c 114 § 15.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.180 Legislative oversight committee. A legislative oversight committee is established to monitor and report on the progress, execution, and efficiency of design-build contracts issued under this chapter. The legislative oversight committee will be comprised of one legislator from each caucus of each chamber of the legislature. The leadership of each caucus shall appoint one member from his or her respective caucus to serve on the legislative oversight committee authorized by this section. [2002 c 114 § 25.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.900 Effective date—1993 c 370. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 370 § 7.]

(2004 Ed.)

Chapter 47.48 RCW CLOSING HIGHWAYS AND RESTRICTING TRAFFIC

Sections

47.48.010	Closure or restriction authorized—Restriction for urban public transportation system use.
47.48.020	Notice of closure or restriction—Emergency closure.
47.48.031	Emergency closures by state patrol.
47.48.040	Penalty.
47.48.050	Transportation of radioactive or hazardous cargo—Definition—Violation, penalty.

Closure of Camas slough: RCW 88.28.055.

47.48.010 Closure or restriction authorized—Restriction for urban public transportation system use.

Whenever the condition of any state highway, county road, or city street, either newly or previously constructed, altered, repaired, or improved, or any part thereof is such that for any reason its unrestricted use or continued use by vehicles or by any class of vehicles will greatly damage that state highway, county road, or city street, or will be dangerous to traffic, or it is being constructed, altered, repaired, improved, or maintained in such a manner as to require that use of the state highway, county road, or city street, or any portion thereof be closed or restricted as to all vehicles or any class of vehicles for any period of time, the secretary, if it is a state highway, the county legislative authority, if it is a county road, or the governing body of any city or town, if it is a city street, is authorized to close the state highway, county road, or city street, as the case may be, to travel by all vehicles or by any class of vehicles, or may declare a lower maximum speed for any class of vehicles, for such a definite period as it shall determine. Nothing in the law of this state prevents the secretary, county legislative authority, or governing body of any city or town from classifying vehicles according to gross weight, axle weight, height, width, length, braking area, performance, vehicle combinations, or tire equipment for the purposes of this section, or from restricting the use of any portion of any state highway, county road, or city street, as the case may be, to its use by an urban public transportation system. [1984 c 7 § 238; 1977 ex.s. c 216 § 1; 1967 c 108 § 9; 1961 c 13 § 47.48.010. Prior: 1937 c 53 § 65; RRS § 6400-65; prior: 1929 c 214 § 1; 1927 c 232 § 1; 1921 c 21 § 1; RRS § 6839.]

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

Restrictions on public highways to prevent damage: RCW 46.44.080.

Urban public transportation system defined: RCW 47.04.082.

47.48.020 Notice of closure or restriction—Emergency closure.

Before any state highway, county road, or city street is closed to, or the maximum speed limit thereon reduced for, all vehicles or any class of vehicles, a notice thereof including the effective date shall be published in one issue of a newspaper of general circulation in the county or city or town in which such state highway, county road, or city street or any portion thereof to be closed is located; and a like notice shall be posted on or prior to the date of publication of such notice in a conspicuous place at each end of the state highway, county road, or city street or portion thereof to be closed or restricted: PROVIDED, That no such state highway, county road, or city street or portion thereof may be

closed sooner than three days after the publication and the posting of the notice herein provided for: PROVIDED, HOWEVER, That in cases of emergency or conditions in which the maximum time the closure will be in effect is twelve hours or less the proper officers may, without publication or delay, close state highways, county roads, and city streets temporarily by posting notices at each end of the closed portion thereof and at all intersecting state highways if the closing be of a portion of a state highway, at all intersecting state highways and county roads if the closing be a portion of a county road, and at all intersecting city streets if the closing be of a city street. In all emergency cases or conditions in which the maximum time the closure will be in effect is twelve hours or less, as herein provided, the orders of the proper authorities shall be immediately effective. [1982 c 145 § 5; 1977 ex.s. c 216 § 2; 1961 c 13 § 47.48.020. Prior: 1937 c 53 § 66, part; RRS § 6400-66, part; prior: 1921 c 21 § 2, part; RRS § 6840, part. Formerly RCW 47.48.020 and 47.48.030.]

47.48.031 Emergency closures by state patrol. (1) Whenever the chief or another officer of the state patrol determines on the basis of a traffic investigation that an emergency exists or less than safe road conditions exist due to human-caused or natural disasters or extreme weather conditions upon any state highway, or any part thereof, state patrol officers may determine and declare closures and temporarily reroute traffic from any such affected highway.

(2) Any alteration of vehicular traffic on any state highway due to closure in emergency conditions is effective until such alteration has been approved or altered by the secretary of transportation or other department of transportation authorities in their local respective jurisdictions.

(3) All state highway closures by officers of the state patrol shall be immediately reported to the secretary of transportation and to other authorities in their local jurisdictions. [1981 c 197 § 1.]

47.48.040 Penalty. When any state highway, county road, or city street or portion thereof shall have been closed, or when the maximum speed limit thereon shall have been reduced, for all vehicles or any class of vehicles, as by law provided, any person, firm or corporation disregarding such closing or reduced speed limit shall be guilty of a misdemeanor, and shall in addition to any penalty for violation of the provisions of this section, be liable in any civil action instituted in the name of the state of Washington or the county or city or town having jurisdiction for any damages occasioned to such state highway, county road, or city street, as the case may be, as the result of disregarding such closing or reduced speed limit. [1977 ex.s. c 216 § 3; 1961 c 13 § 47.48.040. Prior: 1937 c 53 § 67; RRS § 6400-67; prior: 1921 c 21 § 3; RRS § 6841.]

47.48.050 Transportation of radioactive or hazardous cargo—Definition—Violation, penalty. The chief or other officer of the Washington state patrol may prohibit the transportation of placarded radioactive or hazardous cargo over the highways of the state, or a portion thereof, if weather or other conditions create a substantial risk to public safety.

For the purposes of this section hazardous cargo shall mean hazardous materials as defined in RCW 70.136.020(1). Violation of an order issued under this section constitutes a misdemeanor. [1983 c 205 § 1.]

Regulations on notice of prohibition on radioactive or hazardous cargo: RCW 47.01.270.

Chapter 47.50 RCW

HIGHWAY ACCESS MANAGEMENT

Sections

47.50.010	Findings—Access.
47.50.020	Definitions—Access.
47.50.030	Regulating connections.
47.50.040	Access permits.
47.50.050	Permit fee.
47.50.060	Permit review process.
47.50.070	Permit conditions.
47.50.080	Permit removal.
47.50.090	Access management standards.

47.50.010 Findings—Access. (1) The legislature finds that:

(a) Regulation of access to the state highway system is necessary in order to protect the public health, safety, and welfare, to preserve the functional integrity of the state highway system, and to promote the safe and efficient movement of people and goods within the state;

(b) The development of an access management program, in accordance with this chapter, which coordinates land use planning decisions by local governments and investments in the state highway system, will serve to control the proliferation of connections and other access approaches to and from the state highway system. Without such a program, the health, safety, and welfare of the residents of this state are at risk, due to the fact that uncontrolled access to the state highway system is a significant contributing factor to the congestion and functional deterioration of the system; and

(c) The development of an access management program in accordance with this chapter will enhance the development of an effective transportation system and increase the traffic-carrying capacity of the state highway system and thereby reduce the incidences of traffic accidents, personal injury, and property damage or loss; mitigate environmental degradation; promote sound economic growth and the growth management goals of the state; reduce highway maintenance costs and the necessity for costly traffic operations measures; lengthen the effective life of transportation facilities in the state, thus preserving the public investment in such facilities; and shorten response time for emergency vehicles.

(2) In furtherance of these findings, all state highways are hereby declared to be controlled access facilities as defined in RCW 47.50.020, except those highways that are defined as limited access facilities in chapter 47.52 RCW.

(3) It is the policy of the legislature that:

(a) The access rights of an owner of property abutting the state highway system are subordinate to the public's right and interest in a safe and efficient highway system; and

(b) Every owner of property which abuts a state highway has a right to reasonable access to that highway, unless such access has been acquired pursuant to chapter 47.52 RCW, but may not have the right of a particular means of access. The right of access to the state highway may be restricted if, pur-

suant to local regulation, reasonable access can be provided to another public road which abuts the property.

(4) The legislature declares that it is the purpose of this chapter to provide a coordinated planning process for the permitting of access points on the state highway system to effectuate the findings and policies under this section.

(5) Nothing in this chapter shall affect the right to full compensation under section 16, Article I of the state Constitution. [1991 c 202 § 1.]

Captions not law—Effective date—Severability—1991 c 202: "Section captions and part headings as used in this act do not constitute any part of the law." [1991 c 202 § 22.]

Effective date—1991 c 202: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 202 § 24.]

Severability—1991 c 202: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 202 § 25.]

47.50.020 Definitions—Access. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Controlled access facility" means a transportation facility to which access is regulated by the governmental entity having jurisdiction over the facility. Owners or occupants of abutting lands and other persons have a right of access to or from such facility at such points only and in such manner as may be determined by the governmental entity.

(2) "Connection" means approaches, driveways, turnouts, or other means of providing for the right of access to or from controlled access facilities on the state highway system.

(3) "Permitting authority" means the department for connections in unincorporated areas or a city or town within incorporated areas which are authorized to regulate access to state highways pursuant to chapter 47.24 RCW. [1991 c 202 § 2.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.030 Regulating connections. (1) Vehicular access and connections to or from the state highway system shall be regulated by the permitting authority in accordance with the provisions of this chapter in order to protect the public health, safety, and welfare.

(2) The department shall by July 1, 1992, adopt administrative procedures pursuant to chapter 34.05 RCW which establish state highway access standards and rules for its issuance and modification of access permits, closing of unpermitted connections, revocation of permits, and waiver provisions in accordance with this chapter. The department shall consult with the association of Washington cities and obtain concurrence of the city design standards committee as established by RCW 35.78.030 in the development and adoption of rules for access standards for city streets designated as state highways under chapter 47.24 RCW.

(3) Cities and towns shall, no later than July 1, 1993, adopt standards for access permitting on streets designated as state highways which meet or exceed the department's standards, provided that such standards may not be inconsistent with standards adopted by the department. [1991 c 202 § 3.]

(2004 Ed.)

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.040 Access permits. (1) No connection to a state highway shall be constructed or altered without obtaining an access permit in accordance with this chapter in advance of such action. A permitting authority has the authority to deny access to the state highway system at the location specified in the permit until the permittee constructs or alters the connection in accordance with the permit requirements.

(2) The cost of construction or alteration of a connection shall be borne by the permittee, except for alterations which are not required by law or administrative rule, but are made at the request of and for the convenience of the permitting authority. The permittee, however, shall bear the cost of alteration of any connection which is required by the permitting authority due to increased or altered traffic flows generated by changes in the permittee's facilities or nature of business conducted at the location specified in the permit.

(3) Except as otherwise provided in this chapter, an unpermitted connection is subject to closure by the appropriate permitting authority which shall have the right to install barriers across or remove the connection. When the permitting authority determines that a connection is unpermitted and subject to closure, it shall provide reasonable notice of its impending action to the owner of property served by the connection. The permitting authority's procedures for providing notice and preventing the operation of unpermitted connections shall be adopted by rule. [1991 c 202 § 4.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.050 Permit fee. The department shall establish by rule a schedule of fees for permit applications made to the department. The fee shall be nonrefundable and shall be used only to offset the costs of administering the access permit review process and the costs associated with administering the provisions of this chapter. [1991 c 202 § 5.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.060 Permit review process. The review process for access permit applications made by the department shall be as follows: Any person seeking an access permit shall file an application with the department. The department by rule shall establish application form and content requirements. The fee required by RCW 47.50.050 must accompany the applications. [1991 c 202 § 6.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.070 Permit conditions. The permitting authority may issue a permit subject to any conditions necessary to carry out the provisions of this chapter, including, but not limited to, requiring the use of a joint-use connection. The permitting authority may revoke a permit if the applicant fails to comply with the conditions upon which the issuance of the permit was predicated. [1991 c 202 § 7.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.080 Permit removal. (1) Unpermitted connections to the state highway system in existence on July 1, 1990, shall not require the issuance of a permit and may continue to provide access to the state highway system, unless the permitting authority determines that such a connection does not meet minimum acceptable standards of highway safety. However, a permitting authority may require that a permit be obtained for such a connection if a significant change occurs in the use, design, or traffic flow of the connection or of the state highway to which it provides access. If a permit is not obtained, the connection may be closed pursuant to RCW 47.50.040.

(2) Access permits granted prior to adoption of the permitting authorities' standards shall remain valid until modified or revoked. Access connections to state highways identified on plats and subdivisions approved prior to July 1, 1991, shall be deemed to be permitted pursuant to chapter 202, Laws of 1991. The permitting authority may, after written notification, under rules adopted in accordance with RCW 47.50.030, modify or revoke an access permit granted prior to adoption of the standards by requiring relocation, alteration, or closure of the connection if a significant change occurs in the use, design, or traffic flow of the connection.

(3) The permitting authority may issue a nonconforming access permit after finding that to deny an access permit would leave the property without a reasonable means of access to the public roads of this state. Every nonconforming access permit shall specify limits on the maximum vehicular use of the connection and shall be conditioned on the availability of future alternative means of access for which access permits can be obtained. [1991 c 202 § 8.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.090 Access management standards. (1) The department shall develop, adopt, and maintain an access control classification system for all routes on the state highway system, the purpose of which shall be to provide for the implementation and continuing applications of the provision of this chapter.

(2) The principal component of the access control classification system shall be access management standards, the purpose of which shall be to provide specific minimum standards to be adhered to in the planning for and approval of access to state highways.

(3) The control classification system shall be developed consistent with the following:

(a) The department shall, no later than January 1, 1993, adopt rules setting forth procedures governing the implementation of the access control classification system required by this chapter. The rule shall provide for input from the entities described in (b) of this subsection as well as for public meetings to discuss the access control classification system. Nothing in this chapter shall affect the validity of the department's existing or subsequently adopted rules concerning access to the state highway system. Such rules shall remain in effect until repealed or replaced by the rules required by this chapter.

(b) The access control classification system shall be developed in cooperation with counties, cities and towns, the department of community, trade, and economic development,

regional transportation planning organizations, and other local governmental entities, and for city streets designated as state highways pursuant to chapter 47.24 RCW, adopted with the concurrence of the city design standards committee.

(c) The rule required by this section shall provide that assignment of a road segment to a specific access category be made in consideration of the following criteria:

(i) Local land use plans and zoning, as set forth in comprehensive plans;

(ii) The current functional classification as well as potential future functional classification of each road on the state highway system;

(iii) Existing and projected traffic volumes;

(iv) Existing and projected state, local, and metropolitan planning organization transportation plans and needs;

(v) Drainage requirements;

(vi) The character of lands adjoining the highway;

(vii) The type and volume of traffic requiring access;

(viii) Other operational aspects of access;

(ix) The availability of reasonable access by way of county roads and city streets to a state highway; and

(x) The cumulative effect of existing and projected connections on the state highway system's ability to provide for the safe and efficient movement of people and goods within the state.

(d) Access management standards shall include, but not be limited to, connection location standards, safety factors, design and construction standards, desired levels of service, traffic control devices, and effective maintenance of the roads. The standards shall also contain minimum requirements for the spacing of connections, intersecting streets, roads, and highways.

(e) An access control category shall be assigned to each segment of the state highway system by July 1, 1993. [1995 c 399 § 124; 1991 c 202 § 9.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

Chapter 47.52 RCW

LIMITED ACCESS FACILITIES

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47.52.011	"Existing highway" defined.
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- 47.52.105 Acquisition and construction to preserve limited access or reduce required compensation.
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- 47.52.195 Review and appeal on petition of abutter.
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- 47.52.210 State facility within city or town—Title to city or town streets incorporated therein.
- 47.52.220 Personal wireless service facilities—Approach permit—Report.

Description, plans of highways, filing: RCW 47.28.025, 47.28.026.

Port districts, toll facilities: Chapter 53.34 RCW.

Speed limits on limited access facilities: RCW 46.61.430.

47.52.001 Declaration of policy. (1) Unrestricted access to and from public highways has resulted in congestion and peril for the traveler. It has caused undue slowing of all traffic in many areas. The investment of the public in highway facilities has been impaired and highway facilities costing vast sums of money will have to be relocated and reconstructed.

(2) Personal wireless service is a critical part of the state's infrastructure. The rapid deployment of personal wireless service facilities is critical to ensure public safety, network access, quality of service, and rural economic development.

(3) It is, therefore, the declared policy of this state to limit access to the highway facilities of this state in the interest of highway safety and for the preservation of the investment of the public in such facilities, and to assure that the use of rights of way of limited access facilities accommodate the deployment of personal wireless service facilities consistent with these interests. [2004 c 131 § 1; 1961 c 13 § 47.52.001. Prior: 1951 c 167 § 1.]

47.52.010 "Limited access facility" defined. For the purposes of this chapter, a "limited access facility" is defined as a highway or street especially designed or designated for through traffic, and over, from, or to which owners or occupants of abutting land, or other persons, have no right or easement, or only a limited right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility, or for any other reason to accomplish the purpose of a limited access facility. Such highways or streets may be parkways, from which vehicles forming part of an urban public transportation system, trucks, buses, or other commercial vehicles may be excluded; or they may be freeways open to use by all customary forms of street and highway traffic, including vehicles forming a part of an urban

public transportation system. [1967 c 108 § 10; 1961 c 13 § 47.52.010. Prior: 1951 c 167 § 2; 1947 c 202 § 1; Rem. Supp. 1947 § 6402-60.]

Urban public transportation system defined: RCW 47.04.082.

47.52.011 "Existing highway" defined. For the purposes of this chapter, the term "existing highway" shall include all highways, roads and streets duly established, constructed, and in use. It shall not include new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated. [1961 c 13 § 47.52.011. Prior: 1951 c 167 § 3.]

47.52.020 Powers of highway authorities—State facility, county road crossings. The highway authorities of the state, counties, and incorporated cities and towns, acting alone or in cooperation with each other, or with any federal, state, or local agency, or any other state having authority to participate in the construction and maintenance of highways, may plan, designate, establish, regulate, vacate, alter, improve, construct, maintain, and provide limited access facilities for public use wherever the authority or authorities are of the opinion that traffic conditions, present or future, will justify the special facilities. However, upon county roads within counties, the state or county authorities are subject to the consent of the county legislative authority, except that where a state limited access facility crosses a county road the department may, without the consent of the county legislative authority, close off the county road so that it will not intersect such limited access facility.

The department may, in constructing or relocating any state highway, cross any county road at grade without obtaining the consent of the county legislative authority, and in so doing may revise the alignment of the county road to the extent that the department finds necessary for reasons of traffic safety or practical engineering considerations. [1984 c 7 § 239; 1961 c 13 § 47.52.020. Prior: 1957 c 235 § 2; prior: 1953 c 30 § 1; 1951 c 167 § 4; 1947 c 202 § 2, part; Rem. Supp. 1947 § 6402-61, part.]

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

47.52.025 Additional powers—Controlling use of limited access facilities—High-occupancy vehicle lanes. Highway authorities of the state, counties, and incorporated cities and towns, in addition to the specific powers granted in this chapter, shall also have, and may exercise, relative to limited access facilities, any and all additional authority, now or hereafter vested in them relative to highways or streets within their respective jurisdictions, and may regulate, restrict, or prohibit the use of such limited access facilities by various classes of vehicles or traffic. Such highway authorities may reserve any limited access facility or portions thereof, including designated lanes or ramps for the exclusive or preferential use of public transportation vehicles, privately owned buses, or private motor vehicles carrying not less than a specified number of passengers when such limitation will increase the efficient utilization of the highway facility or will aid in the conservation of energy resources. Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all time or at spec-

ified times of day or on specified days. [1974 ex.s. c 133 § 1; 1961 c 13 § 47.52.025. Prior: 1957 c 235 § 3; prior: 1951 c 167 § 5; 1947 c 202 § 2, part; Rem. Supp. 1947 § 6402-61, part.]

High-occupancy vehicle lanes: RCW 46.61.165.

47.52.026 Rules—Control of vehicles entering—Ramp closure, metering, or restrictions—Notice. (1) The department may adopt rules for the control of vehicles entering any state limited access highway as it deems necessary (a) for the efficient or safe flow of traffic traveling upon any part of the highway or connections with it or (b) to avoid exceeding federal, state, or regional air pollution standards either along the highway corridor or within an urban area served by the highway.

(2) Rules adopted by the department pursuant to subsection (1) of this section may provide for the closure of highway ramps or the metering of vehicles entering highway ramps or the restriction of certain classes of vehicles entering highway ramps (including vehicles with less than a specified number of passengers), and any such restrictions may vary at different times as necessary to achieve the purposes mentioned in subsection (1) of this section.

(3) Vehicle restrictions authorized by rules adopted pursuant to this section are effective when proper notice is given by any police officer, or by appropriate signals, signs, or other traffic control devices. [1984 c 7 § 240; 1974 ex.s. c 133 § 3.]

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

47.52.027 Standards and rules for interstate and defense highways—Construction, maintenance, access. The secretary of transportation may adopt design standards, rules, and regulations relating to construction, maintenance, and control of access of the national system of interstate and defense highways within this state as it deems advisable to properly control access thereto, to preserve the traffic-carrying capacity of such highways, and to provide the maximum degree of safety to users thereof. In adopting such standards, rules, and regulations the secretary shall take into account the policies, rules, and regulations of the United States secretary of commerce and the federal highway administration relating to the construction, maintenance, and operation of the system of interstate and defense highways. The standards, rules, and regulations so adopted by the secretary shall constitute the public policy of this state and shall have the force and effect of law. [1977 ex.s. c 151 § 62; 1961 c 13 § 47.52.027. Prior: 1959 c 319 § 35. Formerly RCW 47.28.160.]

Nonmotorized traffic may be prohibited: RCW 46.61.160.

47.52.040 Design—Entrance and exit restricted—Closure of intersecting roads. The highway authorities of the state, counties and incorporated cities and towns may so design any limited access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended; and the determination of design by such authority shall be conclusive and final. In this connection such highway authorities may divide and separate any limited access facility into separate roadways by the construction of raised curbs, central dividing sections, or other physical

separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes and other devices. No person shall have any right of ingress or egress to, from, or across limited access facilities to or from abutting lands, except at designated points at which access may be permitted by the highway authorities upon such terms and conditions as may be specified from time to time: PROVIDED, That any intersecting streets, roads or highways, not made a part of such facility, shall be deemed closed at the right of way line by the designation and construction of said facility and without the consent of any other party or the necessity of any other legal proceeding for such closing, notwithstanding any laws to the contrary. [1961 c 13 § 47.52.040. Prior: 1955 c 75 § 1; 1947 c 202 § 3; Rem. Supp. 1947 § 6402-62.]

47.52.041 Closure of intersecting roads—Rights of abutters. No person, firm or corporation, private or municipal, shall have any claim against the state, city or county by reason of the closing of such streets, roads or highways as long as access still exists or is provided to such property abutting upon the closed streets, roads or highways. Circuity of travel shall not be a compensable item of damage. [1961 c 13 § 47.52.041. Prior: 1955 c 75 § 2.]

47.52.042 Closure of intersecting roads—Other provisions not affected. RCW 47.52.040 and 47.52.041 shall not be construed to affect provisions for establishment, notice, hearing and court review of any decision establishing a limited access facility on an existing highway pursuant to chapter 47.52 RCW. [1961 c 13 § 47.52.042. Prior: 1955 c 75 § 3.]

47.52.050 Acquisition of property. (1) For the purpose of this chapter the highway authorities of the state, counties and incorporated cities and towns, respectively, or in cooperation one with the other, may acquire private or public property and property rights for limited access facilities and service roads, including rights of access, air, view and light, by gift, devise, purchase, or condemnation, in the same manner as such authorities are now or hereafter may be authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions. Except as otherwise provided in subsection (2) of this section all property rights acquired under the provisions of this chapter shall be in fee simple. In the acquisition of property or property rights for any limited access facility or portion thereof, or for any service road in connection therewith, the state, county, incorporated city and town authority may, in its discretion, acquire an entire lot, block or tract of land, if by so doing the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for the limited access facility.

(2) The highway authorities of the state, counties, and incorporated cities and towns may acquire by gift, devise, purchase, or condemnation a three dimensional air space corridor in fee simple over or below the surface of the ground, together with such other property in fee simple and other property rights as are needed for the construction and opera-

tion of a limited access highway facility, but only if the acquiring authority finds that the proposal will not:

(a) impair traffic safety on the highway or interfere with the free flow of traffic; or

(b) permit occupancy or use of the air space above or below the highway which is hazardous to the operation of the highway. [1971 ex.s. c 39 § 1; 1961 c 13 § 47.52.050. Prior: 1947 c 202 § 4; Rem. Supp. 1947 § 6402-63.]

Award of costs in air space corridor acquisitions: RCW 8.25.073.

Right of way donations: Chapter 47.14 RCW.

47.52.060 Court process expedited. Court proceedings necessary to acquire property or property rights for purposes of this chapter shall take precedence over all other causes not involving the public interest in all courts to the end that the provision for limited access facilities may be expedited. [1961 c 13 § 47.52.060. Prior: 1947 c 202 § 5; Rem. Supp. 1947 § 6402-64.]

47.52.070 Establishment of facility—Grade separation—Service roads. The designation or establishment of a limited access facility shall, by the authority making the designation or establishment, be entered upon the records or minutes of such authority in the customary manner for the keeping of such records or minutes. The state, counties and incorporated cities and towns may provide for the elimination of intersections at grade of limited access facilities with existing state or county roads, and with city or town streets, by grade separation or service road, or by closing off such roads and streets at the right of way boundary line of such limited access facility; and after the establishment of any such facility, no highway or street which is not part of said facility, shall intersect the same at grade. No city or town street, county road, or state highway, or any other public or private way, shall be opened into or connect with any such limited access facility without the consent and previous approval of the highway authority of the state, county, incorporated city or town having jurisdiction over such limited access facility. Such consent and approval shall be given only if the public interest shall be served thereby. [1961 c 13 § 47.52.070. Prior: 1951 c 167 § 10; 1947 c 202 § 6; Rem. Supp. 1947 § 6402-65.]

47.52.080 Abutter's right of access protected—Compensation. No existing public highway, road, or street shall be constructed as a limited access facility except upon the waiver, purchase, or condemnation of the abutting owner's right of access thereto as herein provided. In cases involving existing highways, if the abutting property is used for business at the time the notice is given as provided in RCW 47.52.133, the owner of such property shall be entitled to compensation for the loss of adequate ingress to or egress from such property as business property in its existing condition at the time of the notice provided in RCW 47.52.133 as for the taking or damaging of property for public use. [1983 c 3 § 127; 1961 c 13 § 47.52.080. Prior: 1955 c 54 § 2; 1951 c 167 § 11; 1947 c 202 § 7; Rem. Supp. 1947 § 6402-66.]

47.52.090 Cooperative agreements—Urban public transportation systems—Title to highway—Traffic regu-

lations—Underground utilities and overcrossings—Passenger transportation—Storm sewers—City street crossings. The highway authorities of the state, counties, incorporated cities and towns, and municipal corporations owning or operating an urban public transportation system are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, construction, maintenance, use, regulation, or vacation of limited access facilities in their respective jurisdictions to facilitate the purposes of this chapter. Any such agreement may provide for the exclusive or nonexclusive use of a portion of the facility by street cars, trains, or other vehicles forming a part of an urban public transportation system and for the erection, construction, and maintenance of structures and facilities of such a system including facilities for the receipt and discharge of passengers. Within incorporated cities and towns the title to every state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over the highway from the time it is declared to be operational as a limited access facility by the department, subject to the following provisions:

(1) Cities and towns shall regulate all traffic restrictions on such facilities except as provided in RCW 46.61.430, and all regulations adopted are subject to approval of the department before becoming effective. Nothing herein precludes the state patrol or any county, city, or town from enforcing any traffic regulations and restrictions prescribed by state law, county resolution, or municipal ordinance.

(2) The city, town, or franchise holder shall at its own expense maintain its underground facilities beneath the surface across the highway and has the right to construct additional facilities underground or beneath the surface of the facility or necessary overcrossings of power lines and other utilities as may be necessary insofar as the facilities do not interfere with the use of the right of way for limited access highway purposes. The city or town has the right to maintain any municipal utility and the right to open the surface of the highway. The construction, maintenance until permanent repair is made, and permanent repair of these facilities shall be done in a time and manner authorized by permit to be issued by the department or its authorized representative, except to meet emergency conditions for which no permit will be required, but any damage occasioned thereby shall promptly be repaired by the city or town itself, or at its direction. Where a city or town is required to relocate overhead facilities within the corporate limits of a city or town as a result of the construction of a limited access facility, the cost of the relocation shall be paid by the state.

(3) Cities and towns have the right to grant utility franchises crossing the facility underground and beneath its surface insofar as the franchises are not inconsistent with the use of the right of way for limited access facility purposes and the franchises are not in conflict with state laws. The department is authorized to enforce, in an action brought in the name of the state, any condition of any franchise that a city or town has granted. No franchise for transportation of passengers in motor vehicles may be granted on such highways without the approval of the department, except cities and towns are not required to obtain a franchise for the operation of municipal

vehicles or vehicles operating under franchises from the city or town operating within the corporate limits of a city or town and within a radius not exceeding eight miles outside the corporate limits for public transportation on such facilities, but these vehicles may not stop on the limited access portion of the facility to receive or to discharge passengers unless appropriate special lanes or deceleration, stopping, and acceleration space is provided for the vehicles.

Every franchise or permit granted any person by a city or town for use of any portion of a limited access facility shall require the grantee or permittee to restore, permanently repair, and replace to its original condition any portion of the highway damaged or injured by it. Except to meet emergency conditions, the construction and permanent repair of any limited access facility by the grantee of a franchise shall be in a time and manner authorized by a permit to be issued by the department or its authorized representative.

(4) The department has the right to use all storm sewers that are adequate and available for the additional quantity of run-off proposed to be passed through such storm sewers.

(5) The construction and maintenance of city streets over and under crossings and surface intersections of the limited access facility shall be in accordance with the governing policy entered into between the department and the association of Washington cities on June 21, 1956, or as such policy may be amended by agreement between the department and the association of Washington cities. [1984 c 7 § 241; 1977 ex.s. c 78 § 8; 1967 c 108 § 11; 1961 c 13 § 47.52.090. Prior: 1957 c 235 § 4; 1947 c 202 § 8; Rem. Supp. 1947 § 6402-67.]

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

Urban public transportation system defined: RCW 47.04.082.

47.52.100 Existing roads and streets as service roads.

In connection with the development of any limited access facility the state, county or incorporated city or town highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, construct, maintain and vacate local service roads and streets, or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized for limited access facilities under the terms of this chapter. If, in their opinion such local service roads and streets are necessary or desirable, such local service roads or streets shall be separated from the limited access facility by such means or devices designated as necessary or desirable by the proper authority. [1961 c 13 § 47.52.100. Prior: 1947 c 202 § 9; Rem. Supp. 1947 § 6402-68.]

47.52.105 Acquisition and construction to preserve limited access or reduce required compensation. Whenever, in the opinion of the department, frontage or service roads in connection with limited access facilities are not feasible either from an engineering or economic standpoint, the department may acquire private or public property by purchase or condemnation and construct any road, street, or highway connecting to or leading into any other road, street, or highway, when by so doing, it will preserve a limited access facility or reduce compensation required to be paid to an owner by reason of reduction in or loss of access. The department shall provide by agreement with a majority of the

legislative authority of the county or city concerned as to location, future maintenance, and control of any road, street, or highway to be so constructed. The road, street, or highway need not be made a part of the state highway system or connected thereto, but may upon completion by the state be turned over to the county or city for location, maintenance, and control pursuant to the agreement as part of the system of county roads or city streets. [1984 c 7 § 242; 1967 c 117 § 1; 1961 c 13 § 47.52.105. Prior: 1955 c 63 § 1.]

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

47.52.110 Marking of facility with signs. After the opening of any new and additional limited access highway facility, or after the designation and establishment of any existing street or highway, as included the particular highways and streets or those portions thereof designated and established, shall be physically marked and indicated as follows: By the erection and maintenance of such signs as in the opinion of the respective authorities may be deemed proper, indicating to drivers of vehicles that they are entering a limited access area and that they are leaving a limited access area. [1961 c 13 § 47.52.110. Prior: 1947 c 202 § 10; Rem. Supp. 1947 § 6402-69.]

47.52.120 Violations specified—Exceptions—Penalty. (1) After the opening of any limited access highway facility, it shall be unlawful for any person to: (a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on limited access facilities; (b) make a left turn or semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (c) drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (d) drive any vehicle into the limited access facility from a local service road except through an opening provided for that purpose in the dividing curb, dividing section, or dividing line which separates such service road from the limited access facility proper; (e) stop or park any vehicle or equipment within the right of way of such facility, including the shoulders thereof, except at points specially provided therefor, and to make only such use of such specially provided stopping or parking points as is permitted by the designation thereof: PROVIDED, That this subsection (1)(e) shall not apply to authorized emergency vehicles, law enforcement vehicles, assistance vans, or to vehicles stopped for emergency causes or equipment failures; (f) travel to or from such facility at any point other than a point designated by the establishing authority as an approach to the facility or to use an approach to such facility for any use in excess of that specified by the establishing authority.

(2) For the purposes of this section, an assistance van is a vehicle rendering aid free of charge to vehicles with equipment or fuel problems. The state patrol shall establish by rule additional standards and operating procedures, as needed, for assistance vans.

(3) Any person who violates this section is guilty of a misdemeanor and upon arrest and conviction therefor shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the city or county

jail for not less than five days nor more than ninety days, or by both fine and imprisonment.

(4) Nothing contained in this section prevents the highway authority from proceeding to enforce the prohibitions or limitations of access to such facilities by injunction or as otherwise provided by law. [2003 c 53 § 262; 1987 c 330 § 748; 1985 c 149 § 1; 1961 c 13 § 47.52.120. Prior: 1959 c 167 § 1; 1947 c 202 § 11; Rem. Supp. 1947 § 6402-70.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

47.52.121 Prior determinations validated. Any determinations of an authority establishing a limited access facility subsequent to March 19, 1947, and prior to March 16, 1951, in connection with new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated, and all acquisitions of property or access rights in connection therewith are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such authority, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings. [1961 c 13 § 47.52.121. Prior: 1951 c 167 § 12.]

47.52.131 Consideration of local conditions—Report to local authorities—Conferences—Proposed plan. When the department is planning a limited access facility through a county or an incorporated city or town, the department or its staff, before any hearing, shall give careful consideration to available data as to the county or city's comprehensive plan, land use pattern, present and potential traffic volume of county roads and city streets crossing the proposed facility, origin and destination traffic surveys, existing utilities, the physical appearance the facility will present, and other pertinent surveys and, except as provided in RCW 47.52.134, shall submit to the county and city officials for study a report showing how these factors have been taken into account and how the proposed plan for a limited access facility will serve public convenience and necessity, together with the locations and access and egress plans, and over and under crossings that are under consideration. This report shall show the proposed approximate right of way limits and profile of the facility with relation to the existing grade, and shall discuss in a general manner plans for landscaping treatment, fencing, and illumination, and shall include sketches of typical roadway sections for the roadway itself and any necessary structures such as viaducts or bridges, subways, or tunnels.

Conferences shall be held on the merits of this state report and plans and any proposed modification or alternate proposal of the county, city, or town in order to attempt to reach an agreement between the department and the county or city officials. As a result of the conference, the proposed plan, together with any modifications, shall be prepared by the department and presented to the county or city for inspection and study. [1987 c 200 § 1; 1984 c 7 § 243; 1965 ex.s. c 75 § 1.]

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

(2004 Ed.)

47.52.133 Local public hearing—Notices. Except as provided in RCW 47.52.134, the transportation commission and the highway authorities of the counties and incorporated cities and towns, with regard to facilities under their respective jurisdictions, prior to the establishment of any limited access facility, shall hold a public hearing within the county, city, or town wherein the limited access facility is to be established to determine the desirability of the plan proposed by such authority. Notice of such hearing shall be given to the owners of property abutting the section of any existing highway, road, or street being established as a limited access facility, as indicated in the tax rolls of the county, and in the case of a state limited access facility, to the county and/or city or town. Such notice shall be by United States mail in writing, setting forth a time for the hearing, which time shall be not less than fifteen days after mailing of such notice. Notice of such hearing also shall be given by publication not less than fifteen days prior to such hearing in one or more newspapers of general circulation within the county, city, or town. Such notice by publication shall be deemed sufficient as to any owner or reputed owner or any unknown owner or owner who cannot be located. Such notice shall indicate a suitable location where plans for such proposal may be inspected. [1987 c 200 § 2; 1981 c 95 § 1; 1965 ex.s. c 75 § 2.]

47.52.134 When access reports and hearings not required. Access reports and hearings on the establishment of limited access facilities are not required if:

(1) The limited access facility would lie wholly within state or federal lands and the agency or agencies with jurisdiction of the land agree to the access plan; or

(2) The access rights to the affected section of roadway have previously been purchased or established by others; or

(3) The limited access facility would not significantly change local road use, and all affected local agencies and abutting property owners agree in writing to waive a formal hearing on the establishment of the facility after publication of a notice of opportunity for a limited access hearing. This notice of opportunity for a limited access hearing shall be given in the same manner as required for published notice of hearings under RCW 47.52.133. If the authority specified in the notice receives a request for a hearing from one or more abutting property owners or affected local agencies on or before the date stated in the notice, an access report shall be submitted as provided in RCW 47.52.131 and a hearing shall be held. Notice of the hearing shall be given by mail and publication as provided in RCW 47.52.133. [1987 c 200 § 3.]

47.52.135 Hearing procedure. At the hearing any representative of the county, city or town, or any other person may appear and be heard even though such official or person is not an abutting property owner. Such hearing may, at the option of the highway authority, be conducted in accordance with federal laws and regulations governing highway design public hearings. The members of such authority shall preside, or may designate some suitable person to preside as examiner. The authority shall introduce by competent evidence a summary of the proposal for the establishment of a limited access facility and any evidence that supports the adoption of the plan as being in the public interest. At the conclusion of such evidence, any person entitled to notice who has entered

a written appearance shall be deemed a party to this hearing for purposes of this chapter and may thereafter introduce, either in person or by counsel, evidence and statements or counterproposals bearing upon the reasonableness of the proposal. Any such evidence and statements or counterproposals shall receive reasonable consideration by the authority before any proposal is adopted. Such evidence must be material to the issue before the authority and shall be presented in an orderly manner. [1982 c 189 § 5; 1981 c 67 § 29; 1977 c 77 § 2; 1965 ex.s. c 75 § 3.]

Effective date—1982 c 189: See note following RCW 34.12.020.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

47.52.137 Adoption of plan—Service of findings and order—Publication of resume—Finality—Review. Following the conclusion of such hearing the authority shall adopt a plan with such modifications, if any, it deems proper and necessary. Its findings and order shall be in writing and copies thereof shall be served by United States mail upon all persons having entered a written appearance at such hearing, and in the case of a state limited access facility, the county commissioners of the county affected and the mayor of the city or town affected. The authority shall also cause a resume of such plan to be published once each week for two weeks in one or more newspapers of general circulation within such county, city or town beginning not less than ten days after the mailing of such findings and order. Such determination by the authority shall become final within thirty days after such mailing unless a review is taken as hereinafter provided. In case of an appeal, the order shall be final as to all parties not appealing. [1965 ex.s. c 75 § 4.]

47.52.139 Local approval of plan—Disapproval, request for review. Upon receipt of the findings and order adopting a plan, the county, city, or town may notify the department of transportation of its approval of such plan in writing, in which event such plan shall be final.

In the event that a county, city, or town does not approve the plan, the county, city, or town shall file its disapproval in writing with the secretary of transportation within thirty days after the mailing thereof to such mayor or county commissioner. Along with the written disapproval shall be filed a written request for a hearing before a board of review, hereinafter referred to as the board. The request for hearing shall set forth the portions of the plan of the department to which the county, city, or town objects, and shall include every issue to be considered by the board. The hearing before a board of review shall be governed by RCW 47.52.150 through 47.52.190, as now or hereafter amended. [1977 ex.s. c 151 § 63; 1965 ex.s. c 75 § 5.]

47.52.145 Modification of adopted plan without further public hearings, when. Whenever after the final adoption of a plan for a limited access highway by the transportation commission, an additional design public hearing with respect to the facility or any portion thereof is conducted pursuant to federal law resulting in a revision of the design of the limited access plan, the commission may modify the previously adopted limited access plan to conform to the revised

design without further public hearings providing the following conditions are met:

(1) As compared with the previously adopted limited access plan, the revised plan will not require additional or different right of way with respect to that section of highway for which the design has been revised, in excess of five percent by area; and

(2) If the previously adopted limited access plan was modified by a board of review convened at the request of a county, city, or town, the legislative authority of the county, city, or town shall approve any revisions of the plan which conflict with modifications ordered by the board of review. [1981 c 95 § 2; 1977 c 77 § 1.]

47.52.150 State facility through city or town—Board of review, composition and appointment. Upon request for a hearing before the board by any county, city, or town, a board consisting of five members shall be appointed as follows: The mayor or the county commissioners, as the case may be shall appoint two members of the board, of which one shall be a duly elected official of the city, county, or legislative district, except that of the legislative body of the county, city, or town requesting the hearing, subject to confirmation by the legislative body of the city or town; the secretary of transportation shall appoint two members of the board; and one member shall be selected by the four members thus appointed. Such fifth member shall be a licensed civil engineer or a recognized professional city or town planner, who shall be chairman of the board. In the case both the county and an included city or town request a hearing, the board shall consist of nine members appointed as follows: The mayor and the county commission shall each appoint two members from the elective officials of their respective jurisdictions, and of the four thus selected no more than two thereof may be members of a legislative body of the county, city, or town. The secretary of transportation shall appoint four members of the board. One member shall be selected by the members thus selected, and such ninth member shall be a licensed civil engineer or a recognized city or town planner, who shall be chairman of the board. Such boards as are provided by this section shall be appointed within thirty days after the receipt of such a request by the secretary. In the event the secretary or a county, city, or town shall not appoint members of the board or members thus appointed fail to appoint a fifth or ninth member of the board, as the case may be, either the secretary or the county, city, or town may apply to the superior court of the county in which the county, city, or town is situated to appoint the member or members of the board in accordance with the provisions of this chapter. [1977 ex.s. c 151 § 64; 1963 c 103 § 3; 1961 c 13 § 47.52.150. Prior: 1959 c 242 § 3; 1957 c 235 § 7.]

47.52.160 State facility through city or town—Hearing—Notice—Evidence—Determination of issues. The board shall fix a reasonable time not more than thirty days after the date of its appointment and shall indicate the time and place for the hearing, and shall give notice to the county, city, or town and to the department. At the time and place fixed for the hearing, the state and the county, city, or town shall present all of their evidence with respect to the objec-

tions set forth in the request for the hearing before the board, and if either the state, the county, or the city or town fails to do so, the board may determine the issues upon such evidence as may be presented to it at the hearing. [1984 c 7 § 244; 1963 c 103 § 4; 1961 c 13 § 47.52.160. Prior: 1957 c 235 § 8.]

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

47.52.170 State facility through city or town—Hearing—Procedure. No witness's testimony shall be received unless he shall have been duly sworn, and the board may cause all oral testimony to be stenographically reported. Members of the board, its duly authorized representatives, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do; to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of their office. [1961 c 13 § 47.52.170. Prior: 1957 c 235 § 9.]

47.52.180 State facility through city or town—Hearing—Findings of board—Modification of proposed plan by stipulation. At the conclusion of such hearing, the board shall consider the evidence taken and shall make specific findings with respect to the objections and issues within thirty days after the hearing, which findings shall approve, disapprove, or modify the proposed plan of the department of transportation. Such findings shall be final and binding upon both parties. Any modification of the proposed plan of the department of transportation made by the board of review may thereafter be modified by stipulation of the parties. [1977 ex.s. c 151 § 65; 1977 c 77 § 3; 1961 c 13 § 47.52.180. Prior: 1957 c 235 § 10.]

47.52.190 State facility through city or town—Hearing—Assistants—Costs—Reporter. The board shall employ such assistance and clerical help as is necessary to perform its duties. The costs thereby incurred and incident to the conduct of the hearing, necessary expenses, and fees, if any, of members of the board shall be borne equally by the county, city, or town requesting the hearing and the department. When oral testimony is stenographically reported, the department shall provide a reporter at its expense. [1984 c 7 § 245; 1963 c 103 § 5; 1961 c 13 § 47.52.190. Prior: 1957 c 235 § 11.]

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

47.52.195 Review and appeal on petition of abutter. An abutting property owner may petition for review in the superior court of the state of Washington in the county where the limited access facility is to be located. Such review and any appeal therefrom shall be considered and determined by said court upon the record of the authority in the manner, under the conditions and subject to the limitations and with

the effect specified in the Administrative Procedure Act, chapter 34.05 RCW, as amended. [1965 ex.s. c 75 § 6.]

47.52.200 Law enforcement jurisdiction within city or town. Whenever any limited access highway facility passes within or through any incorporated city or town the municipal police officers of such city or town, the sheriff of the county wherein such city or town is situated and officers of the Washington state patrol shall have independent and concurrent jurisdiction to enforce any violation of the laws of this state occurring thereon: PROVIDED, The Washington state patrol shall bear primary responsibility for the enforcement of laws of this state relating to motor vehicles within such limited access highway facilities. [1961 c 122 § 1.]

47.52.210 State facility within city or town—Title to city or town streets incorporated therein. (1) Whenever the transportation commission adopts a plan for a limited access highway to be constructed within the corporate limits of a city or town which incorporates existing city or town streets, title to such streets shall remain in the city or town, and the provisions of RCW 47.24.020 as now or hereafter amended shall continue to apply to such streets until such time that the highway is operated as either a partially or fully controlled access highway. Title to and full control over that portion of the city or town street incorporated into the limited access highway shall be vested in the state upon a declaration by the secretary of transportation that such highway is operational as a limited access facility, but in no event prior to the acquisition of right of way for such highway including access rights, and not later than the final completion of construction of such highway.

(2) Upon the completion of construction of a state limited access highway within a city or town, the department of transportation may relinquish to the city or town streets constructed or improved as a functional part of the limited access highway, slope easements, landscaping areas, and other related improvements to be maintained and operated by the city or town in accordance with the limited access plan. Title to such property relinquished to a city or town shall be conveyed by a deed executed by the secretary of transportation and duly acknowledged. Relinquishment of such property to the city or town may be expressly conditioned upon the maintenance of access control acquired by the state and the continued operation of such property as a functional part of the limited access highway. [1981 c 95 § 3; 1977 ex.s. c 78 § 3.]

47.52.220 Personal wireless service facilities—Approach permit—Report. (1) The department shall authorize an off and on approach to partially controlled limited access highways for the placement and service of facilities providing personal wireless services.

(a) The approach shall be in a legal manner not to exceed thirty feet in width.

(b) The approach may be specified at a point satisfactory to the department at or between designated highway stations.

(c) The permit holder may use the approach for ingress and egress from the highway for construction or maintenance of the personal wireless service facility during nonpeak traffic hours so long as public safety is not adversely affected.

The permit holder may use the approach for ingress and egress at any time for the construction of the facility if public safety is not adversely affected and if construction will not substantially interfere with traffic flow during peak traffic periods.

(2) The department shall authorize the approach by an annual permit, which may only be canceled upon one hundred eighty days' written notice to the permit holder.

(a) The department shall set the yearly cost of a permit in rule.

(b) The permit shall be assignable to the contractors and subcontractors of the permit holder. The permit shall also be transferable to a new owner following the sale or merger of the permit holder.

(3) For the purposes of this section:

(a) "Personal wireless services" means any federally licensed personal wireless service.

(b) "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures.

(4) The department shall present a report to the house of representatives technology, telecommunications, and energy committee and the senate technology and communications committee on the implementation of the permit process and the cost of permits by January 15, 2004, and by the first day of the legislative session following adoption of any rule increasing the cost of permits. [2003 c 188 § 2.]

Chapter 47.56 RCW

STATE TOLL BRIDGES, TUNNELS, AND FERRIES

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47.56.010 Definitions. As used in this chapter:

(1) "Toll bridge" means a bridge constructed or acquired under this chapter, upon which tolls are charged, together with all appurtenances, additions, alterations, improvements, and replacements thereof, and the approaches thereto, and all lands and interests used therefor, and buildings and improvements thereon.

(2) "Toll road" means any express highway, superhighway, or motorway at such locations and between such termini as may be established by law, and constructed or to be constructed as a limited access highway under the provisions of this chapter by the department, and shall include, but not be limited to, all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service facilities, communications facilities, and administration, storage, and other buildings that the department may deem necessary for the operation of the project, together with all property, rights, easements, and interests that may be acquired by the department for the construction or the operation of the project, all of which shall be conducted in the same manner and under the same procedure as provided for the establishing, constructing, operating, and maintaining of toll bridges by the department, insofar as those procedures are reasonably consistent and applicable.

(3) "1950 Tacoma Narrows bridge" means the bridge crossing the Tacoma Narrows that was opened to vehicle travel in 1950. [2002 c 114 § 2; 1984 c 7 § 246; 1961 c 13 § 47.56.010. Prior: 1953 c 220 § 1; 1937 c 173 § 1, part; RRS § 6524-1, part.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

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

47.56.030 Powers and duties regarding toll facilities—Purchasing. (1) Except as permitted under chapter 47.46 RCW:

(a) The department of transportation shall have full charge of the construction of all toll bridges and other toll facilities including the Washington state ferries, and the operation and maintenance thereof.

(b) The transportation commission shall determine and establish the tolls and charges thereon, and shall perform all duties and exercise all powers relating to the financing, refinancing, and fiscal management of all toll bridges and other toll facilities including the Washington state ferries, and bonded indebtedness in the manner provided by law.

(c) The department shall have full charge of design of all toll facilities.

(d) Except as provided in this section, the department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract in the manner of state highway construction immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department is authorized to negotiate contracts for any amount without bid under (d)(i) and (ii) of this subsection:

(i) Emergency contracts, in order to make repairs to ferries or ferry terminal facilities or removal of such facilities whenever continued use of ferries or ferry terminal facilities constitutes a real or immediate danger to the traveling public or precludes prudent use of such ferries or facilities; and

(ii) Single source contracts for vessel dry dockings, when there is clearly and legitimately only one available bidder to conduct dry dock-related work for a specific class or classes of vessels. The contracts may be entered into for a single vessel dry docking or for multiple vessel dry dockings for a period not to exceed two years.

(2) The department shall proceed with the procurement of materials, supplies, services, and equipment needed for the support, maintenance, and use of a ferry, ferry terminal, or other facility operated by Washington state ferries, in accordance with chapter 43.19 RCW except as follows:

(a) Except as provided in (d) of this subsection, when the secretary of the department of transportation determines in writing that the use of invitation for bid is either not practicable or not advantageous to the state and it may be necessary to make competitive evaluations, including technical or performance evaluations among acceptable proposals to complete the contract award, a contract may be entered into by use of a competitive sealed proposals method, and a formal request for proposals solicitation. Such formal request for proposals solicitation shall include a functional description of the needs and requirements of the state and the significant factors.

(b) When purchases are made through a formal request for proposals solicitation the contract shall be awarded to the responsible proposer whose competitive sealed proposal is determined in writing to be the most advantageous to the state taking into consideration price and other evaluation factors set forth in the request for proposals. No significant factors may be used in evaluating a proposal that are not specified in

the request for proposals. Factors that may be considered in evaluating proposals include but are not limited to: Price; maintainability; reliability; commonality; performance levels; life cycle cost if applicable under this section; cost of transportation or delivery; delivery schedule offered; installation cost; cost of spare parts; availability of parts and service offered; and the following:

(i) The ability, capacity, and skill of the proposer to perform the contract or provide the service required;

(ii) The character, integrity, reputation, judgment, experience, and efficiency of the proposer;

(iii) Whether the proposer can perform the contract within the time specified;

(iv) The quality of performance of previous contracts or services;

(v) The previous and existing compliance by the proposer with laws relating to the contract or services;

(vi) Objective, measurable criteria defined in the request for proposal. These criteria may include but are not limited to items such as discounts, delivery costs, maintenance services costs, installation costs, and transportation costs; and

(vii) Such other information as may be secured having a bearing on the decision to award the contract.

(c) When purchases are made through a request for proposal process, proposals received shall be evaluated based on the evaluation factors set forth in the request for proposal. When issuing a request for proposal for the procurement of propulsion equipment or systems that include an engine, the request for proposal must specify the use of a life cycle cost analysis that includes an evaluation of fuel efficiency. When a life cycle cost analysis is used, the life cycle cost of a proposal shall be given at least the same relative importance as the initial price element specified in the request of proposal documents. The department may reject any and all proposals received. If the proposals are not rejected, the award shall be made to the proposer whose proposal is most advantageous to the department, considering price and the other evaluation factors set forth in the request for proposal.

(d) If the department is procuring large equipment or systems (e.g., electrical, propulsion) needed for the support, maintenance, and use of a ferry operated by Washington state ferries, the department shall proceed with a formal request for proposal solicitation under this subsection (2) without a determination of necessity by the secretary. [2002 c 114 § 19; 2001 c 59 § 1; 1995 1st sp.s. c 4 § 1; 1977 ex.s. c 151 § 66; 1969 ex.s. c 180 § 3; 1961 c 278 § 8; 1961 c 13 § 47.56.030. Prior: 1937 c 173 § 10; RRS § 6524-10.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Effective date—1995 1st sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 14, 1995]." [1995 1st sp.s. c 4 § 4.]

47.56.032 Authority of department and commission relating to state ferries. All powers vested in the toll bridge authority as of September 21, 1977, relating to the acquiring, operating, extending, designing, constructing, repairing, and maintenance of the Washington state ferries or any part thereof and the collecting of tolls and charges for use of its facilities, shall be performed by the department. The commis-

sion shall determine all fares, tolls, and other charges for its facilities and shall directly perform all duties and exercise all powers relating to financing, refinancing, and fiscal management of the system's bonded indebtedness in the manner provided by law. [1984 c 7 § 247; 1961 c 278 § 9.]

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

47.56.040 Toll bridges authorized—Investigations.

The department is empowered, in accordance with the provisions of this chapter, to provide for the establishment and construction of toll bridges upon any public highways of this state together with approaches thereto wherever it is considered necessary or advantageous and practicable for crossing any stream, body of water, gulch, navigable water, swamp, or other topographical formation whether that formation is within this state or constitutes a boundary between this state and an adjoining state or country. The necessity or advantage and practicability of any such toll bridge shall be determined by the department, and the feasibility of financing any toll bridge in the manner provided by this chapter shall be a primary consideration and determined according to the best judgment of the department. For the purpose of obtaining information for the consideration of the department upon the construction of any toll bridge or any other matters pertaining thereto, any cognizant officer or employee of the state shall, upon the request of the department, make reasonable examination, investigation, survey, or reconnaissance for the determination of material facts pertaining thereto and report this to the department. The cost of any such examination, investigation, survey, or reconnaissance shall be borne by the department or office conducting these activities from the funds provided for that department or office for its usual functions. [1984 c 7 § 248; 1961 c 13 § 47.56.040. Prior: 1937 c 173 § 3; RRS § 6524-3; prior: 1913 c 56 § 2; RRS § 6525.]

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

47.56.042 State boundary bridges—Investigations—Agreements with counties or states. The department is authorized to enter into agreements with any county of this state and/or with an adjoining state or county thereof for the purpose of implementing an investigation of the feasibility of any toll bridge project for the bridging of a river forming a portion of the boundary of this state, and the adjoining state. The department may use funds available to it to carry out the purposes of this section. These agreements may provide that if any such project is determined to be feasible and is adopted, any advancement of funds by any state or county may be reimbursed out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived from the project. [1984 c 7 § 249; 1961 c 13 § 47.56.042. Prior: 1955 c 203 § 1.]

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

47.56.050 Purchase of bridges and ferries authorized—Provisions applicable. (1) The department, whenever it is considered necessary or advantageous and practicable, is empowered to provide for the acquisition by purchase of, and to acquire by purchase (a) any bridge or bridges or ferries which connect with or may be connected with the pub-

lic highways of this state (b) together with approaches thereto.

(2) In connection with the acquisition by purchase of any bridge or bridges or ferries under subsection (1) of this section, the department, the state treasurer, any city, county, or other political subdivision of this state, and all of their officers:

(a) Are empowered and required to do all acts and things provided for in this chapter to establish and construct toll bridges and operate, finance, and maintain such bridges insofar as the powers and requirements are applicable to the purchase of any bridge or bridges or ferries and their operation, financing, and maintenance; and

(b) In purchasing, operating, financing, and maintaining any bridge or bridges or ferries acquired or to be acquired by purchase under this section, shall act in the same manner and under the same procedures as are provided in this chapter to establish, construct, operate, finance, and maintain toll bridges insofar as such manner and procedure are applicable to the purchase of any bridge or bridges or ferries and their operation, financing, and maintenance.

(3) Without limiting the generality of the provisions contained in subsections (1) and (2) of this section, the department is empowered: (a) To cause surveys to be made for the purpose of investigating the propriety of acquiring by purchase any such bridge or bridges or ferries and the right of way necessary or proper for that bridge or bridges or ferries, and other facilities necessary to carry out the provisions of this chapter; (b) to issue, sell, and redeem bonds, and to deposit and pay out the proceeds of the bonds for the financing thereof; (c) to collect, deposit, and expend tolls therefrom; (d) to secure and remit financial and other assistance in the purchase thereof; and (e) to carry insurance thereon.

(4) The provisions of RCW 47.56.220 apply when any bridge or bridges or ferries are acquired by purchase pursuant to this section. [1984 c 7 § 250; 1973 c 106 § 25; 1961 c 13 § 47.56.050. Prior: 1945 c 266 § 1; Rem. Supp. 1945 § 6524-3a.]

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

47.56.060 Toll bridges—General powers of department and officials—Financial statements. The department, the officials thereof, and all other state officials are empowered to act and make agreements consistent with law as may be necessary or desirable in connection with the duties and powers conferred upon them respectively by law regarding the construction, maintenance, operation, and insurance of toll bridges or the safeguarding of the funds and revenues required for such construction and the payment of the indebtedness incurred therefor. The department shall keep full, complete, and separate accounts of each toll bridge, and annually shall prepare balance sheet and income and profit and loss statements showing the financial condition of each such toll bridge, which statement shall be open at all reasonable times to the inspection of holders of bonds issued by the department. [1984 c 7 § 251; 1961 c 13 § 47.56.060. Prior: 1937 c 173 § 17; RRS § 6524-17.]

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

47.56.070 Toll facilities authorized—Provisions applicable—Restrictions. The department of transportation may, with the approval of the transportation commission, provide for the establishment, construction, and operation of toll tunnels, toll roads, and other facilities necessary for their construction and connection with public highways of the state. It may cause surveys to be made to determine the propriety of their establishment, construction, and operation, and may acquire rights of way and other facilities necessary to carry out the provisions hereof; and may issue, sell, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction thereof; carry insurance thereon; and handle any other matters pertaining thereto, all of which shall be conducted in the same manner and under the same procedure as provided for the establishing, constructing, operating, and maintaining of toll bridges by the department, insofar as reasonably consistent and applicable. No toll facility, toll bridge, toll road, or toll tunnel, shall be combined with any other toll facility for the purpose of financing unless such facilities form a continuous project, to the end that each such facility or project be self-liquidating and self-sustaining. [1977 ex.s. c 151 § 67; 1961 c 13 § 47.56.070. Prior: 1953 c 220 § 3; 1937 c 173 § 3 1/2; RRS § 6524-3 1/2.]

47.56.075 Toll roads, facilities—Legislative authorization or regional or local sponsorship required. The department shall approve for construction only such toll roads as the legislature specifically authorizes or such toll facilities as are specifically sponsored by a regional transportation investment district, city, town, or county. [2002 c 56 § 404; 1984 c 7 § 252; 1961 c 13 § 47.56.075. Prior: 1953 c 220 § 7.]

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

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

47.56.076 Regional transportation investment district—May impose tolls—Approval by the voters. Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, and only for the purposes authorized in *RCW 36.120.050(1)(f), a regional transportation investment district may impose vehicle tolls on state routes where improvements financed in whole or in part by a regional transportation investment district add additional lanes to, or reconstruct lanes on, a highway of statewide significance. The department shall administer the collection of vehicle tolls on designated facilities unless otherwise specified in law, and the state transportation commission, or its successor, shall be the tolling authority. [2002 c 56 § 403.]

***Reviser's note:** RCW 36.120.050 was amended by 2003 c 350 § 4, changing subsection (1)(f) to subsection (1)(g).

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

47.56.077 Concessions to operate private business on toll road prohibited. The department shall not grant concessions for the operation or establishment of any privately owned business upon toll road rights of way. [1984 c 7 § 253; 1961 c 13 § 47.56.077. Prior: 1953 c 220 § 8.]

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

47.56.080 Construction of toll bridges and issuance of bonds authorized. Whenever in the judgment of the transportation commission it is considered in the best interest of the public highways of the state that any new toll bridge or bridges be constructed upon any public highway and across any stream, body of water, gulch, navigable water, swamp, or other topographical formation and operated by the state the commission shall adopt a resolution declaring that public interest and necessity require the construction of such toll bridge or bridges and authorizing the issuance of revenue bonds for the purpose of obtaining funds in an amount not in excess of that estimated to be required for such construction. The issuance of bonds as provided in this chapter for the construction of more than one toll bridge may at the discretion of the commission be included in the same authority and issue of bonds. [1977 ex.s. c 151 § 68; 1961 c 13 § 47.56.080. Prior: 1937 c 173 § 6; RRS § 6524-6.]

47.56.090 Authority to acquire right of way in constructing a toll bridge. The department of transportation is empowered to secure right of way for toll bridges and for approaches thereto by gift or purchase, or by condemnation in the manner provided by law for the taking of private property for public highway purposes. [1977 ex.s. c 151 § 69; 1961 c 13 § 47.56.090. Prior: 1937 c 173 § 5; RRS § 6524-5.]

47.56.100 Toll bridges—Right of way across state highways and political subdivisions—Compensation. The right of way is hereby given, dedicated, and set apart upon which to locate, construct, and maintain bridges or approaches thereto or other highway crossings, and transportation facilities thereof or thereto, through, over, or across any state highways, and through, over, or across the streets, alleys, lanes, and roads within any city, county, or other political subdivision of the state. If any property belonging to any city, county, or other political subdivision of the state is required to be taken for the construction of any bridge or approach thereto, or if any such property is injured or damaged by such construction, compensation therefor as may be proper or necessary and as agreed upon may be paid by the department to the particular county, city, or other political subdivision of the state owning the property, or condemnation proceedings may be brought for the determination of the compensation. [1984 c 7 § 254; 1977 ex.s. c 103 § 4; 1961 c 13 § 47.56.100. Prior: 1937 c 173 § 16; RRS § 6524-16.]

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

47.56.110 Toll bridges—Resolution of necessity in acquiring right of way—Effect of. Before the department proceeds with any action to secure a right of way or with construction of any toll bridge under the provisions of this chapter, the commission shall first pass a resolution that public interest and necessity require the acquisition of right of way for and the construction of the toll bridge. The resolution is conclusive evidence (1) of the public necessity of such construction; (2) that the property is necessary therefor; and (3) that the proposed construction is planned or located in a manner which will be most compatible with the greatest public good and the least private injury. When it becomes necessary for the department to condemn any real estate to be used in

connection with any such bridge, the attorney general of the state shall represent the department. In eminent domain proceedings to acquire property for any of the purposes of this chapter, any toll bridge, real property, personal property, franchises, rights, easements, or other property or privileges appurtenant thereto appropriated or dedicated to a public use or purpose by any person, firm, private, public, or municipal corporation, county, city, town, district, or any political subdivision of the state, may be condemned and taken, and the acquisition and use as provided in this chapter for the same public use or purpose to which the property has been so appropriated or dedicated, or for any other public use or purpose, is a superior and permanent right and necessity, and a more necessary use and purpose than the public use or purpose to which the property has already been appropriated or dedicated. It is not necessary in any eminent domain proceedings under this chapter to plead or prove any acts or proceedings preliminary or prior to the adoption of the resolution hereinbefore referred to describing the property sought to be taken and directing such proceedings. [1984 c 7 § 255; 1961 c 13 § 47.56.110. Prior: 1937 c 173 § 11; RRS § 6524-11.]

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

47.56.120 Toll bridges—Construction directed—Costs. In the event that the transportation commission should determine that any toll bridge should be constructed, all cost thereof including right of way, survey, and engineering shall be paid out of any funds available for payment of the cost of such toll bridge under this chapter. [1977 ex.s. c 151 § 70; 1961 c 13 § 47.56.120. Prior: 1937 c 173 § 4; RRS § 6524-4.]

47.56.130 Toll bridges—Bonds—Cooperative funds from state and federal government. The department is hereby empowered to issue bonds for the construction of any toll bridge or toll bridges authorized under the provisions of this chapter. Any and all bonds issued for the construction of any toll bridge or toll bridges under the authority of the department shall be issued in the name of the department, shall constitute obligations only of the department, shall be identified as toll bridge bonds, and shall contain a recital on the face thereof that the payment or redemption of the bonds and the payment of the interest thereon is secured by a direct and exclusive charge and lien upon the tolls and other revenues of any nature whatever received from the operation of the particular toll bridge or bridges for the construction of which the bonds are issued and that neither the payment of the principal or any part thereof nor of the interest thereon or any part thereof constitutes a debt, liability, or obligation of the state of Washington. The department is empowered to receive and accept funds from the state of Washington or the federal government upon a cooperative or other basis for the construction of any toll bridge authorized under this chapter and is empowered to enter into such agreements with the state of Washington or the federal government as may be required for the securing of such funds. [1984 c 7 § 256; 1961 c 13 § 47.56.130. Prior: 1937 c 173 § 7; RRS § 6524-7.]

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

47.56.140 Toll bridges, bonds—Form, contents, manner of sale—Interim bonds. The revenue bonds may be issued and sold by the department of transportation from time to time and in such amounts as it deems necessary to provide sufficient funds for the construction of the bridge, and to pay interest on outstanding bonds issued for its construction during the period of actual construction and for six months after completion thereof.

The department of transportation shall determine the form, conditions, and denominations of the bonds, and the maturity dates which the bonds to be sold shall bear and the interest rate thereon. All bonds of the same issue need not bear the same interest rate. Principal and interest of the bonds may be payable at such place as determined by the department. They may be in any form including bearer bonds or registered bonds as provided in RCW 39.46.030, with interest payable at such times as determined by the department, and shall mature at such times and in such amounts as the department prescribes. The department may provide for the retirement of the bonds at any time prior to maturity, and in such manner and upon payment of such premiums as it may determine in the resolution providing for the issuance of the bonds. All such bonds shall be signed by the state auditor and countersigned by the governor and any interest coupons appertaining thereto shall bear the signature of the state auditor. The countersignature of the governor on such bonds and the signature of the state auditor on any coupons may be their printed or lithographed facsimile signatures. Successive issues of such bonds within the limits of the original authorization shall have equal preference with respect to the redemption thereof and the payment of interest thereon. The department may fix different maturity dates, serially or otherwise, for successive issues under any one original authorization. The bonds shall be negotiable instruments under the law merchant. All bonds issued and sold hereunder shall be sold on sealed bids to the highest and best bidder after such advertising for bids as the department deems proper. The department may reject any and all bids and may thereafter sell the bonds at private sale under such terms and conditions as it deems most advantageous to its own interests; but not at a price below that of the best bid which was rejected. The department may contract loans and borrow money through the sale of bonds of the same character as those herein authorized, from the United States or any agency thereof, upon such conditions and terms as may be agreed to and the bonds shall be subject to all the provisions of this chapter, except the requirement that they be first offered at public sale.

Temporary or interim bonds, certificates, or receipts, of any denomination, and with or without coupons attached, signed by the state auditor, may be issued and delivered until bonds are executed and available for delivery. [1983 c 167 § 118; 1970 ex.s. c 56 § 62; 1969 ex.s. c 232 § 33; 1963 ex.s. c 3 § 45; 1961 c 13 § 47.56.140. Prior: 1953 c 79 § 1; 1937 c 173 § 8; RRS § 6524-8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

47.56.150 Toll bridges—Bond proceeds and toll revenues, disposition of—Construction fund—Disbursement—Investment. The proceeds from the sale of all bonds authorized under the provisions of this chapter shall be paid to the state treasurer for the credit of the department and be deposited as demand deposits forthwith in such depository or depositories as may be authorized by law to receive deposits of state funds to the credit of a fund to be designated as the construction fund of the particular toll bridge or toll bridges for which such bonds were issued and sold, which fund shall not be a state fund and shall at all times be kept segregated and set apart from all other funds and in trust for the purposes herein set out. Such proceeds shall be paid out or disbursed solely for the construction of such toll bridge or toll bridges, the acquisition of the necessary lands and easements therefor and the payment of interest on such bonds during the period of actual construction and for a period of six months thereafter, only as the need therefor shall arise. The department may agree with the purchaser of the bonds upon any conditions or limitations restricting the disbursement of such funds that may be deemed advisable, for the purpose of assuring the proper application of such funds. All moneys in such fund and not required to meet current construction costs of the toll bridge or toll bridges for which such bonds were issued and sold, and all funds constituting surplus revenues that are not immediately needed for the particular object or purpose to which they must be applied or are pledged shall be invested in bonds and obligations of the nature eligible for investment of surplus state moneys: PROVIDED, That the department may provide in the proceedings authorizing the issuance of these bonds that the investment of such moneys shall be made only in particular bonds and obligations within the classifications eligible for such investment, and such provisions shall thereupon be binding upon the department and all officials having anything to do with the investment. Any surplus which may exist in the construction fund shall be applied to the retirement of bonds issued for the construction of such toll bridge or toll bridges by purchase or call. If these bonds cannot be purchased at a price satisfactory to the department and are not by their terms callable prior to maturity, the surplus shall be paid into the fund applicable to the payment of principal and interest of the bonds and shall be used for that purpose. The proceedings authorizing the issuance of bonds may provide limitations and conditions upon the time and manner of applying the surplus to the purchase and call of outstanding bonds and the terms upon which they shall be purchased or called. Such limitations and conditions shall be followed and observed in the application and use of the surplus. All bonds so retired by purchase or call shall be immediately canceled. [1984 c 7 § 257; 1961 c 13 § 47.56.150. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

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

47.56.160 Toll bridges—Toll revenue fund. All tolls or other revenues received from the operation of any toll bridge or toll bridges constructed with the proceeds of bonds issued and sold hereunder shall be paid over by the department to the state treasurer. The treasurer shall deposit them forthwith as demand deposits in a depository or depositories authorized by law to receive deposits of state funds. The deposit shall be made to the credit of a special trust fund des-

ignated as the toll revenue fund of the particular toll bridge or toll bridges producing the tolls or revenue, which fund shall be a trust fund and shall at all times be kept segregated and set apart from all other funds. [1984 c 7 § 258; 1961 c 13 § 47.56.160. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

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

47.56.165 Tacoma Narrows toll bridge account. A special account to be known as the Tacoma Narrows toll bridge account is created in the motor vehicle fund in the state treasury.

(1) Deposits to the account must include:

(a) All proceeds of bonds issued for construction of the Tacoma Narrows public-private initiative project, including any capitalized interest;

(b) All of the toll charges and other revenues received from the operation of the Tacoma Narrows bridge as a toll facility, to be deposited at least monthly; and

(c) Any interest that may be earned from the deposit or investment of those revenues.

(2) Proceeds of bonds shall be used consistent with RCW 47.46.130, including the reimbursement of expenses and fees incurred under agreements entered into under RCW 47.46.040 as required by those agreements.

(3) Toll charges, other revenues, and interest may be used to:

(a) Pay any required costs of financing, operation, maintenance, and management and necessary repairs of the facility; and

(b) Repay amounts to the motor vehicle fund as required under RCW 47.46.140.

(4) When repaying the motor vehicle fund under RCW 47.46.140, the state treasurer shall transfer funds from the Tacoma Narrows toll bridge account to the motor vehicle fund on or before each debt service date for bonds issued for the Tacoma Narrows public-private initiative project in an amount sufficient to repay the motor vehicle fund for amounts transferred from that fund to the highway bond retirement fund to provide for any bond principal and interest due on that date. The state treasurer may establish subaccounts for the purpose of segregating toll charges, bond sale proceeds, and other revenues. [2002 c 114 § 11.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.56.170 Toll bridges—Transfer of funds for bond payments—Surplus funds. From the money deposited in each separate construction fund under RCW 47.56.160, the state treasurer shall transfer to the place or places of payment named in the bonds such sums as may be required to pay the interest as it becomes due on all bonds sold and outstanding for the construction of a particular toll bridge or toll bridges during the period of actual construction and during the period of six months immediately thereafter. The state treasurer shall thereafter transfer from each separate toll revenue fund to the place or places of payment named in the bonds such sums as may be required to pay the interest on the bonds and redeem the principal thereof as the interest payments and bond redemption become due for all bonds issued and sold

for the construction of the particular toll bridge or toll bridges producing the tolls or revenues so deposited in the toll revenue fund. All funds so transferred for the payment of principal or interest on bonds issued for any particular toll bridge shall be segregated and applied solely for the payment of that principal or interest. The proceedings authorizing the issuance of bonds may provide for setting up a reserve fund or funds out of the tolls and other revenues not needed for the payment of principal and interest, as the same currently matures and for the preservation and continuance of the fund in a manner to be provided therein. The proceedings may also require the immediate application of all surplus moneys in the toll revenue fund to the retirement of the bonds prior to maturity, by call or purchase, in such manner and upon such terms and the payment of such premiums as may be deemed advisable in the judgment of the department.

The moneys remaining in each separate toll revenue fund after providing the amount required for interest and redemption of bonds as provided in this section shall be held and applied as provided in the proceedings authorizing the issuance of the bonds. If the proceedings authorizing the issuance of the bonds do not require surplus revenues to be held or applied in any particular manner, they shall be allocated and used for such other purposes incidental to the construction, operation, and maintenance of the toll bridge or bridges as the department may determine. [1984 c 7 § 259; 1961 c 13 § 47.56.170. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

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

47.56.180 Toll bridges—Payments made by warrants on vouchers—Interest on deposits. Warrants for payments to be made on account of the bonds shall be duly drawn by the state treasurer on vouchers approved by the department.

Moneys required to meet the costs of construction and all expenses and costs incidental to the construction of any particular toll bridge or toll bridges or to meet the costs of operating, maintaining, and repairing the bridge or bridges shall be paid from the proper fund therefor by the state treasurer upon vouchers approved by the department.

All interest received or earned on money deposited in each and every fund provided for in this chapter shall be credited to and become a part of the particular fund upon which the interest accrues. [1984 c 7 § 260; 1973 c 106 § 26; 1961 c 13 § 47.56.180. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

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

47.56.190 Toll bridges—Agreement on deposit of funds. The department may provide in the proceedings authorizing the issuance of bonds or may otherwise agree with the purchasers of bonds regarding the deposit of all moneys constituting the construction fund and the toll revenue fund and provide for the deposit of the money at such times and with such depositaries or paying agents and upon the furnishing of security as meets with the approval of the purchasers of the bonds so long as the depositaries and security provided for or agreed upon are qualified and eligible in accordance with the requirements of law. [1984 c 7 § 261;

1961 c 13 § 47.56.190. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

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

47.56.200 Toll bridges—Use of bond proceeds and revenue for expenses. Notwithstanding anything contained in this chapter, the proceeds received from the sale of bonds and the tolls or other revenues received from the operation of any toll bridge or toll bridges may be used to defray any expenses incurred by the department in connection with and incidental to the issuance and sale of bonds for the construction of the toll bridge or toll bridges including expenses for the preparation of surveys and estimates and making inspections and examinations required by the purchasers of the bonds. In addition, the proceedings authorizing the issuance of the bonds may contain appropriate provisions governing the use and application of the bond proceeds and toll or other revenues for the purposes herein specified. [1984 c 7 § 262; 1961 c 13 § 47.56.200. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

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

47.56.210 Toll bridges—Remedies of bond holders. While any bonds issued by the department under this chapter remain outstanding, the powers, duties, or existence of the department or of any other official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. The holder of any bond may by mandamus or other appropriate proceeding require and compel the performance of any of the duties imposed upon any state department, official, or employee, or imposed upon the department or its officers, agents, and employees in connection with the construction, maintenance, operation, and insurance of any bridge, and in connection with the collection, deposit, investment, application, and disbursement of all tolls and other revenues derived from the operation and use of any bridge and in connection with the deposit, investment, and disbursement of the proceeds received from the sale of bonds. The enumeration of rights and remedies in this section shall not be deemed to exclude the exercise or prosecution of any other rights or remedies by the holders of the bonds. [1984 c 7 § 263; 1961 c 13 § 47.56.210. Prior: 1937 c 173 § 18; RRS § 6524-18.]

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

47.56.220 Toll bridges—Limitations on other service—Protection of outstanding bonds. Except as otherwise provided in RCW 47.56.291, *47.56.714, and 47.56.756, as long as any of the bonds issued hereunder for the construction of any toll bridge are outstanding and unpaid, there shall not be erected, constructed, or maintained any other bridge or other crossing over, under, through, or across the waters over which such toll bridge is located or constructed, connecting or joining directly or indirectly the lands or extensions thereof or abutments thereon on both sides of the waters spanned or crossed by such toll bridge within a distance of ten miles from either side of such toll bridge excepting bridges or other highway crossings actually in existence and being maintained, or for which there was outstanding an existing and lawfully issued franchise, at the

time of the location of such toll bridge and prior to the time of the authorization of such bonds, and no ferry or other similar means of crossing the said waters within the said distance and connecting or plying directly or indirectly between the lands or extensions thereof or abutments thereon on both sides of the waters spanned or crossed by such bridge shall be maintained or operated or permitted or allowed: PROVIDED, That ferries and other similar means of crossing actually in existence and being maintained and operated, or for which there was outstanding an existing and lawfully issued franchise, at the time of the location of such bridge and prior to the time of the authorization of such bonds, may continue and be permitted to be operated and maintained under such existing rights and franchises, or any lawful renewal or extension thereof. The provisions of this section shall be binding upon the state department of transportation, the state of Washington, and all of its departments, agencies, or instrumentalities as well as any and all private, political, municipal, and public corporations and subdivisions, including cities, counties, and other political subdivisions, and the prohibitions of this section shall restrict and limit the powers of the legislature of the state of Washington in respect to the matters herein mentioned as long as any of such bonds are outstanding and unpaid and shall be deemed to constitute a contract to that effect for the benefit of the holders of all such bonds. [1983 c 3 § 128; 1979 ex.s. c 212 § 19; 1979 c 131 § 8; 1961 c 13 § 47.56.220. Prior: 1937 c 173 § 13; RRS § 6524-13.]

***Reviser's note:** RCW 47.56.714 was repealed by 1990 c 42 § 403, effective September 1, 1990.

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.230 Toll bridges—Insurance or indemnity bonds authorized. When any toll bridge or bridges authorized under this chapter is being built by the department, the department may carry or cause to be carried an amount of insurance or indemnity bond or bonds as protection against loss or damage as the department may deem proper. The department is hereby further empowered to carry such an amount of insurance to cover any accident or destruction in part or in whole to any toll bridge or toll bridges until all bonds sold for the construction of the toll bridge or toll bridges and interest accrued thereon have been fully redeemed and paid. All moneys collected on any indemnity bond or insurance policy as the result of any damage or injury to the toll bridge or toll bridges shall be used for the purpose of repairing or rebuilding the toll bridge or toll bridges as long as there are revenue bonds against any such structure outstanding and unredeemed. The department is also empowered to carry insurance or indemnity bonds insuring against the loss of tolls or other revenues to be derived from any such toll bridge or bridges by reason of any interruption in the use of the toll bridge or toll bridges from any cause whatever, and the proceeds of the insurance or indemnity bonds shall be paid into the fund into which the tolls and other revenues of the bridge thus insured are required to be paid and shall be applied to the same purposes and in the same manner as other moneys in the fund. The insurance or indemnity bonds may be in an amount equal to the probable tolls and other revenues to be received from the operation of the toll bridge or toll bridges during any period of time that may be determined by the department and fixed in its discretion, and be paid for out

of the toll revenue fund as may be specified in the proceedings. The department may provide in the proceedings authorizing the issuance of bonds for the carrying of insurance as authorized by this chapter, and the purchase and carrying of insurance as authorized by this chapter, and the purchase and carrying of such insurance shall thereupon be obligatory upon the department and be paid for out of the toll revenue fund as may be specified in the proceedings. [1984 c 7 § 264; 1961 c 13 § 47.56.230. Prior: 1937 c 173 § 15; RRS § 6524-15.]

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

47.56.240 Toll bridges—Fixing of toll rates authorized—Lien of bonds on revenue. The commission is hereby empowered to fix the rates of toll and other charges for all toll bridges built under the terms of this chapter. Toll charges so fixed may be changed from time to time as conditions warrant. The commission, in establishing toll charges, shall give due consideration to the cost of operating and maintaining such toll bridge or toll bridges including the cost of insurance, and to the amount required annually to meet the redemption of bonds and interest payments on them. The tolls and charges shall be at all times fixed at rates to yield annual revenue equal to annual operating and maintenance expenses including insurance costs and all redemption payments and interest charges of the bonds issued for any particular toll bridge or toll bridges as the bonds become due. The bond redemption and interest payments constitute a first direct and exclusive charge and lien on all such tolls and other revenues and interest thereon. Sinking funds created therefrom received from the use and operation of the toll bridge or toll bridges, and such tolls and revenues together with the interest earned thereon shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose as long as any of these bonds are outstanding and unpaid. [1984 c 7 § 265; 1961 c 13 § 47.56.240. Prior: 1937 c 173 § 9; RRS § 6524-9.]

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

47.56.242 Liquidation and closure of facility accounts upon removal of tolls—Transfer to motor vehicle fund. The department is authorized to liquidate and close toll facility trust and other facility accounts established outside the state treasury under chapter 47.56 RCW after the removal of tolls from the facility for which the accounts were established. Any balance remaining in the accounts shall thereupon be transferred to the motor vehicle fund. In addition, the department may, after the removal of tolls from a particular facility or facilities, require that all moneys transferred to the place of payment named in the revenue bonds, for the purpose of paying principal or interest or for redemption of the bonds not then expended for such purpose, be returned to the state treasurer for deposit in the motor vehicle fund. [1984 c 7 § 266; 1967 ex.s. c 145 § 48.]

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

47.56.243 Liquidation and closure of facility accounts upon removal of tolls—Satisfaction of claims. After transfer of such moneys pursuant to RCW 47.56.242, all valid claims against such accounts, including proper

claims for refunds for unused commute media and other pre-paid toll fees, may be satisfied, and any outstanding bonds or any coupons may be redeemed by payment from the motor vehicle fund upon proper application to and approval by the department of transportation.

Neither the provisions of this section nor of RCW 47.56.242 shall be construed to preclude any remedy otherwise available to bond owners or coupon holders. [1983 c 167 § 119; 1967 ex.s. c 145 § 49.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

47.56.245 Toll charges retained until costs paid. The department shall retain toll charges on all existing and future facilities until all costs of investigation, financing, acquisition of property, and construction advanced from the motor vehicle fund, and obligations incurred under RCW 47.56.250 and chapter 16, Laws of 1945 have been fully paid.

(1) Except as provided in subsection (2) of this section, with respect to every facility completed after March 19, 1953, costs of maintenance and operation shall be paid periodically out of the revenues of the facility in which such costs were incurred.

(2) Where a state toll facility is constructed under chapter 47.46 RCW adjacent to or within two miles of an existing bridge that was constructed under this chapter, revenue from the toll facility may not be used to pay for costs of maintenance on the existing bridge. [2002 c 114 § 23; 1984 c 7 § 267; 1965 ex.s. c 170 § 53; 1961 c 13 § 47.56.245. Prior: 1953 c 220 § 6.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

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

47.56.247 Credit permits for vehicular passage. The department may issue permits for the passage of vehicles on any or all of its toll bridges, toll tunnels, toll roads, or for the Washington state ferry system on a credit basis upon such terms and conditions as the department deems proper. [1984 c 7 § 268; 1961 c 258 § 1.]

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

Severability—1961 c 258: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 258 § 3.]

47.56.248 Credit permits for vehicular passage—Cash deposit or bond—Revocation of permit. The department may require the holder of the permit to furnish to and maintain in force with the department a cash deposit or a corporate surety bond. The department may require the holder of the permit to increase the amount of cash bond, or to furnish an additional surety bond, or may reduce the amount of the cash bond or surety bond required, as the amount of charges incurred and regularity of payment warrant, or may revoke any permit granted for failure of the holder to comply with any of its terms. [1984 c 7 § 269; 1961 c 258 § 2.]

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

Severability—1961 c 258: See note following RCW 47.56.247.

47.56.250 Contributions by the state or political subdivision—Bonds—Repayment. Whenever a proposed toll bridge, toll road, toll tunnel, or any other toll facility of any sort is to be constructed, any city, county, or other political subdivision located in relation to such facility so as to benefit directly or indirectly thereby, may, either jointly or separately, at the request of the transportation commission advance or contribute money, or bonds, rights of way, labor, materials, and other property toward the expense of building the toll facility, and for preliminary surveys and the preparation of plans and estimates of cost therefor and other preliminary expenses. Any such city, county, or other political subdivision may, either jointly or separately, at the request of the transportation commission advance or contribute money or bonds for the purpose of guaranteeing the payment of interest or principal on the bonds issued by the commission to finance the toll facility. Appropriations for such purposes may be made from any funds available, including county road funds received from or credited by the state, or funds obtained by excess tax levies made pursuant to law or the issuance of general obligation bonds for this purpose. General obligation bonds issued by a city, county, or political subdivision may with the consent of the commission be placed with the department of transportation to be sold by the department to provide funds for such purpose. Money, or bonds, or property so advanced or contributed may be immediately transferred or delivered to the department to be used for the purpose for which contribution was made. The commission may enter into an agreement with a city, county, or other political subdivision to repay any money, or bonds or the value of a right of way, labor, materials, or other property so advanced or contributed. The commission may make such repayment to a city, county, or other political subdivision and reimburse the state for any expenditures made by it in connection with the toll facility out of tolls and other revenues for the use of the toll facility. [1977 ex.s. c 151 § 71; 1961 c 13 § 47.56.250. Prior: 1959 c 162 § 1; 1955 c 166 § 1; 1937 c 173 § 12; RRS § 6524-12.]

47.56.253 Permits, leases, licenses to governmental entities to use property of toll facility or ferry system. If the department deems it in the public interest and not inconsistent with the use and operation of the toll facility involved, the department may on application therefor issue a permit, lease, or license to the state, or to any city, county, port district, or other political subdivision or municipal corporation of the state to use any portion of the property of any toll bridge, toll road, toll tunnel, or Washington state ferry system upon such terms and conditions as the department may prescribe. [1984 c 7 § 270; 1961 c 257 § 2.]

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

Severability—1961 c 257: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 257 § 7.]

47.56.254 Sale of unneeded property—Authorized—Rules. If the secretary of transportation determines that any real property (including lands, improvements thereon, and any interests or estates) originally acquired for toll facility purposes is no longer required for purposes of the depart-

ment, the department shall offer it for sale as authorized by RCW 47.12.063 or 47.12.283. The department may adopt rules further implementing this section. [1979 ex.s. c 189 § 4; 1977 ex.s. c 151 § 72; 1973 1st ex.s. c 177 § 3; 1961 c 257 § 3.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.
Severability—1961 c 257: See note following RCW 47.56.253.

47.56.255 Sale of unneeded property—Certification to governor—Execution, delivery of deed. When full payment for real property agreed to be sold as authorized by RCW 47.56.254 has been received, the department may certify this fact to the governor, with a description of the land and terms of the sale, and the governor may execute and the secretary of state shall attest the deed and deliver it to the grantee. [1984 c 7 § 271; 1973 1st ex.s. c 177 § 4; 1961 c 257 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.
Severability—1961 c 257: See note following RCW 47.56.253.

47.56.256 Franchises for utility, railway, urban public transportation purposes. If the department deems it not inconsistent with the use and operation of any department facility, the department may grant franchises to persons, associations, private or municipal corporations, the United States government, or any agency thereof, to use any portion of the property of any toll bridge, toll road, toll tunnel, or the Washington state ferry system, including approaches thereto, for the construction and maintenance of water pipes, flumes, gas pipes, telephone, telegraph, and electric light and power lines and conduits, trams or railways, any structures or facilities that are part of an urban public transportation system owned or operated by a municipal corporation, agency, or department of the state of Washington other than the department of transportation, and any other such facilities in the manner of granting franchises on state highways. [1984 c 7 § 272; 1967 c 108 § 12; 1961 c 257 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.
Severability—1961 c 257: See note following RCW 47.56.253.

Urban public transportation system defined: RCW 47.04.082.

47.56.257 Deposit of moneys received under RCW 47.56.253 through 47.56.256. Any moneys received pursuant to the provisions of RCW 47.56.253 through 47.56.256 shall be deposited into the separate and proper trust fund with the state treasurer established for the respective toll facility. [1979 ex.s. c 189 § 5; 1961 c 257 § 6.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.
Severability—1961 c 257: See note following RCW 47.56.253.

47.56.270 Lake Washington and 1950 Tacoma Narrows bridges part of primary highways. The Lake Washington bridge and the 1950 Tacoma Narrows bridge in chapter 47.17 RCW made a part of the primary state highways of the state of Washington, shall, upon completion, be operated, maintained, kept up, and repaired by the department in the manner provided in this chapter, and the cost of such operation, maintenance, upkeep, and repair shall be paid from funds appropriated for the use of the department for the construction and maintenance of the primary state highways of

the state of Washington. This section does not apply to that portion of the Tacoma Narrows bridge facility first opened to traffic after June 13, 2002. [2002 c 114 § 20; 1983 c 3 § 129; 1961 c 13 § 47.56.270. Prior: 1939 c 5 § 4; RRS § 6524-3a.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.56.271 1950 Tacoma Narrows bridge toll-free—Exception. Except as otherwise provided in this section, the 1950 Tacoma Narrows bridge hereinbefore by the provisions of RCW 47.17.065 and 47.56.270 made a part of the primary state highways of the state shall be operated and maintained by the department as a toll-free facility at such time as the bonded indebtedness relating to the construction of the 1950 Tacoma Narrows bridge is wholly retired and tolls equaling the indebtedness of the toll bridge authority incurred for the construction of the 1950 Tacoma Narrows bridge to the county of Pierce have been collected. Toll charges may be imposed upon the 1950 Tacoma Narrows bridge only if that bridge is included as part of a public toll bridge facility that includes an additional toll bridge adjacent to the 1950 Tacoma Narrows bridge and constructed under RCW 47.46.080. [2002 c 114 § 21; 1983 c 3 § 130; 1965 c 50 § 1.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.56.273 Fox Island toll bridge—Need for removal of tolls. Present tolls on the Fox Island toll bridge have retarded the development of Fox Island for residential purposes because of the financial burden upon residents and potential residents resulting from paying these tolls in addition to those imposed upon the Narrows bridge. The removal or readjustment of tolls from the Fox Island toll bridge is required in the interest of the orderly development of Fox Island. The development of Fox Island will provide additional users of the Narrows bridge with a resultant increase of revenue to the state from tolls due to such additional use. [1961 c 13 § 47.56.273. Prior: 1957 c 270 § 1.]

47.56.282 Additional Lake Washington bridge (1957 Act)—Revenue bonds—Toll charges and other support. The authority is hereby authorized by resolution to issue and sell its revenue bonds in an amount sufficient to provide funds to pay all costs of construction of an additional Lake Washington bridge and approaches and all costs of construction or any alterations to the existing Lake Washington bridge or its approaches as a result of the construction of the additional bridge, including but not limited to all costs of survey, acquisition of rights of way, design, engineering, all expenses of issuance and sale of such bonds, and to pay interest on said bonds during construction and for six months after tolls are first imposed.

Said revenue bonds shall constitute obligations only of the Washington toll bridge authority and shall be payable both principal and interest from the tolls and revenues derived from the operation of said toll facility as hereinbefore constituted and from any other moneys or funds available therefor. Said bonds shall not constitute an indebtedness of the state of Washington and shall contain a recital on the face thereof to that effect, and shall be negotiable instruments

under the law merchant. Such bonds shall include a covenant that the payment or redemption thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other revenues received from the operation of said toll facility and from any interest which may be earned from the deposit or investment of any such revenues, except for payment of costs of operation, maintenance and necessary repairs of said facility. The tolls and charges to be imposed shall be fixed in such amounts so that when collected they will produce revenues that shall be at least equal to expenses of operating, maintaining and repairing said toll facility, including all insurance costs, amounts for adequate reserves and coverage of annual debt service on said bonds, and all payments necessary to pay the principal thereof and interest thereon. [1965 ex.s. c 170 § 56; 1961 c 13 § 47.56.282. Prior: 1957 c 266 § 2.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "authority" means department of transportation; see RCW 47.04.015.

47.56.284 Additional Lake Washington bridge (1957 Act)—Continuous project—Authorization of other additional bridges. The existing Lake Washington bridge, the toll bridge authorized in chapter 266, Laws of 1957, and any other bridge hereafter constructed across Lake Washington, are hereby construed and designated as a continuous project within the terms and provisions of RCW 47.56.070; and notwithstanding the provisions of RCW 47.56.220, the department may authorize additional toll bridges across Lake Washington at such times as traffic may warrant and at such sites as deemed feasible. [1984 c 7 § 273; 1961 c 13 § 47.56.284. Prior: 1957 c 266 § 4.]

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

47.56.286 Additional Lake Washington bridge (1957 Act)—Interpretation. The provisions of chapter 47.56 RCW, except where inconsistent with RCW 47.56.282 through 47.56.286, shall govern and be controlling in all matters and things necessary to carry out the purposes of RCW 47.56.282 through 47.56.286. Nothing in RCW 47.56.282 through 47.56.286 is intended to amend, alter, modify, or repeal any of the provisions of any statute relating to the powers and duties of the department except as such powers and duties are amplified or modified by the specific provisions of RCW 47.56.282 through 47.56.286 for the uses and purposes herein set forth. RCW 47.56.282 through 47.56.286 are additional to such existing statutes and concurrent therewith. [1985 c 7 § 114; 1984 c 7 § 274; 1961 c 13 § 47.56.286. Prior: 1957 c 266 § 6.]

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

47.56.287 Second Lake Washington bridge—Use of motor vehicle fund to pay deficits. To the extent that revenues from the imposition of tolls and franchise fees for use of the second Lake Washington bridge authorized and constructed under the provisions of *RCW 47.56.281 are insufficient to meet costs of maintenance and operation and required payments of principal, interest, and other charges incidental to the issuance, sale, and retirement of the bonds issued pursuant to the provisions of RCW 47.56.282 or on any subsequent refunding bond issues, the department shall

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use moneys in the motor vehicle fund to pay such deficits. [1984 c 7 § 275; 1965 ex.s. c 170 § 54.]

***Reviser's note:** RCW 47.56.281 was decodified by 1984 c 7 § 387.

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

47.56.288 Second Lake Washington bridge—Designation of funds to pay deficits—Pledge of excise tax proceeds. Any funds required to pay such deficits shall be from the proceeds of state excise taxes on motor vehicle fuels and shall be taken from that portion of the motor vehicle fund which is or may be appropriated for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet such deficits.

The proceeds of such excise taxes are hereby pledged to the payment of any such deficits in the costs of maintenance and operation of the bridge and in the payment of principal and interest which may arise on account of the bonds issued under the provisions of RCW 47.56.282, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, such deficits. [1965 ex.s. c 170 § 55.]

47.56.290 Additional Lake Washington bridge (1953 Act)—Appropriation—Repayment from bond issue. There is hereby appropriated from the motor vehicle fund to the Washington toll bridge authority for the biennium ending March 31, 1955, the sum of two hundred thousand dollars or so much thereof as may be necessary to carry out the provisions of chapter 192, Laws of 1953, which sum shall be considered as a loan from the motor vehicle fund to be repaid to said fund on the sale of bonds issued in connection therewith. [1961 c 13 § 47.56.290. Prior: 1953 c 192 § 2.]

47.56.291 Additional Lake Washington bridge in vicinity of first bridge—Design and construction authorized. Notwithstanding the provisions of RCW 47.56.220, the Washington state highway commission is authorized to design and construct an additional bridge across Lake Washington at a site in the vicinity of the first Lake Washington bridge. [1965 ex.s. c 170 § 57.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.310 Additional Columbia river bridge—Vancouver to Portland bridges—Cooperation with Oregon. The Washington toll bridge authority is hereby authorized in conjunction with the Oregon state highway commission, to erect an additional bridge or so much thereof as may be agreed upon with the Oregon state highway commission, including approaches thereto, across the Columbia river adjacent to the existing interstate bridge between Vancouver, Washington, and Portland, Oregon, and to reconstruct and improve the said existing interstate bridge and its approaches or so much thereof as may be agreed upon with the Oregon state highway commission. Such additional bridge, together with the existing interstate bridge, shall be an integral part of

U.S. highway No. 99, and to the Oregon boundary shall be a part of primary state highway No. 1. All acts necessary to the design and construction of said new bridge and approaches thereto and the reconstruction and alteration of the existing bridge and approaches may be done and performed by either the Oregon state highway commission or the Washington toll bridge authority with the approval of the other or by both of them jointly. [1961 c 13 § 47.56.310. Prior: 1955 c 152 § 1; 1953 c 132 § 1.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.320 Additional Columbia river bridge—Tolls.

The Washington toll bridge authority is authorized to enter into an agreement with the Oregon state highway commission that the new bridge, including approaches, provided for herein shall be merged and consolidated with the existing interstate bridge, including its approaches, located between Vancouver, Washington and Portland, Oregon so that both bridges shall be and become a single toll facility.

The Washington toll bridge authority is hereby authorized to operate and to assume the full control of said toll facility and each portion thereof, whether within or without the borders of the state of Washington, with full power to impose and collect tolls from the users of both bridges constituting said toll facility for the purpose of providing revenue at least sufficient to pay the cost and incidental expenses of construction of the new bridge including approaches thereto in both states, the reconstruction and improvement of the existing interstate bridge including approaches thereto in both states, the cost of maintaining, operating and repairing both of said bridges while the same are operated as said toll facility, and for the payment of the principal of and interest on its revenue bonds authorized by, and for the purposes set forth in, RCW 47.56.310 through 47.56.345. [1961 c 13 § 47.56.320. Prior: 1955 c 152 § 2; 1953 c 132 § 2.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.330 Additional Columbia river bridge—Agreements with Oregon authorized. The Washington toll bridge authority and the Washington state highway commission are hereby authorized to enter into such agreements with the Oregon state highway commission as they shall find necessary or convenient to carry out the purposes of RCW 47.56.310 through 47.56.345.

Any such agreements may include, but shall not be limited to, the following:

(1) A provision that all acts pertaining to the design and construction of said new bridge and the reconstruction and improvement of the existing interstate bridge may be done and performed by the Oregon state highway commission or the Washington toll bridge authority, with the approval of the other, or by both, and that any and all contracts for the construction of the new bridge and the reconstruction and improvement of the existing bridge shall be awarded in the name of the state of Oregon by and through its state highway commission or the state of Washington under direction of the

Washington toll bridge authority, or both: PROVIDED, That there shall be a further provision that each state shall have full power to design and construct approaches to each bridge within the respective boundaries of said state with reimbursement from the proceeds of the sale of revenue bonds to be issued.

(2) A provision that the state of Oregon, the Oregon state highway commission, and any other duly constituted agency of the state of Oregon, the state of Washington, the Washington toll bridge authority, the Washington state highway commission, and any other duly constituted agency of the state of Washington shall be reimbursed out of the proceeds of the sale of such bonds for any advances they may have made or expenses they may have incurred for any of the purposes for which said revenue bonds may be issued, after duly verified, itemized statements of such advances and expenses have been submitted to and jointly approved by the Oregon state highway commission and Washington toll bridge authority.

(3) A provision that during the period of operation of said bridges and the approaches thereto as a toll facility all maintenance and repair work may be performed by either the Oregon state highway commission or by the Washington toll bridge authority with a provision for reimbursement of the costs of such maintenance and repair from revenue derived from the collection of tolls on said toll facility.

Any such agreements shall include the following provisions:

(1) A provision that the new bridge and approaches provided for herein shall be consolidated and merged with the existing interstate bridge and its approaches located between Vancouver, Washington and Portland, Oregon so that both bridges shall be and become a single toll facility.

(2) A provision that the Washington toll bridge authority shall assume and have complete responsibility for the operation of both bridges and approaches thereto as a single toll facility except as to repair and maintenance, and with full power in the Washington toll bridge authority to impose and collect all toll charges from the users of said bridges and to disburse the revenue derived therefrom for the payment of expenses of maintenance and operation and repair thereof, all costs of constructing said new bridge and reconstructing and improving said existing bridge and all expenses incidental thereto, and the payment of the principal of and the interest on the revenue bonds herein provided for.

(3) A provision that the Washington toll bridge authority shall provide for the issuance, sale and payment of revenue bonds payable solely from the revenue derived from the imposition and collection of tolls upon both bridges as a single toll facility, and that such bonds shall be in such amounts as to provide funds with which to pay the costs of the design and construction of the proposed new bridge, including the approaches thereto in both states and the costs of acquisition of rights of way therefor, the reconstruction and alteration of the existing bridge and approaches thereto, expenses incident to the issuance of such bonds including the payment of interest for the period beginning with the date of issuance thereof and ending at the expiration of six months after tolls are first imposed, and a reasonable amount for working capital and prepaid insurance, with the further provision that any sale of the bonds to be issued shall be approved by the Oregon state highway commission.

(4) A provision that the Washington toll bridge authority, after consultation with the Oregon state highway commission, shall fix the classifications and amounts of tolls to be charged and collected from users of said toll facility with power after consultation with the Oregon state highway commission to revise the same if deemed necessary, and the time or times when such tolls shall first be imposed, with the further provision that such toll charges shall be removed after all costs of construction of the new bridge and approaches thereto and the reconstruction and improvement of the existing bridge and approaches thereto, including all incidental costs, shall have been paid, and all of said revenue bonds, and interest thereon, issued and sold pursuant to the authority of RCW 47.56.310 through 47.56.345 shall have been fully paid and redeemed. [1961 c 13 § 47.56.330. Prior: 1955 c 152 § 4; 1953 c 132 § 3.]

Reviser's note: Powers, duties, and functions of toll bridge authority and highway commission transferred to department of transportation; see RCW 47.01.031. Terms "Washington toll bridge authority" and "Washington state highway commission" mean department of transportation; see RCW 47.04.015.

47.56.340 Additional Columbia river bridge—When toll free. Both the bridges herein provided for shall be operated as toll-free bridges whenever the costs of construction of the new bridge and approaches thereto and the reconstruction and improvement of the existing bridge and approaches thereto, including all incidental costs shall have been paid, and when all of said revenue bonds and interest thereon issued and sold pursuant to the authority of RCW 47.56.310 through 47.56.345 shall have been fully paid and redeemed. [1961 c 13 § 47.56.340. Prior: 1955 c 152 § 3; 1953 c 132 § 4.]

47.56.343 Additional Columbia river bridge—Revenue bonds. The Washington toll bridge authority shall have the power and is hereby authorized by resolution to issue and sell its revenue bonds in an amount sufficient to provide funds to pay all the costs of construction of the new bridge and approaches thereto and the reconstruction and improvement of the existing bridge and approaches thereto, including all costs of survey, acquisition of rights of way, engineering, legal and incidental expenses, to pay the interest due thereon during the period beginning with the date of issue of the bonds and ending at the expiration of six months after the first imposition and collection of tolls from the users of said toll facility, and to pay amounts that will provide a reasonable sum for working capital and prepaid insurance and all costs incidental to the issuance and sale of the bonds.

Except as may be otherwise specifically provided in RCW 47.56.310 through 47.56.345, the provisions of chapter 47.56 RCW shall govern the issuance and sale of said revenue bonds, the execution thereof, the disbursement of the proceeds of sale thereof, the interest rate or rates thereon, their form, terms, conditions, covenants, negotiability, denominations, maturity date or dates, the creation of special funds or accounts safeguarding and providing for the payment of the principal thereof and interest thereon, and their manner of redemption and retirement.

Said revenue bonds shall constitute obligations only of the Washington toll bridge authority and shall be payable

both principal and interest solely from the tolls and revenues derived from the operation of said toll facility as hereinbefore constituted. Said bonds shall not constitute an indebtedness of the state of Washington and shall contain a recital on the face thereof to that effect, and shall be negotiable instruments under the law merchant. Such bonds shall include a covenant that the payment or redemption thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other revenues received from the operation of said toll facility and from any interest which may be earned from the deposit or investment of any such revenues, except for payment of costs of operation, maintenance and necessary repairs of said facility. The tolls and charges to be imposed shall be fixed in such amounts so that when collected they will produce revenues that shall be at least equal to expenses of operating, maintaining and repairing said toll facility, including all insurance costs, amounts for adequate reserves and coverage of annual debt service on said bonds, and all payments necessary to pay the principal thereof and interest thereon. [1961 c 13 § 47.56.343. Prior: 1955 c 152 § 5.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.345 Additional Columbia river bridge—Construction—Severability. Except as may be otherwise specifically provided in RCW 47.56.310 through 47.56.345, the provisions of chapter 47.56 RCW shall govern and be controlling in all matters and things necessary to carry out the purposes of RCW 47.56.310 through 47.56.345. Nothing in RCW 47.56.310 through 47.56.345 is intended to amend, alter, modify, or repeal any of the provisions of any statute relating to the powers and duties of the department except as such powers and duties are amplified or modified by the specific provisions of RCW 47.56.310 through 47.56.345 for the uses and purposes herein set forth, and RCW 47.56.310 through 47.56.345 shall be additional to such existing statutes and concurrent therewith.

If any sentence, clause, or phrase of RCW 47.56.310 through 47.56.345 is held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other sentence, clause, or phrase of RCW 47.56.310 through 47.56.345.

The provisions of RCW 47.56.310 through 47.56.345 shall be liberally construed so that the uses and purposes hereof may be achieved and accomplished. [1984 c 7 § 276; 1961 c 13 § 47.56.345. Prior: 1955 c 152 § 6.]

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

47.56.360 Bridging Puget Sound, Hood Canal—Operation, maintenance, prior charge upon revenue—Appropriations to be repaid. All operation and maintenance on any project while tolls are collected thereon shall be paid as they are incurred as a prior charge upon the revenue and tolls collected upon such project. Any funds herein appropriated from the motor vehicle fund to the Washington toll bridge authority, together with the sum of two hundred twenty-five thousand dollars heretofore appropriated by section 19, chapter 259, Laws of 1951, shall be considered as a loan and repaid by the authority to the motor vehicle fund

upon the sale of bonds of any project. [1961 c 13 § 47.56.360. Prior: 1953 c 78 § 2.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.366 Hood Canal bridge—Public sport fishing—Disclaimer of liability. The department may permit public sport fishing from the Hood Canal bridge. The department may adopt rules governing public use of the bridge for sport fishing to the end that such activity shall not interfere with the primary use and operation of the bridge as a highway facility. Notwithstanding the provisions of RCW 4.92.090 or any other statute imposing liability upon the state of Washington, the state hereby disclaims any liability arising out of loss or injury in connection with the public use of the Hood Canal bridge for sport fishing purposes. [1984 c 7 § 277; 1963 c 240 § 2.]

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

47.56.380 Express highway—Tacoma-Seattle-Everett—Limited access. The department is authorized to study and if feasible, after approval by the transportation commission to locate, construct, finance and operate as a toll road, until paid for, an express highway from the vicinity of Tacoma through Seattle to the vicinity of Everett. Right of way shall be acquired as a limited access facility. [1984 c 7 § 278; 1961 c 13 § 47.56.380. Prior: 1953 c 183 § 1.]

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

47.56.390 Express highway—Operation as toll highway—Part of state system. The toll road, when completed, shall become a part of the state highway system but may be operated as a toll highway by the department until such time as all costs of investigation, financing, acquisition of property, construction, maintenance, management, operation, repayment of advances from the motor vehicle fund, and obligations incurred under RCW 47.56.250 and chapter 16, Laws of 1945, have been fully paid. [1984 c 7 § 279; 1961 c 13 § 47.56.390. Prior: 1953 c 183 § 2.]

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

47.56.400 Express highway—Powers and duties of department. The department has the same powers, duties, and functions with respect to toll roads as the Washington toll bridge authority had with respect to toll bridges, and all the provisions of chapter 47.56 RCW apply to and govern toll roads insofar as is reasonably consistent and applicable, except as otherwise provided in RCW 47.56.380 through 47.56.400. [1984 c 7 § 280; 1961 c 13 § 47.56.400. Prior: 1953 c 183 § 3.]

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

47.56.410 Lopez Island-San Juan toll bridge—Appropriation—Study—Location, exploration, foundation, design. There is appropriated to the Washington toll bridge authority from the motor vehicle fund for the biennium ending June 30, 1959, the sum of one hundred seventy-

five thousand dollars or so much thereof as thereafter may be necessary for the following purposes:

(1) Twenty-five thousand dollars of the appropriation shall be available to study and make surveys, including traffic studies acceptable to prospective bond purchasers or investment firms, of the feasibility of the construction of a toll bridge between Lopez Island and San Juan Island in San Juan county so as to permit ferry runs from the mainland to Upright Head, overland travel from Upright Head to Roche Harbor, and ferry runs from Roche Harbor to Sidney, British Columbia. It shall be understood in such feasibility studies that San Juan county shall construct and maintain all road connections between the proposed bridge and the ferry landings at Upright Head and Roche Harbor.

(2) If as a result of the studies referred to above the toll bridge authority determines the project is feasible, and if San Juan county shall agree to sponsor such project and to conduct and maintain the road connections referred to above, one hundred fifty thousand dollars shall be available for the location, foundation exploration, and design of such bridge. [1961 c 13 § 47.56.410. Prior: 1957 c 141 § 1.]

47.56.420 Lopez Island-San Juan toll bridge—Final designs, construction, revenue bonds authorized. If the project is deemed feasible by the authority, the authority shall enter into final design plans, and construction thereof, issue revenue bonds to pay all costs of the project and let contracts in connection with the proposed project. Such revenue bonds shall be issued in accordance with the applicable provisions of RCW 47.56.080 through 47.56.250, and in addition to the purposes above stated may be issued to provide funds for paying all costs of issuance and sale of such bonds, and to pay interest on said bonds during construction and for six months thereafter. [1961 c 13 § 47.56.420. Prior: 1957 c 141 § 2.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "authority" means department of transportation; see RCW 47.04.015.

47.56.430 Lopez Island-San Juan toll bridge—Operation, maintenance, prior charge upon revenue—Appropriations to be repaid. All operation and maintenance on any project while tolls are collected thereon shall be paid as they are incurred as a prior charge upon the revenue and tolls collected upon such project. Any funds herein appropriated from the motor vehicle fund to the Washington toll bridge authority shall be considered as a loan and repaid by the authority to the motor vehicle fund upon the sale of bonds for this project. [1961 c 13 § 47.56.430. Prior: 1957 c 141 § 3.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.440 Lopez Island-San Juan toll bridge—Effect of toll bridge authority resolution No. 295—Ferry system refunding revenue bonds. Nothing authorized by RCW 47.56.410 through 47.56.440 shall be undertaken or done in any manner not in accord with any of the covenants and conditions contained in resolution No. 295 passed by the toll bridge authority on February 9, 1955, providing for the sale of Washington state ferry system refunding revenue bonds;

and all things authorized by RCW 47.56.410 through 47.56.440, including but not limited to feasibility, studies, location, design, construction and financing, shall be performed in accordance with the covenants and conditions of said resolution. If the terms of such resolution shall require that tolls on the bridge authorized by RCW 47.56.410 through 47.56.440 be used to redeem outstanding bonds issued pursuant to said resolution, such tolls shall be so used. [1961 c 13 § 47.56.440. Prior: 1957 c 141 § 4.]

47.56.450 Columbia river bridge at Biggs Rapids—Authorized—Cooperation with Klickitat county, highway commission, Oregon highway commission and Sherman county. If the Washington toll bridge authority should conclude that the construction of a toll bridge across the Columbia river in the vicinity of Biggs Rapids is feasible as a result of studies presently being conducted, the authority is hereby authorized, in conjunction with Klickitat county, the Washington state highway commission, the Oregon state highway commission, and Sherman county, Oregon, to design and construct a toll bridge at such location. All acts necessary to the design and construction of such bridge and approaches thereto may be done by the Washington toll bridge authority, Klickitat county, the Washington state highway commission, the Oregon state highway commission, Sherman county, Oregon, or any of such governmental agencies pursuant to agreement with the Washington toll bridge authority. [1961 c 13 § 47.56.450. Prior: 1957 c 142 § 1.]

Reviser's note: Powers, duties, and functions of toll bridge authority and highway commission transferred to department of transportation; see RCW 47.01.031. Terms "Washington toll bridge authority" and "Washington state highway commission" mean department of transportation; see RCW 47.04.015.

47.56.460 Columbia river bridge at Biggs Rapids—Appropriation—Repayment from bond issue. There is appropriated from the motor vehicle fund for the biennium ending June 30, 1959, the sum of one hundred fifty thousand dollars, or as much thereof as may be necessary for the purpose of location, design, preparation of cost estimates, and all other things preliminary to the construction of such bridge. Any funds herein appropriated from the motor vehicle fund to the Washington toll bridge authority shall be considered as a loan and repaid by the authority to the motor vehicle fund upon the sale of bonds for this project as provided in RCW 47.56.470. [1961 c 13 § 47.56.460. Prior: 1957 c 142 § 2.]

47.56.470 Columbia river bridge at Biggs Rapids—Revenue bonds. The Washington toll bridge authority is hereby authorized by resolution to issue and sell its revenue bonds in an amount sufficient to provide funds to pay all the costs of construction of such bridge and approaches thereto, including but not limited to all costs of survey, acquisition of rights of way, design, engineering, all expenses of issuance and sale of such bonds, and to pay interest on said bonds during construction and for six months after tolls are first imposed.

Except as may be otherwise specifically provided in RCW 47.56.450 through 47.56.500, the provisions of chapter 47.56 RCW shall govern the issuance and sale of said revenue bonds, the execution thereof, the disbursement of the

proceeds of sale thereof, the interest rate or rates thereon, their form, terms, conditions, covenants, negotiability, denomination, maturity date or dates, the creation of special funds or accounts safeguarding and providing for the payment of the principal therefor and interest thereon, and their manner of redemption and retirement.

Said revenue bonds shall constitute obligations only of the Washington toll bridge authority and shall be payable both principal and interest solely from the tolls and revenues derived from the operation of said toll facility as hereinbefore constituted. Said bonds shall not constitute an indebtedness of the state of Washington and shall contain a recital on the face thereof to that effect, and shall be negotiable instruments under the law merchant. Such bonds shall include a covenant that the payment or redemption thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other revenues received from the operation of said toll facility and from any interest which may be earned from the deposit or investment of any such revenues, except for payment of costs of operation, maintenance and necessary repairs of said facility. The tolls and charges to be imposed shall be fixed in such amounts so that when collected they will produce revenues that shall be at least equal to expenses of operating, maintaining and repairing said toll facility, including all insurance costs, amounts for adequate reserves and coverage of annual debt service on said bonds, and all payments necessary to pay the principal thereof and interest thereon. [1961 c 13 § 47.56.470. Prior: 1957 c 142 § 3.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.480 Columbia river bridge at Biggs Rapids—Construction of act. The provisions of chapter 47.56 RCW shall govern and be controlling in all matters and things necessary to carry out the purposes of RCW 47.56.450 through 47.56.500. Nothing in RCW 47.56.450 through 47.56.500 is intended to amend, alter, modify or repeal any of the provisions of any statute relating to the powers and duties of the Washington toll bridge authority except as such powers and duties are amplified or modified by the specific provisions of RCW 47.56.450 through 47.56.500 for the uses and purposes herein set forth, and RCW 47.56.450 through 47.56.500 shall be additional to such existing statutes and concurrent therewith. [1961 c 13 § 47.56.480. Prior: 1957 c 142 § 4.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.490 Columbia river bridge at Biggs Rapids—Powers of department—Tolls. The department is authorized to operate and to assume the full control of the toll facility and each portion thereof, whether within or without the borders of the state of Washington, with full power to impose and collect tolls from the users of the bridge for the purpose of providing revenue at least sufficient to pay the cost and incidental expenses of construction, maintenance, repair, and operation of the bridge and approaches in both states, and for the payment of the principal of and interest on its revenue

bonds as authorized by RCW 47.56.470. [1984 c 7 § 281; 1961 c 13 § 47.56.490. Prior: 1957 c 142 § 5.]

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

47.56.500 Columbia river bridge at Biggs Rapids—Agreements authorized. The Washington toll bridge authority, the Washington state highway commission and Klickitat county are each authorized to enter into such agreement with each other, the Oregon state highway commission and Sherman county, Oregon, as they shall find necessary and convenient to carry out the purposes of RCW 47.56.450 through 47.56.500; and the Washington toll bridge authority, the Washington state highway commission and Klickitat county are each authorized to do any and all acts contained in such agreement and necessary and convenient to carry out the purposes of RCW 47.56.450 through 47.56.500.

Such agreement shall include, but shall not be restricted to the following provisions:

(1) A provision that the Washington toll bridge authority shall assume and have complete responsibility for the operation of such bridge and approaches thereto, and with full power in the Washington toll bridge authority to impose and collect all toll charges from the users of such bridge and to disburse the revenue derived therefrom for the expenses of maintenance and operation and repair thereof, all costs of construction, and the payment of principal and interest on any revenue bonds herein provided for.

(2) A provision that the Washington toll bridge authority shall provide for the issuance, sale and payment of revenue bonds payable solely from the revenue derived from the imposition and collection of tolls upon such toll bridge.

(3) A provision that the Washington toll bridge authority, after consultation with the other governmental agencies who are parties to such agreement, shall fix and revise the classifications and amounts of tolls to be charged and collected from the users of the toll bridge, with the further provision that such toll charges shall be removed after all costs of planning, designing, and construction of such toll bridge and approaches thereto and all incidental costs shall have been paid, and all of said revenue bonds, and interest thereon, issued and sold pursuant to RCW 47.56.450 through 47.56.500 shall have been fully paid and redeemed.

(4) A provision that all acts pertaining to the design and construction of such toll bridge may be done and performed by the Oregon state highway commission, the Washington state highway commission or the Washington toll bridge authority, or any of them, and that any and all contracts for the construction of such toll bridge shall be awarded in the name of the state of Oregon by and through its state highway commission or the state of Washington by and through its state highway commission or its toll bridge authority, or all of them.

(5) A provision that the state of Washington, the state of Oregon, and all governmental agencies party to such agreement shall be reimbursed out of the proceeds of the sale of such bonds for any advances they may have made or expenses they may have incurred for any of the purposes for which said revenue bonds may be issued, after duly verified itemized statements of such advances and expenses have

been submitted to and been approved by all parties to such agreement.

(6) A provision that during the period of operation of such bridge and approaches thereto as a toll facility all maintenance and repair may be performed by either the Oregon state highway commission or the Washington state highway commission with a provision for reimbursement of the costs of such maintenance and repair from revenue derived from the collection of tolls on such bridge. [1961 c 13 § 47.56.500. Prior: 1957 c 142 § 6.]

Reviser's note: Powers, duties, and functions of toll bridge authority and highway commission transferred to department of transportation; see RCW 47.01.031. Terms "Washington toll bridge authority" and "Washington state highway commission" mean department of transportation; see RCW 47.04.015.

47.56.580 Naches Pass tunnel—What studies and surveys shall include. Such studies and surveys shall include but shall not be confined to the following:

(1) The most desirable design, tunnel approaches, and connecting roads;

(2) The most desirable location;

(3) The cost of construction and the length of construction time required;

(4) The financial feasibility of the tunnel and the amount, if any, of supplementary aid required to finance it;

(5) The relative economic benefit to counties, cities, or other political subdivisions to be principally served by construction of the tunnel;

(6) The benefit to the state highway system, taking into account the statewide interest in the tunnel and the estimated additional motor vehicle fuel tax revenue which would accrue to the motor vehicle fund as a result of the construction of the tunnel. [1961 c 13 § 47.56.580. Prior: 1959 c 292 § 2.]

47.56.590 Naches Pass tunnel—Plan for financing. Upon the completion of such studies and surveys, the highway commission and the toll bridge authority, in cooperation with the joint fact-finding committee on highways, streets and bridges, shall prepare a plan for financing the project. The plan shall include the cost of the entire project; the portion of such total cost which can be financed by the issuance of toll bridge authority revenue bonds; the portion of such total cost and the amount of guarantee funds which should be contributed or advanced by any political subdivisions to be economically benefited by construction of the project; and the portion of such total cost and the amount of guarantee funds which should be contributed from that portion of the motor vehicle fund available to the department of highways for state highway purposes. When completed, the financing plan shall be adopted by resolution of the commission and the authority. [1961 c 13 § 47.56.590. Prior: 1959 c 292 § 3.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "highway commission" and "toll bridge authority" mean department of transportation; see RCW 47.04.015.

47.56.600 Naches Pass tunnel—Design. Upon adoption of the financing plan the commission and the authority, acting jointly, shall forthwith proceed to make the design for

the entire project. [1961 c 13 § 47.56.600. Prior: 1959 c 292 § 4.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "commission" and "authority" mean department of transportation; see RCW 47.04.015.

47.56.610 Naches Pass tunnel—Contribution by political subdivisions. After adoption of the financing plan, the authority and the highway commission, acting jointly, shall request any political subdivision which will be benefited by the construction of the project, to advance or contribute money or bonds toward the expenses of construction or to guarantee toll bridge authority revenue bonds to be issued to finance the project. [1961 c 13 § 47.56.610. Prior: 1959 c 292 § 5.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "authority," "toll bridge authority," and "highway commission" mean department of transportation; see RCW 47.04.015.

47.56.630 Naches Pass tunnel—Repayment to motor vehicle fund of funds appropriated. All funds herein appropriated from the motor vehicle fund to the Washington state highway commission and the Washington toll bridge authority shall be considered as a loan and shall be repaid by the commission and the authority to the motor vehicle fund upon the sale of bonds for this project. [1961 c 13 § 47.56.630. Prior: 1959 c 292 § 7.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "Washington state highway commission" and "Washington toll bridge authority" mean department of transportation; see RCW 47.04.015.

47.56.631 Naches Pass tunnel—Additional studies—Route of highway and tunnel—Appropriation. The Washington toll bridge authority is authorized and directed to make all necessary traffic studies, acceptable to prospective bond purchasers or investment firms to determine the amount of subsidy or other financial assistance necessary to make feasible the construction of a toll highway and tunnel on primary state highway 5 through the Cascade mountains, together with the necessary approaches connecting to existing highways. Said highway and tunnel project shall start on state highway 5 near the junction of the White and Greenwater rivers; thence in an easterly direction through Greenwater river drainage area to the west portal of the tunnel under Pyramid Park; thence to the east portal; thence following the north fork of the Little Naches river to the Little Naches river; thence down to its junction with the Bumping river at state highway 5.

There is hereby appropriated from the motor vehicle fund to the Washington toll bridge authority for the biennium ending June 30, 1963 the sum of fifty thousand dollars to carry out the provisions of this section. [1961 ex.s. c 21 § 18.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

(2004 Ed.)

47.56.640 Bridging lower Columbia river in vicinity of Astoria-Megler. The Washington state highway commission is hereby authorized in conjunction with the Oregon state highway commission to erect a bridge or so much thereof as may be agreed upon with the Oregon state highway commission, including approaches thereto, across the Columbia river in the vicinity of Astoria, Oregon and Megler, Washington. Such bridge shall be an integral part of U. S. highway No. 101 and to the Oregon boundary shall be a part of primary state highway No. 12. All acts necessary to the design and construction of said new bridge and approaches thereto may be done and performed by either the Oregon state highway commission or the Washington state highway commission with the approval of the other or by both of them jointly. [1961 c 209 § 1.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.643 Bridging lower Columbia river in vicinity of Astoria-Megler—Agreements with United States—Acceptance of public or private funds. In order to carry out the provisions of RCW 47.56.640 through 47.56.667 the Washington state highway commission may consult, cooperate and enter into agreements with the government of the United States or any of its agencies and accept and expend moneys from any public or private source, including the government of the United States or any political subdivision, which is now or may be made available for carrying out the purposes contained in RCW 47.56.640 through 47.56.667. [1961 c 209 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.646 Bridging lower Columbia river in vicinity of Astoria-Megler—Agreements with Oregon—Provisions for Oregon bond issue, powers and duties of both states, tolls, apportionment of costs, etc. Subject to the conditions stated in RCW 47.56.658, the Washington state highway commission is hereby authorized to enter into such agreements with the Oregon state highway commission as it shall find necessary or convenient to carry out the purposes of RCW 47.56.640 through 47.56.667.

Any such agreements shall include, but shall not be limited to, the following:

(1) A provision that the state of Oregon or the Oregon state highway commission shall issue general obligation bonds in the aggregate principal sum of not to exceed twenty-four million dollars par value or so much thereof as shall be required to pay all costs of location and construction of said bridge, but excluding costs of location, relocation, improvement, construction or reconstruction of approaches as the same are shown and described in "A Report On a Proposed Bridge Across the Columbia River," prepared by the Oregon and Washington state highway commissions, dated January, 1959. In determining the amount of money required for construction, there shall be taken into account all available financial contributions for such construction costs, of whatever description and from whatever source.

(2) A provision that to the extent that revenues derived from the imposition and collection of tolls and franchise fees for the use of the bridge in any year are insufficient to provide for the payment of principal, interest and other charges incidental to the issuance, sale and retirement of the bonds issued by Oregon or any subsequent refunding bond issues, the state of Oregon will pay the first one hundred thousand dollars of such deficit and the state of Washington is bound to pay, when due, forty percent of the balance of such deficit for such year from any moneys in the motor vehicle fund not otherwise pledged or from any other source available to the Washington state highway commission for said purpose: PROVIDED, That in no case shall the portion of such deficit paid by the state of Washington exceed two hundred thousand dollars in any such year.

(3) A provision that the Oregon state highway commission shall assume and have complete responsibility for the operation of the bridge as a toll facility and each portion thereof, whether within or without the borders of Washington and with full power in the Oregon state highway commission to impose and collect all toll charges and franchise fees from the users of said bridge and to disburse the revenue derived therefrom for the following purposes in the following order:

(a) Payment of all costs of toll collection and insurance in the event the bridge is insured.

(b) Payment of the principal, interest and other charges incidental to the issuance, sale and retirement of the bonds herein provided for including any subsequent refunding bonds.

(4) A provision that the Oregon state highway commission, after consultation with the Washington state highway commission shall fix the classifications and amounts of tolls to be charged and collected from users of said toll facility with power after consultation with the Washington state highway commission to revise the same if deemed necessary, and the time or times when such tolls shall first be imposed.

(5) A provision that all acts pertaining to the design and construction of said bridge may be done and performed by the Oregon state highway commission or the Washington state highway commission with the approval of the other, or by both, and that any and all contracts for the construction of the bridge shall be awarded in the name of the state of Oregon by and through its state highway commission or the state of Washington by and through its state highway commission, or both: PROVIDED, HOWEVER, That there shall be a further provision that each state shall have full power to design and construct approaches to the bridge within the respective boundaries of each state. Such approaches shall constitute a part of the state highways system of each state and the cost of design, right of way and construction thereof shall be borne by the respective states from any funds available for such purposes. In the event design or construction of approaches is included in any contract for the construction of the bridge, the cost of such approaches within the respective boundaries of each state shall be segregated and paid for by the respective states.

Any such agreements may include, but shall not be limited to the following:

(1) A provision that the state of Oregon, the Oregon state highway commission, and any other duly constituted agency of the state of Oregon, the state of Washington, the Washing-

ton toll bridge authority, the Washington state highway commission, and any other duly constituted agency of the state of Washington shall be reimbursed out of the proceeds of the sale of such bonds for any advances they may have made or expenses they may have incurred subsequent to March 1, 1961 for any of the purposes for which said bonds may be issued by the state of Oregon, after duly verified, itemized statements of such advances and expenses have been submitted to and jointly approved by the Oregon state highway commission and Washington state highway commission.

(2) A provision that during the period of operation of said bridge as a toll facility all or any part of the maintenance and repair work may be performed by either the Oregon state highway commission or by the Washington state highway commission with a provision for payment of the costs of such maintenance and repair one-half from the Oregon state highway commission and one-half from the Washington state highway commission. [1961 c 209 § 3.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "Washington state highway commission" and "Washington toll bridge authority" mean department of transportation; see RCW 47.04.015.

47.56.649 Bridging lower Columbia river in vicinity of Astoria-Megler—Use of Washington motor vehicle fuel taxes, motor vehicle fund to pay Oregon bonds if tolls and fees insufficient. To the extent that all revenues from the imposition and collection of tolls and franchise fees for use of the bridge are insufficient to provide for the payment of principal, interest and other charges incidental to the issuance, sale and retirement of the bonds issued by the state of Oregon in connection with this project, or on any subsequent refunding bond issues, there is hereby imposed, to the extent provided in first subsection (2) of RCW 47.56.646, a first and prior charge against all revenues hereafter derived from the proceeds of state excise taxes on motor vehicle fuels now directed by law to be deposited in the motor vehicle fund available for state highway commission purposes.

To the extent that revenues of the project are insufficient to meet required payments of principal, interest and other charges incidental to the issuance, sale and retirement of bonds, the Washington state highway commission shall use moneys in the motor vehicle fund to pay its share of such deficits. [1961 c 209 § 4.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.652 Bridging lower Columbia river in vicinity of Astoria-Megler—Procedure for this state paying deficiency in tolls and fees for Oregon bond issue. The payments provided for in RCW 47.56.649, as they come due, shall be authorized by the Washington state highway commission and paid by warrants signed by the state treasurer, upon the duly verified itemized statements of the Oregon state highway commission showing the amount due from the state of Washington required to meet its share of any deficit computed as provided in [first] subsection (2) of RCW 47.56.646. [1961 c 209 § 5.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.655 Bridging lower Columbia river in vicinity of Astoria-Megler—Washington liability for costs—Maintenance and repair—Approaches. The Washington state highway commission shall pay one-half of all costs of maintenance and repair of said bridge from funds appropriated for the use of the Washington state highway commission for construction and maintenance of the primary state highways. The Washington state highway commission shall pay for the costs of design, right of way and construction of approaches to said bridge within the boundaries of the state of Washington from funds appropriated for the use of the Washington state highway commission for construction and maintenance of the primary state highways or from any other funds available for said purpose. [1961 c 209 § 6.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.658 Bridging lower Columbia river in vicinity of Astoria-Megler—Financial responsibility of Pacific county—Prior commitment required. The Washington state highway commission shall not enter into agreements with the Oregon state highway commission for the construction of the toll bridge over the lower Columbia river as authorized by RCW 47.56.646 unless and until:

Pacific county has, at the request of the state highway commission, contributed or properly authorized the contribution of money or bonds in the sum of one hundred eighty-five thousand dollars or so much thereof as may be necessary to reimburse the Washington state highway commission for costs of design and construction of the approaches to said bridge within the boundaries of the state of Washington, such contribution to be made by any of the methods authorized in RCW 47.56.250. [1969 ex.s. c 281 § 52; 1961 c 209 § 7.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.56.659 Bridging lower Columbia river in vicinity of Astoria-Megler—Contractual obligations of Pacific county terminated. All accrued and unaccrued obligations of Pacific county created by that certain contract between the Washington state highway commission and Pacific county dated June 20, 1961, entered into pursuant to *subsection (2) of RCW 47.56.658 are hereby terminated. [1969 ex.s. c 281 § 53.]

***Reviser's note:** Subsection (2) of RCW 47.56.658 was deleted by 1969 ex.s. c 281 § 52.

47.56.661 Bridging lower Columbia river in vicinity of Astoria-Megler—Deposit of contribution of Pacific county in motor vehicle fund—Use. In the event Pacific county makes the contribution authorized in *subsection (1) of RCW 47.56.658, such contribution shall be placed in the

motor vehicle fund and shall be available for state highway purposes. [1961 c 209 § 8.]

***Reviser's note:** Subsection (1) of RCW 47.56.658 became the second paragraph of RCW 47.56.658 when subsection (2) of RCW 47.56.658 was deleted by 1969 ex.s. c 281 § 52.

47.56.667 Bridging lower Columbia river in vicinity of Astoria-Megler—When toll free. The bridge herein provided for shall be operated as a toll-free bridge whenever the bonds to be issued by the state of Oregon together with interest thereon have been fully paid, unless the state of Washington and the state of Oregon hereafter agree through their highway commissions that tolls shall be retained on the bridge to repay in whole or in part the respective states for moneys advanced to pay principal or interest on the bonds issued by the state of Oregon. [1961 c 209 § 10.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "highway commission" means department of transportation; see RCW 47.04.015.

47.56.700 Columbia river, Vernita bridge and highway approach from Richland—Authorized. If the Washington toll bridge authority shall conclude that the construction of a toll bridge across the Columbia river in the vicinity of Vernita, including approaches, and a highway approach from the vicinity of Richland to said toll bridge, are feasible, the authority is hereby authorized to make all surveys, design and construct said toll bridge and approaches. [1963 c 197 § 1.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.701 Columbia river, Vernita bridge and highway approach from Richland—Revenue bonds—Tolls and charges. The Washington toll bridge authority is hereby authorized by resolution to issue and sell its revenue bonds in an amount sufficient to provide funds to pay all the costs of construction of such bridge and approaches thereto, and the highway approach from the vicinity of Richland to said bridge, including but not limited to all costs of survey, acquisition of rights of way, design, engineering, all expenses of issuance and sale of such bonds, and to pay interest on said bonds during construction and for six months after tolls are first imposed.

Except as may be otherwise specifically provided in RCW *47.20.410, 47.20.415, and 47.56.700 through 47.56.706, the provisions of RCW 47.56.130 through 47.56.245 shall govern the issuance and sale of said revenue bonds, the execution thereof, the disbursement of the proceeds of sale thereof, the interest rate or rates thereon, their form, terms, conditions, covenants, negotiability, denomination, maturity date or dates, the creation of special funds or accounts safeguarding and providing for the payment of the principal therefor and interest thereon, and their manner of redemption and retirement.

Said revenue bonds shall constitute obligations only of the Washington toll bridge authority and shall be payable both principal and interest from the tolls and revenues derived from the operation of said toll bridge and from that

portion of the motor vehicle fund as provided in RCW 47.56.702. Said bonds shall not constitute an indebtedness of the state of Washington and shall contain a recital on the face thereof to that effect, and shall be negotiable instruments under the law merchant. Such bonds shall include a covenant that the payment or redemption thereof and the interest thereon are secured by a first and direct charge and lien on all of the tolls and other revenues received from the operation of said toll bridge and from any interest which may be earned from the deposit or investment of any such revenues and such sums as are pledged from the motor vehicle fund as provided in RCW 47.56.702, except for payment of costs of operation, maintenance and necessary repairs of said facility. The tolls and charges to be imposed shall be fixed in such amounts so that when collected they, together with said pledge from the motor vehicle fund, will produce revenues that shall be at least equal to expenses of operating, maintaining and repairing said toll facility, including all insurance costs, amounts for adequate reserves and coverage of annual debt service on said bonds, and all payments necessary to pay the principal thereof and interest thereon.

Until all of said bonds are fully paid and until the motor vehicle fund is fully reimbursed for all sums advanced therefrom to pay principal and interest on said bonds or any subsequent refunding bond issue, the tolls charged for the use of said facility shall never be reduced below the sums specified in the following schedule:

For every combination of vehicles and for buses having a seating capacity for over fifteen persons	\$0.75
For all trucks licensed for a maximum gross load of over 8,000 lbs. other than a combination of vehicles and all buses having a seating capacity for less than sixteen persons	\$0.50
For all other motor vehicles not specified above and for motorcycles	\$0.25

[1963 c 197 § 2.]

Reviser's note: *(1) RCW 47.20.410 was repealed by 1970 ex.s. c 51 § 178; RCW 47.20.415 was repealed by 1967 ex.s. c 145 § 8.

(2) Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

47.56.702 Columbia river, Vernita bridge and highway approach from Richland—Pledge of excise taxes imposed on motor vehicle fuels. The department may pledge the proceeds of all excise taxes imposed on motor vehicle fuels now directed by law to be deposited in the motor vehicle fund and which are available for appropriation to the department for state highway purposes in the sum of one hundred thousand dollars per year for the purpose of guaranteeing the payment of principal and interest on bonds issued by the authority as authorized in RCW 47.56.701 or for sinking fund requirements or reserves established by the authority with respect thereto or for guaranteeing the payment of principal and interest on any subsequent refunding bond issues. To the extent of any such pledge the department shall use such moneys to meet such obligations as they arise but only to the extent that net revenues of the project are insufficient therefor. [1984 c 7 § 282; 1963 c 197 § 3.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "toll bridge authority" means department of transportation; see RCW 47.04.015.

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

47.56.703 Columbia river, Vernita bridge and highway approach from Richland—Continued imposition of such taxes. Whenever the department has made a pledge of motor vehicle funds as authorized in RCW 47.56.702 the legislature agrees to continue to impose excise taxes on motor vehicle fuels, and there is imposed a first and prior charge thereon, in amounts sufficient to provide the department with funds necessary to enable it to comply with the pledge. [1984 c 7 § 283; 1963 c 197 § 4.]

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

47.56.704 Columbia river, Vernita bridge and highway approach from Richland—Repayment of motor vehicle fund money—Continuation of tolls. Any money from the motor vehicle fund used by the department for payment of expenses of location, maintenance, repair, and operation of the bridge and approaches and highway approach, and principal or interest on any bonds issued pursuant to RCW 47.56.701 or any subsequent refunding bond issue shall be repaid to the motor vehicle fund to be used for state highway purposes from revenues of the project, and tolls shall be continued for any additional length of time necessary for this purpose. [1984 c 7 § 284; 1963 c 197 § 5.]

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

47.56.705 Columbia river, Vernita bridge and highway approach from Richland—Facility to be part of highway system—Operation, collection of tolls. The toll facility, when completed, shall become a part of the state highway system and the department is hereby authorized to operate and to assume the full control of said toll bridge with full power to collect tolls from the users of such bridge as established by the department for the purpose of providing revenue which, with the pledge from the motor vehicle fund provided for in RCW 47.56.702, shall be sufficient to pay all costs and incidental expenses of location, construction, maintenance, repair, and operation of said bridge and approaches and highway approach from the vicinity of Vernita to said bridge, for the repayment of the principal and interest on its revenue bonds, and reimbursement to the motor vehicle fund of all sums expended therefrom under *RCW 47.20.415 and 47.56.700 through 47.56.706. [1983 c 3 § 131; 1963 c 197 § 6.]

***Reviser's note:** RCW 47.20.415 was repealed by 1967 ex.s. c 145 § 8.

47.56.706 Columbia river, Vernita bridge and highway approach from Richland—Laws applicable—Construction of 1963 statute. Except as specifically provided in *RCW 47.20.415 and 47.56.700 through 47.56.706, the provisions of RCW 47.56.010 through 47.56.257 shall govern and be controlling in all matters and things necessary to carry out the purposes of *RCW 47.20.415 and 47.56.700 through 47.56.706. Nothing in *RCW 47.20.415 and 47.56.700 through 47.56.706 is intended to amend, alter, modify, or repeal any of the provisions of any statute relating to the powers and duties of the department except as such powers and

duties are amplified or modified by the special provisions of *RCW 47.20.415 and 47.56.700 through 47.56.706 for the uses and purposes herein set forth, and the provisions of *RCW 47.20.415 and 47.56.700 through 47.56.706 shall be additional to such existing statutes and concurrent therewith. [1983 c 3 § 132; 1963 c 197 § 7.]

*Reviser's note: RCW 47.20.415 was repealed by 1967 ex.s. c 145 § 8.

47.56.711 Spokane river bridges. The state highway bridge across the Spokane river in the vicinity of Trent Avenue in Spokane shall be known and designated as the James E. Keefe bridge.

After September 1, 1990, ownership of the Spokane river toll bridge, known as the Maple Street bridge, shall revert to the city of Spokane. [1990 c 42 § 401; 1979 c 131 § 1.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—1979 c 131: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 131 § 11.]

47.56.7115 Spokane river toll bridge—Operation and maintenance responsibility and funding. The city of Spokane shall be responsible for operating and maintaining the Spokane river toll bridge and the surrounding area except:

(1) The department of transportation shall remove the toll booths and restripe the approaches, as necessary, once the tolls have been removed.

(2) The department of transportation shall replace the bridge deck and upgrade the approaches. In order to accomplish this activity, the department of transportation shall pursue federal bridge replacement funds and the city of Spokane shall contribute three hundred thousand dollars towards the required matching funds. [1990 c 42 § 402.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

47.56.7125 Spokane river toll bridge—Transfer of funds. The state treasurer shall transfer all remaining funds in the Spokane river toll bridge revenue account to the motor vehicle fund to be used for the following purposes:

(1) Repay existing loans from the motor vehicle fund to the Spokane river toll bridge revenue account in the amount of six hundred sixteen thousand two dollars and thirty-three cents;

(2) Fund removal of toll booths and associated repairs on the Spokane river toll bridge; and

(3) Fund preliminary engineering of the bridge deck replacement on the Spokane river toll bridge.

Any remaining funds are reserved to provide matching funds for federal bridge replacement funds to replace the bridge deck in the 1991-93 biennium. [1990 c 42 § 404.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

47.56.720 Puget Island-Westport ferry—Payments for operation and maintenance to Wahkiakum county—Toll-free operation and provision of rest room facilities, when. (1) The legislature finds that the ferry operated by Wahkiakum county between Puget Island and Westport on

the Columbia river provides service which is primarily local in nature with secondary benefits to the state highway system in providing a bypass for state route 4 and providing the only crossing of the Columbia river between the Astoria-Megler bridge and the Longview bridge.

(2) The department is hereby authorized to enter into a continuing agreement with Wahkiakum county pursuant to which the department shall pay to Wahkiakum county from moneys appropriated for such purpose monthly amounts not to exceed eighty percent of the operating and maintenance deficit with a maximum not to exceed the amount appropriated for that biennium to be used in the operation and maintenance of the Puget Island ferry, commencing July 1, 1992.

(3) The annual deficit, if any, incurred in the operation and maintenance of the ferry shall be determined by Wahkiakum county subject to the approval of the department. If eighty percent of the deficit for the preceding fiscal year exceeds the total amount paid to the county for that year, the additional amount shall be paid to the county by the department upon the receipt of a properly executed voucher. The total of all payments to the county in any biennium shall not exceed the amount appropriated for that biennium. The fares established by the county shall be comparable to those used for similar runs on the state ferry system.

(4) Whenever, subsequent to June 9, 1977, state route 4 between Cathlamet and Longview is closed to traffic pursuant to chapter 47.48 RCW due to actual or potential slide conditions and there is no suitable, reasonably short alternate state route provided, Wahkiakum county is authorized to operate the Puget Island ferry on a toll-free basis during the entire period of such closure. The state's share of the ferry operations and maintenance deficit during such period shall be one hundred percent.

(5) Whenever state route 4 between Cathlamet and Longview is closed to traffic, as mentioned in subsection (4) hereof, the state of Washington shall provide temporary rest room facilities at the Washington ferry landing terminal. [1992 c 82 § 1; 1987 c 368 § 1; 1984 c 7 § 285; 1977 c 11 § 1; 1973 2nd ex.s. c 26 § 1; 1971 ex.s. c 254 § 1.]

Effective date—1987 c 368: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 368 § 2.]

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

Effective date—1973 2nd ex.s. c 26: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect October 1, 1973." [1973 2nd ex.s. c 26 § 3.]

47.56.725 County ferries—Deficit reimbursements—Capital improvement funds. (1) The department is hereby authorized to enter into a continuing agreement with Pierce, Skagit, and Whatcom counties pursuant to which the department shall, from time to time, direct the distribution to each of the counties the amounts authorized in subsection (2) of this section in accordance with RCW 46.68.090.

(2) The department is authorized to include in each agreement a provision for the distribution of funds to each county to reimburse the county for fifty percent of the deficit incurred during each previous fiscal year in the operation and maintenance of the ferry system owned and operated by the county. The total amount to be reimbursed to Pierce, Skagit,

and Whatcom counties collectively shall not exceed one million dollars in any biennium. Each county agreement shall contain a requirement that the county shall maintain tolls on its ferries at least equal to tolls in place on January 1, 1990.

(3) The annual fiscal year operating and maintenance deficit, if any, shall be determined by Pierce, Skagit, and Whatcom counties subject to review and approval of the department. The annual fiscal year operating and maintenance deficit is defined as the total of operations and maintenance expenditures less the sum of ferry toll revenues and that portion of fuel tax revenue distributions which are attributable to the county ferry as determined by the department. Distribution of the amounts authorized by subsection (2) of this section by the state treasurer shall be directed by the department upon the receipt of properly executed vouchers from each county.

(4) The county road administration board may evaluate requests by Pierce, Skagit, Wahkiakum, and Whatcom counties for county ferry capital improvement funds. The board shall evaluate the requests and, if approved by a majority of the board, submit the requests to the legislature for funding out of the amounts available under *RCW 46.68.090(1)(j). Any county making a request under this subsection shall first seek funding through the public works trust fund, or any other available revenue source, where appropriate. [1999 c 269 § 12; 1991 c 310 § 1; 1984 c 7 § 286; 1977 c 51 § 2; 1975-'76 2nd ex.s. c 57 § 2; 1975 1st ex.s. c 21 § 1.]

***Reviser's note:** RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(j) to subsection (2)(h).

Effective date—1999 c 269: See note following RCW 36.78.070.

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

Effective date—1977 c 51: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977." [1977 c 51 § 4.]

Severability—1977 c 51: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 c 51 § 3.]

47.56.730 "No Smoking" areas on ferries—Establishment directed. The legislature finds that the public health, safety, and welfare require that "No Smoking" areas be established on all state ferries since there is a significant number of our citizens who are nonsmokers. The department is hereby authorized and directed to adopt rules pursuant to the administrative procedure act, chapter 34.05 RCW, to establish and clearly designate areas on all state operated ferries that are expressly reserved for use by nonsmokers. [1984 c 7 § 287; 1974 ex.s. c 10 § 1.]

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

47.56.740 Columbia river bridge at Horn Rapids—Authorized—Approach routes. Subject to the provisions of RCW 47.56.741, 47.56.742, and 47.56.743, the department of transportation is hereby authorized and directed to make all necessary surveys and to design and construct a toll bridge across the Columbia river. The approaches to the toll bridge shall (1) extend from the bridge to state route number 240 on the west and may include the improvement of the Horn Rapids Road; (2) extend from the bridge easterly to

state route number 395 and shall include the improvement of Alder Road; and (3) extend from a point on the easterly approach road southerly to state route number 182 and shall include the improvement of existing county roads. [1981 c 327 § 1; 1979 ex.s. c 212 § 1.]

Severability—1979 ex.s. c 212: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 212 § 21.]

47.56.741 Columbia river bridge at Horn Rapids—Agreements with local governments. If the transportation commission concludes that construction of a toll bridge across the Columbia river at North Richland in the vicinity of the Horn Rapids Road, including approaches, is economically feasible, the department is authorized to enter into agreements with Richland, Benton county, and Franklin county in accordance with RCW 47.56.742. [1979 ex.s. c 212 § 2.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.742 Columbia river bridge at Horn Rapids—Bonds—Agreements with local governments required. The transportation commission shall not request the issuance of any bonds for the construction of the toll bridge and its approaches unless and until:

(1) Either Richland or Benton county separately or Richland and Benton county jointly agree with the department to maintain to standards prescribed by the department the westerly approach from the bridge to state route number 240 including sections of Horn Rapids Road so long as any bonds issued to pay for the construction of the toll bridge and its approaches remain outstanding.

(2) Franklin county shall agree with the department to maintain to standards prescribed by the department the easterly approach from the bridge to state route number 395 and the approach from the easterly approach road southerly to state route number 182 so long as any bonds issued to pay for the construction of the toll bridge and its approaches remain outstanding. [1981 c 327 § 2; 1979 ex.s. c 212 § 3.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.743 Columbia river bridge at Horn Rapids—Bonds—Plans for funding obligations of local governments required. The transportation commission shall not request the issuance of any bonds for the construction of the toll bridge and its approaches until Benton and Franklin counties and Richland have adopted specific and acceptable plans to assure the funding of their respective obligations as established by the agreements authorized in RCW 47.56.742. [1979 ex.s. c 212 § 4.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.744 Columbia river bridge at Horn Rapids—Agreements with United States—Acceptance of public or private funds. In order to facilitate the financing of the toll bridge the department, Benton and Franklin counties, and Richland may consult, cooperate, and enter into agreements with the government of the United States or any of its agencies and accept and expend money from any public or private

source which is now or may be available to assist in the construction of the bridge. [1979 ex.s. c 212 § 5.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.745 Columbia river bridge at Horn Rapids—General obligation bonds authorized—Additional bonds authorized, restriction. In order to provide funds for the construction of such bridge and approaches thereto, including but not limited to all costs of survey, acquisition of rights of way, design, engineering, and to pay the interest on the bonds when due during construction and for a period not exceeding six months after the bridge is open to traffic, there shall be issued and sold general obligation bonds of the state of Washington in the principal amount of not to exceed eighty million dollars or such lesser amount thereof, at such times as may be determined to be necessary by the department of transportation. At the request of the transportation commission the state finance committee may issue additional general obligation bonds of the state of Washington ranking on a parity with the bonds authorized hereinabove and subject to the provisions of RCW 47.56.740 through 47.56.756 as now amended, to pay the cost of further improving the approaches to the bridge or adding additional bridge lanes or constructing a parallel bridge: PROVIDED, That such additional bonds shall not be issued without further express authorization of the legislature. [1981 c 327 § 3; 1979 ex.s. c 212 § 6.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.746 Columbia river bridge at Horn Rapids—Bonds—Issuance, sale, retirement supervised by state finance committee. The issuance, sale, and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the department of transportation shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as the department of transportation shall determine to be necessary to meet the purposes specified in RCW 47.56.745. [1979 ex.s. c 212 § 7.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.747 Columbia river bridge at Horn Rapids—Bonds—Term—Terms and conditions—Signatures—Registration—Where payable—Negotiable instruments—Legal investment for state funds—Bond anticipation notes. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of issuance. The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds and/or bond anticipation notes provided for in this section, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the fiscal agency of the state of Washington in Seattle or New York City as to principal alone, or as to both

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principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder, unless registered, shall be fully negotiable instruments. The bonds shall be legal investments for all state funds or for funds under state control and all funds of municipal corporations.

At such time as a determination has been made to issue the general obligation bonds or a portion thereof as authorized in RCW 47.56.745, the state finance committee may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of the bonds, which notes shall be designated as "bond anticipation notes." If, prior to the issuance of such bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem such outstanding notes and to pay interest thereon. Such portion of the proceeds of the sale of the bonds as may be required for the payment of principal of and redemption premium, if any, and interest on the notes shall be applied thereto when the bonds are issued. [1979 ex.s. c 212 § 8.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.748 Columbia river bridge at Horn Rapids—Bonds—Bond proceeds—Deposit and use. Except for that portion of the proceeds required to pay bond anticipation notes under RCW 47.56.747, and except as provided in RCW 47.56.750, the money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the Columbia river toll bridge account hereby created in the motor vehicle fund, and such money shall be available only for the purposes enumerated in RCW 47.56.745, for payment of the expense incurred in the issuance and sale of any such bonds and to repay the motor vehicle fund for any sums advanced to pay the cost of surveys, location, design, right of way, and all other things preliminary to the construction of the bridge and its approaches. [1981 c 327 § 4; 1979 ex.s. c 212 § 9.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.749 Columbia river bridge at Horn Rapids—Bonds—Statement describing nature of obligation—Sources of payment. Bonds and bond anticipation notes issued under the provisions of RCW 47.56.740 through 47.56.756 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in chapter 212, Laws of 1979 ex. sess. from the proceeds of state excise taxes on motor vehicles and special fuels imposed by chapters 82.36 and 82.38 RCW and from the tolls and revenues derived from the operation of such toll bridge. [1995 c 274 § 15; 1979 ex.s. c 212 § 10.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.750 Columbia river bridge at Horn Rapids—Bonds—Account created in highway bond retirement

fund—Deposit of revenue—Pledge of excise taxes—Repayment procedure—Legislative covenant. There is hereby created in the highway bond retirement fund in the state treasury a special account to be known as the Columbia river toll bridge account into which shall be deposited any capitalized interest from the proceeds of the bonds, and at least monthly all of the tolls and other revenues received from the operation of the toll bridge and from any interest which may be earned from the deposit or investment of these revenues after the payment of costs of operation, maintenance, management, and necessary repairs of the facility. The principal of and interest on the bonds shall be paid first from money deposited in the Columbia river toll bridge account in the highway bond retirement fund, and then, to the extent that money deposited in that account is insufficient to make any such payment when due, from the state excise taxes on motor vehicle and special fuels deposited in the highway bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapters 82.36 and 82.38 RCW to pay the bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the bonds if the money deposited in the Columbia river toll bridge account of the highway bond retirement fund is insufficient to make such payments. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee shall certify to the state treasurer such amount of additional moneys as may be required for debt service, and the treasurer shall thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the highway bond retirement fund. Any proceeds of such excise taxes required for these purposes shall first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the state. If the proceeds from the excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the bonds when due, the amount required to make the payments on the principal or interest shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns shall be repaid from the first moneys distributed to the state not required for redemption of the bonds or interest thereon. The legislature covenants and pledges that it shall at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the bonds. [1999 c 269 § 13; 1995 c 274 § 16; 1979 ex.s. c 212 § 11.]

Effective date—1999 c 269: See note following RCW 36.78.070.

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.751 Columbia river bridge at Horn Rapids—Operation by department of transportation—Amount and duration of tolls—Use of motor vehicle fund mon-

eyes—Priority of payments—Trust fund—Covenants by state finance committee. (1) The department of transportation is authorized to operate and assume full control of the bridge and shall fix and maintain the tolls and charges in the manner provided by RCW 47.56.240 so that when collected they will produce revenues sufficient to pay all expenses of operating, maintaining, managing, and repairing the toll bridge including all insurance costs and the amounts required to pay the principal and interest on the bonds when due and to satisfy the other obligations set forth in RCW 47.56.740 through 47.56.756 and 47.56.220 as now or hereafter amended: PROVIDED, That revision of tolls and charges shall be determined by the department after considering the effect upon the traffic using the bridge and the projected revenues which will result from the increase of tolls and charges for the use of the bridge.

(2) To the extent that net revenues and income are insufficient to meet the required payments of principal and interest on bonds, the department shall use moneys pledged from the motor vehicle fund as provided in RCW 47.56.750.

(3) The payment of the principal of and the interest on the bonds shall constitute a first direct and exclusive charge and lien on all such tolls and other revenues and interest thereon received from the use and operation of the Columbia river toll bridge, after the payment of all expenses of operating, maintaining, managing, and repairing the toll bridge, and such tolls and revenues together with interest earned thereon, and all other money deposited in the Columbia river toll bridge account in the highway bond redemption fund, shall constitute a trust fund for the security and payment of such bonds, or bonds refunding such bonds, and shall not be used or pledged for any other purpose as long as such bonds or any of them are outstanding and unpaid.

(4) The state finance committee may on behalf of the state make such covenants in connection with the bond proceedings or otherwise to assure the maintenance of the tolls and charges on the Columbia river toll bridge, the proper application thereof, the proper operation, maintenance, management, and repair of the bridge to provide for and secure the timely payment of the bonds. Such covenants shall be binding on the department of transportation and transportation commission. [1979 ex.s. c 212 § 12.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.752 Columbia river bridge at Horn Rapids—Toll revenue trust fund—Transfer of surplus moneys. All tolls or other revenues received from the operation of the Columbia toll bridge constructed with the proceeds of bonds issued and sold hereunder shall be paid over by the department of transportation to the state treasurer who shall deposit the same forthwith as demand deposits in such depository or depositories as may be authorized by law to receive deposits of state funds to the credit of a special trust fund to be designated as the toll revenue fund of the Columbia river toll bridge, which fund shall be a trust fund and shall at all times be kept segregated and set apart from all other funds.

After provision has been made for payment of costs of operation, maintenance, management and necessary repairs of the facility, the surplus moneys available in the toll revenue fund, or so much thereof as may be required, shall be

transferred monthly to the Columbia river toll bridge account of the highway bond retirement fund to pay the principal of and interest on the bonds authorized by RCW 47.56.745. [1979 ex.s. c 212 § 13.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.753 Columbia river bridge at Horn Rapids—Repayment of motor vehicle fund money—Continuation of tolls. Any moneys from the motor vehicle fund used by the department for payment of expenses of location, maintenance, repair, and operation of the bridge and approaches, and principal or interest on any bonds issued pursuant to RCW 47.56.745, or any subsequent refunding bond issue, shall be repaid to the motor vehicle fund from revenues of the project after all such bonds have been retired. Tolls shall be continued for any additional length of time necessary for this purpose. [1979 ex.s. c 212 § 14.]

Appropriation, repayment to motor vehicle fund—1981 c 327: "There is appropriated from the motor vehicle fund to the department of transportation for the biennium ending June 30, 1983, the sum of one million dollars, or so much thereof as may be necessary for the purpose of surveys, location, design, right of way, and all other things preliminary to the construction of the toll bridge described in RCW 47.56.740 as now amended together with its approaches. All funds expended from this appropriation shall be considered a loan and shall be repaid to the motor vehicle fund from the proceeds from the sale of bonds for this project." [1981 c 327 § 5.]

Appropriation, repayment to motor vehicle fund—1979 ex.s. c 212: "There is appropriated from the motor vehicle fund to the department of transportation for the biennium ending June 30, 1981, the sum of one million dollars, or so much thereof as may be necessary for the purpose of surveys, location, design, right of way, and all other things preliminary to the construction of the bridge and its approaches. All funds expended from this appropriation shall be considered a loan and shall be repaid to the motor vehicle fund upon the sale of bonds for this project." [1979 ex.s. c 212 § 20.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.754 Columbia river bridge at Horn Rapids—Ferries, urban arterials, Spokane river toll bridges, bonds—Lien against fuel tax revenues. Except as otherwise provided by statute, the bonds issued under authority of RCW 47.56.745, the bonds authorized by RCW 47.60.560 through 47.60.640, the bonds authorized by chapter 5, Laws of 1979, and chapter 131, Laws of 1979, and any additional general obligation bonds of the state of Washington which may be authorized by the forty-sixth legislature or thereafter and which pledge motor vehicle and special fuel excise taxes for the payment of principal thereof and interest thereon shall be an equal charge and lien against the revenues from such motor vehicle and special fuel excise taxes. [1979 ex.s. c 212 § 15.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.755 Columbia river bridge at Horn Rapids—When toll free—Conveyance to city or counties. Upon the redemption of all bonds issued pursuant to RCW 47.56.745 and the repayment of all other obligations to the motor vehicle fund as authorized by RCW 47.56.753, the department of transportation shall remove the tolls and transfer the bridge and its approaches to the city and/or counties having jurisdiction thereof, and the bridge and its approaches shall become a county road or in part a county road and in part a city street. The bridge, its approaches, and right of way shall be con-

veyed to the city or counties by deed executed by the secretary of transportation. [1979 ex.s. c 212 § 16.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.756 Additional bridge at Columbia Point authorized. Notwithstanding the provisions of RCW 47.56.220 as now or hereafter amended, the department may design and construct an additional bridge across the Columbia river in the vicinity of Columbia Point. [1979 ex.s. c 212 § 17.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.760 First Avenue South bridge in Seattle—Study by commission—Bonds, tolls—Additional funding. (1) The transportation commission is authorized to conduct a study, to be paid from category C funds, to determine the economic and operational feasibility and consistency with federal laws of constructing, entirely or in part with toll-financed revenue bonds, a new parallel bridge and approaches on First Avenue South in Seattle, together with reconstruction of approaches to the existing bridge and connections to existing city street systems as necessary.

(2) If the commission concludes that construction, entirely or in part with toll-financed revenue bonds, of the facilities described in subsection (1) of this section is economically and operationally feasible and consistent with federal law, the commission may:

(a) Issue and sell revenue bonds under the provisions of this chapter for the purpose of constructing the facilities described in subsection (1) of this section; and

(b) Impose and collect tolls on the facilities for the purpose of funding the revenue bonds issued under this section.

(3) The commission shall seek additional funding for the bridge from local sources, including the city, county, and port district. Any funding obtained from local sources shall be matched by an equal amount of category C state funds under chapter 47.05 RCW. [1987 c 510 § 1.]

47.56.761 First Avenue South bridge in Seattle—Study by city—Tolls—Revenues. The city of Seattle is authorized to conduct a study, to be paid for wholly from city funds, to determine the operational feasibility and consistency with federal law of charging tolls on the First Avenue South Bridge on State Route 99. The study is to be conducted in cooperation with the department of transportation. If the city of Seattle and the department of transportation determine that the charging of tolls is feasible and consistent with federal law, then the city is authorized to charge reasonable tolls and to construct, operate and maintain toll collection facilities on the bridge.

The toll collection revenues less the costs of collection shall be placed in a separate account solely for the purpose of financial participation with the state and other local governmental entities in the construction, when commenced by the department of transportation, of a new parallel bridge and approaches on First Avenue South in Seattle, together with reconstruction of approaches to the existing bridge and connections to existing city street systems as necessary. Interest generated by funds within the account shall be credited to that account in their entirety. [1987 c 510 § 2.]

47.56.770 Refunding bonds—Authorized. The state finance committee is authorized to issue refunding bonds and use other available money to refund, defease, and redeem all of those toll bridge authority, ferry, and Hood Canal bridge refunding revenue bonds under RCW 47.56.771 through 47.56.774. [1993 c 4 § 2.]

Legislative declaration—1993 c 4: "It is declared that it is in the best interest of the state to modify the debt service and reserve requirements, sources of payment, covenants, and other terms of the outstanding toll bridge authority, ferry, and Hood Canal bridge refunding revenue bonds." [1993 c 4 § 1.]

Effective date—1993 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 12, 1993]." [1993 c 4 § 11.]

47.56.771 Refunding bonds—General obligation—Signatures, negotiability—Payment of principal and interest—Pledge of excise taxes. (1) The refunding bonds authorized under RCW 47.56.770 shall be general obligation bonds of the state of Washington and shall be issued in a total principal amount not to exceed fifteen million dollars. The exact amount of refunding bonds to be issued shall be determined by the state finance committee after calculating the amount of money deposited with the trustee for the bonds to be refunded which can be used to redeem or defease outstanding toll bridge authority, ferry, and Hood Canal bridge revenue bonds after the setting aside of sufficient money from that fund to pay the first interest installment on the refunding bonds. The refunding bonds shall be serial in form maturing at such time, in such amounts, having such denomination or denominations, redemption privileges, and having such terms and conditions as determined by the state finance committee. The last maturity date of the refunding bonds shall not be later than January 1, 2002.

(2) The refunding bonds shall be signed by the governor and the state treasurer under the seal of the state, which signatures shall be made manually or in printed facsimile. The bonds shall be registered in the name of the owner in accordance with chapter 39.46 RCW. The refunding bonds shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state, and shall contain an unconditional promise to pay the principal thereof and the interest thereon when due. The refunding bonds shall be fully negotiable instruments.

(3) The principal and interest on the refunding bonds shall be first payable in the manner provided in this section from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW.

(4) The principal of and interest on the refunding bonds shall be paid first from the state excise taxes on motor vehicle and special fuels deposited in the ferry bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapters 82.36 and 82.38 RCW to pay the refunding bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the refunding bonds. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee shall certify to the state treasurer such amount of additional money as may be

required for debt service, and the treasurer shall thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the ferry bond retirement fund. Any proceeds of such excise taxes required for these purposes shall first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the Puget Sound capital construction account. If the proceeds from excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the refunding bonds when due, the amount required to make the payments on the principal or interest shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns shall be repaid from the first money distributed to the state not required for redemption of the refunding bonds or interest thereon. The legislature covenants that it shall at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the refunding bonds. [1999 c 269 § 14; 1995 c 274 § 17; 1993 c 4 § 3.]

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

47.56.772 Refunding bonds—Liquidation of existing bond funds. Upon the issuance of refunding bonds as authorized by RCW 47.56.770, the department of transportation may liquidate the existing bond fund and other funds and accounts established in the proceedings which authorized the issuance of the outstanding toll bridge authority, ferry, and Hood Canal bridge refunding revenue bonds and apply the money contained in those funds and accounts to the defeasance and redemption of outstanding toll bridge authority, ferry, and Hood Canal refunding revenue bonds, except that prior to such bond redemption, money sufficient to pay the first interest installment on the refunding bonds shall be deposited in the ferry bond retirement fund. Money remaining in such funds not used for such bond defeasance and redemption or first interest installment on the refunding bonds shall be transferred to and deposited in the Puget Sound ferry operations account created under RCW 47.60.530. [1999 c 94 § 25; 1993 c 4 § 4.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

47.56.773 Refunding bonds—Repayment to Puget Sound capital construction account. Any money appropriated from the Puget Sound capital construction account under section 10, chapter 4, Laws of 1993 and expended to pay expenses of issuing the refunding bonds authorized by RCW 47.56.770, and any money in the Puget Sound capital construction account subsequently used to pay principal and interest on the refunding bonds authorized by RCW 47.56.770 shall be repaid to the Puget Sound capital con-

struction account for use by the department of transportation. [1993 c 4 § 5.]

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

47.56.774 Various bond issues—Charge against fuel tax revenues. Except as otherwise provided by statute, the refunding bonds issued under authority of RCW 47.56.770, the bonds authorized by RCW 47.60.560 through 47.60.640, the bonds authorized by RCW 47.26.420 through 47.26.427, and any general obligation bonds of the state of Washington which have been or may be authorized by the legislature after the enactment of those sections and which pledge motor vehicle and special fuel excise taxes for the payment of principal thereof and interest thereon shall be an equal charge and lien against the revenues from such motor vehicle and special fuel excise taxes. [1993 c 4 § 6.]

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

Chapter 47.58 RCW

EXISTING AND ADDITIONAL BRIDGES

Sections

47.58.010	Improvement of existing bridge and construction of new bridge as single project—Agreement—Tolls.
47.58.020	Examinations and surveys—Preliminary expenses—Financing.
47.58.030	Construction, operation of bridges—Collection of tolls—Schedule of charges.
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47.58.900	Chapter provides additional method.

Bridges over navigable waters: RCW 79.91.090 through 79.91.120.

47.58.010 Improvement of existing bridge and construction of new bridge as single project—Agreement—Tolls. Whenever the legislature specifically authorizes, as a single project, the construction of an additional toll bridge, including approaches, and the reconstruction of an existing adjacent bridge, including approaches, and the imposition of tolls on both bridges, the department is authorized to enter into appropriate agreements whereunder the existing bridge or its approaches will be reconstructed and improved and an additional bridge, including approaches and connecting highways will be constructed as a part of the same project to be located adjacent to or within two miles of the existing bridge and will be financed through the issuance of revenue bonds of the same series. The department has the right to impose tolls for traffic over the existing bridge as well as the additional bridge for the purpose of paying the cost of operation and maintenance of the bridge or bridges and the interest on and creating a sinking fund for retirement of revenue bonds issued for account of such project, all in the manner permitted and provided by this chapter. [1984 c 7 § 288; 1961 c 13 § 47.58.010. Prior: 1955 c 208 § 1.]

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

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47.58.020 Examinations and surveys—Preliminary expenses—Financing. For the purpose of obtaining information as to the necessity of the reconstruction or improvement of any such bridge and the expediency of constructing any such additional bridge it is the duty of the department to make any examination, investigation, survey, or reconnaissance pertaining thereto. The cost of any such examination, investigation, survey, or reconnaissance, and all preliminary expenses in the issuance of any revenue bonds, making surveys and appraisals and drafting, printing, issuance, and sale of bonds under this chapter, shall be advanced by any interested municipality, agency, or department of the state of Washington. All such advancements shall be reimbursed out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived by the department through its operations hereunder for account of the project, as may be agreed upon between the department and the municipality, agency, or department. [1984 c 7 § 289; 1961 c 13 § 47.58.020. Prior: 1955 c 208 § 2.]

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

47.58.030 Construction, operation of bridges—Collection of tolls—Schedule of charges. The secretary shall have full charge of the construction of all such improvements and reconstruction work and the construction of any additional bridge, including approaches and connecting highways, that may be authorized under this chapter and the operation of such bridge or bridges, as well as the collection of tolls and other charges for services and facilities thereby afforded. The schedule of charges for the services and facilities shall be fixed and revised from time to time by the commission so that the tolls and revenues collected will yield annual revenue and income sufficient, after payment or allowance for all operating, maintenance, and repair expenses, to pay the interest on all revenue bonds outstanding under the provisions of this chapter for account of the project and to create a sinking fund for the retirement of the revenue bonds at or prior to maturity. The charges shall be continued until all such bonds and interest thereon and unpaid advancements, if any, have been paid. [1984 c 7 § 290; 1961 c 13 § 47.58.030. Prior: 1955 c 208 § 3.]

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

47.58.040 Revenue bonds—Form—Sale—Interim bonds—Deposit of proceeds. For the purpose of paying the cost of all or any part of the improvement and reconstruction work and the construction of any additional bridge, approaches thereto, and connecting highways, the department is hereby authorized by resolution to issue its revenue bonds which shall constitute obligations only of the department and shall be payable from any funds available except revenue from the general fund, including but not limited to the revenues and income from the operation of the bridge or bridges constituting the project as may be provided in and by such resolution. Each such revenue bond shall contain a recital that payment or redemption of the bond and payment of the interest thereon is secured by a direct charge and lien upon the tolls and revenues pledged for that purpose and that such bond does not constitute an indebtedness of the state of Washington. Such revenue bonds may bear such date or

dates, may mature at such time or times as the department shall determine, may bear interest at such rate or rates, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be made subject to such terms of redemption with or without premium, and may contain such other terms and covenants not inconsistent with this chapter as may be provided in such resolution. Notwithstanding the form or tenor of the bond, and in the absence of an express recital on its face that the bond is nonnegotiable, each such revenue bond shall at all times be and shall be treated as a negotiable instrument for all purposes. All such bonds shall be signed by the state treasurer and countersigned by the governor, and any interest coupons appertaining thereto shall bear the signature of the state treasurer. The countersignature of the governor on the bonds and the signature of the state treasurer on the coupons may be their printed or lithographed facsimile signatures. Pending the issuance of definitive bonds, temporary or interim bonds, certificates, or receipts of any denomination and with or without coupons attached may be issued as may be provided by the resolution. All bonds issued under or by authority of this chapter shall be sold to the highest and best bidder at such price or prices, at such rate or rates of interest, and after such advertising for bids as the department may deem proper, but it may reject any and all bids so submitted and thereafter sell the bonds so advertised under such terms and conditions as it deems advantageous. The purchase price of all bonds issued hereunder shall be paid to the state treasurer consistent with the provisions of the resolution pursuant to which the bonds have been issued or to the trustee designated in the bond resolution and held as a separate trust fund to be disbursed on the orders of the department. [1984 c 7 § 291; 1973 c 106 § 27; 1970 ex.s. c 56 § 64; 1969 ex.s. c 232 § 78; 1961 c 102 § 1; 1961 c 13 § 47.58.040. Prior: 1955 c 208 § 4.]

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

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

47.58.050 Revenue bonds—Expenses includable—Conditions—Remedies of bondholders. In determining the amount of bonds required to be issued, there may be included any expenses incurred or approved by the department in connection with and incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and making inspections and examinations, required reserves, if any, interest during the estimated construction period and for six months thereafter, and a reasonable amount for initial operating expenses and prepaid insurance. The department is hereby empowered to include in any resolution authorizing the issuance of the bonds such covenants, stipulations, and conditions as it deems necessary with respect to the continued use and application of the revenues and income from the bridge or bridges. The holder of any bond or the trustee for any bonds designated by resolution may by mandamus or other appropriate proceeding compel performance of any duties imposed upon any state department, official, or employee, including any duties imposed upon or undertaken by the department or its officers, agents, and employees in connection with any improvement or reconstruction work on

any existing bridge, the construction of any additional bridge, including approaches and connecting highways provided to be so constructed, the maintenance and operation of the bridge or bridges and in connection with the collection, deposit, investment, application, and disbursement of the proceeds of the bonds and the revenues and income derived from the operation of the bridge or bridges. [1984 c 7 § 292; 1961 c 13 § 47.58.050. Prior: 1955 c 208 § 5.]

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

47.58.060 Bond resolution—Disposition of income and revenues. Each resolution providing for the issuance of revenue bonds shall provide for setting aside the necessary amounts for the reasonable and proper operation, maintenance, and repair expenses, and shall fix and determine the amounts to be set apart and applied to the payment of the interest on and retirement of the revenue bonds. All income and revenues as collected shall be paid to the state treasurer for the account of the department as a separate trust fund to be segregated and set apart for the payment of the revenue bonds, or may be remitted to and held by a designated trustee in such manner and with such collateral as may be provided in the resolution authorizing the issuance of the bonds. [1984 c 7 § 293; 1961 c 13 § 47.58.060. Prior: 1955 c 208 § 6.]

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

47.58.070 Bonds legal investment for state moneys. Notwithstanding any other provision of the law, bonds issued under this chapter shall be legal investments by the state investment board of any state moneys in its hands, except permanent school funds. [1981 c 3 § 39; 1961 c 13 § 47.58.070. Prior: 1955 c 208 § 7.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

47.58.080 Eminent domain. The department is hereby authorized and empowered to acquire in the name of the state by the exercise of the power of eminent domain any lands, property, rights, rights of way, franchises, easements, and other property of any person, firm, corporation, political subdivision, or other owner, deemed necessary or convenient for the construction, reconstruction, improvement, and operation of any project initiated and carried on by the department under this chapter. The proceedings shall be in accordance with and subject to the provisions of any and all laws applicable to the exercise of the power of eminent domain by the state. [1984 c 7 § 294; 1961 c 13 § 47.58.080. Prior: 1955 c 208 § 8.]

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

47.58.090 Study of projects—Specific authorization of construction and finance. Under the provisions of this chapter, projects other than those specifically authorized herein involving existing bridges may be studied and analyzed by the department, and recommendations therefor may be submitted to the legislature, but such other projects shall not be financed or constructed by the department under the provisions of this chapter until further specific authorization therefor has been provided by the legislature. [1984 c 7 § 295; 1961 c 13 § 47.58.090. Prior: 1955 c 208 § 11.]

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

47.58.500 Manette bridge—Port Washington Narrows project. (1) The authority is especially authorized under the provisions of this chapter to reconstruct and improve the existing approaches and construct new approaches to the Manette bridge on secondary state highway 21-B in the city of Bremerton, and to construct an additional bridge, including approaches, over Port Washington Narrows in the vicinity of the said Manette bridge, at such exact location as may be selected by the director of highways, the state highway commission and the authority. Such project shall be known and designated as the Port Washington Narrows project and such new bridge and approaches when constructed shall be and become an integral part of the state highway system to be connected with and be a part of secondary state highway 21-B.

(2) The authority shall have the right to impose tolls for pedestrian and vehicular traffic over the existing Manette bridge, as well as such new bridge when constructed, for the purpose of paying the costs of reconstructing and improving approaches and constructing new approaches to the existing Manette bridge, constructing the new bridge in the vicinity thereof, to pay interest on and create a sinking fund for the retirement of revenue bonds issued for account of such project, and to pay any and all costs and expenses incurred by the authority in connection with and incidental to the issuance and sale of bonds, and for the preparation of surveys and estimates and to establish the required interest reserves for and during the estimated construction period and for six months thereafter. [1961 c 13 § 47.58.500. Prior: 1955 c 208 § 10.]

Reviser's note: Powers, duties, and functions of toll bridge authority, highway commission, and director of highways transferred to department of transportation; see RCW 47.01.031. Terms "authority" and "state highway commission" mean department of transportation; term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.58.900 Chapter provides additional method. This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers existing on June 8, 1955. [1961 c 13 § 47.58.900. Prior: 1955 c 208 § 9.]

Chapter 47.60 RCW

PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

Sections

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Sale, lease of unneeded toll facility, ferry system property—Franchises for utility, railway purposes: RCW 47.56.253 through 47.56.257.

Traffic violations and unlawful acts on toll facility or ferry: RCW 46.61.690.

47.60.010 Ferry system, toll bridges, and facilities authorized—Power to contract, sell and lease back. The department is authorized to acquire by lease, charter, contract, purchase, condemnation, or construction, and partly by any or all of such means, and to thereafter operate, improve, and extend, a system of ferries on and crossing Puget Sound and any of its tributary waters and connections thereof, and connecting with the public streets and highways in the state. The system of ferries shall include such boats, vessels, wharves, docks, approaches, landings, franchises, licenses, and appurtenances as shall be determined by the department to be necessary or desirable for efficient operation of the ferry system and best serve the public. The department may in like manner acquire by purchase, condemnation, or construction and include in the ferry system such toll bridges, approaches, and connecting roadways as may be deemed by the department advantageous in channeling traffic to points served by the ferry system. In addition to the powers of acquisition granted by this section, the department is empowered to enter into any contracts, agreements, or leases with any person, firm, or corporation and to thereby provide, on such terms and conditions as it shall determine, for the operation of any ferry or ferries or system thereof, whether acquired by the department or not.

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The authority of the department to sell and lease back any state ferry, for federal tax purposes only, as authorized by 26 U.S.C., Sec. 168(f)(8) is confirmed. Legal title and all incidents of legal title to any ferry sold and leased back (except for the federal tax benefits attributable to the ownership thereof) shall remain in the state of Washington. [1984 c 18 § 1; 1984 c 7 § 296; 1961 c 13 § 47.60.010. Prior: 1949 c 179 § 1; Rem. Supp. 1949 § 6584-30.]

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

47.60.013 Emergency powers of governor to insure continued operation of ferry and toll bridge system—Cost reimbursement. The governor is authorized to take such actions as may be necessary to insure the continued operation of the Puget Sound ferry and toll bridge system under any emergency circumstances which threaten the continued operation of the system. In the event of such an emergency, the governor may assume all the powers granted by law to the transportation commission and department of transportation with respect to the ferry system. In addition, notwithstanding the provisions of chapters 47.60 and 47.64 RCW, the governor may contract with any qualified persons for the operation of the Washington state ferry system, or any part thereof, or for ferry service to be provided by privately owned vessels. Administrative costs to the office of the governor incurred in the exercise of this authority shall be reimbursed by the department. [1981 c 341 § 1.]

Severability—1981 c 341: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 341 § 2.]

47.60.015 "Washington State Ferries"—Name authorized. The department is authorized to operate its ferry system under the name: "Washington State Ferries." [1984 c 7 § 297; 1961 c 13 § 47.60.015. Prior: 1953 c 33 § 1.]

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

47.60.017 State ferry system a public mass transportation system. The legislature finds and declares that the state ferry system is a public mass transportation system. [1974 ex.s. c 105 § 1.]

47.60.020 Eminent domain—Condemnation proceedings. For the purpose of carrying out any or all of the powers granted in this chapter, the department has the power of eminent domain for the acquisition of either real or personal property, used or useful for the Puget Sound ferry system. Condemnation pursuant to this chapter shall be the procedure set out in chapter 8.04 RCW. The department may institute condemnation proceedings in the superior court of any county or other court of competent jurisdiction in which any of the property sought to be condemned is located or in which the owner of any thereof does business, and the court in any such action has jurisdiction to condemn property wherever located within the state. It shall not be necessary to allege or prove any offer to purchase or inability to agree with the owners thereof for the purchase of any such property in the proceedings. It is the intention of this section to permit the consolidation in one action of all condemnation proceedings necessary to acquire a ferry system and every type of prop-

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erty incident thereto, irrespective of its location within the state or diversity of ownership. Upon the filing of a petition for condemnation as provided in this section, the court may issue an order restraining the removal from the jurisdiction of the state of any personal property sought to be acquired by the proceeding during the pendency thereof. The court further has the power to issue such orders or process as are necessary to place the department into possession of any property condemned. [1984 c 7 § 298; 1961 c 13 § 47.60.020. Prior: 1949 c 179 § 2; Rem. Supp. 1949 § 6584-31.]

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

47.60.030 Existing contracts—Prior negotiations and bids validated. In any case where the department takes over any property or properties which are under lease, contract, or concession, or where the department has heretofore entered into any contract or negotiation or received any bid for any of the purposes set forth in this chapter, the department is authorized to continue in effect and carry out any such contract, lease, or concession or complete any such negotiation or accept any such bid or any modification of any of them which appears advantageous to the department without regard to any limitations or directions as to the manner thereof contained in this chapter. However, this section shall not be construed as requiring the department so to act, but this section is permissive only and then only in respect to contracts, leases, concessions, negotiations, or bids existing, entered into, or received prior to April 1, 1949. [1984 c 7 § 299; 1961 c 13 § 47.60.030. Prior: 1949 c 179 § 7; Rem. Supp. 1949 § 6584-36.]

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

47.60.040 Survey by department. For the purpose of obtaining information for the consideration of the department upon the acquisition of any ferries or ferry facilities or the construction of any toll bridge under this chapter, the department shall make any examination, investigation, survey, or reconnaissance for the determination of material facts pertaining thereto.

The cost of any such examination, investigation, survey, or reconnaissance, and all preliminary expenses leading up to and resulting in the issuance of any revenue bonds including, but not being limited to expenses in making surveys and appraisals and the drafting, printing, issuance, and sale of bonds under this chapter shall be borne by the department out of the motor vehicle fund. All such costs and expenses as well as any thereof heretofore incurred shall be reimbursed to the motor vehicle fund out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived by the department through its operations hereunder. [1984 c 7 § 300; 1961 c 13 § 47.60.040. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

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

47.60.050 Improvement of facilities—Financing. Any facility that the department acquires or is authorized to acquire under the provisions of this chapter may be rehabilitated, rebuilt, enlarged, or improved, and the cost thereof may be paid from the revenues of the system or through the issuance of bonds as hereinafter provided. [1984 c 7 § 301; 1961

c 13 § 47.60.050. Prior: 1949 c 179 § 3, part; Rem. Supp. 1949 § 6584-32, part.]

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

47.60.060 Revenue bonds authorized—Issuance—Conditions—Negotiability—Interim bonds. For the purpose of paying the cost of acquiring by lease, charter, contract, purchase, condemnation, or construction all or any part of such Puget Sound ferry system, including toll bridges, approaches, and roadways incidental thereto, and for rehabilitating, rebuilding, enlarging, or improving all or any part of the system, the department is authorized by resolution to issue its revenue bonds which shall constitute obligations only of the department and shall be payable solely and only from all or such part of the revenues from the operation of the system as may be provided in and by the resolution.

Each revenue bond shall contain a recital that payment or redemption of the bond and payment of the interest thereon is secured by a direct charge and lien upon the tolls and revenues pledged for that purpose and that the bond does not constitute an indebtedness of the state of Washington.

The department is empowered to include in any resolution authorizing the issuance of the bonds such covenants, stipulations, and conditions as may be deemed necessary with respect to the continued use and application of the income and revenues from the undertaking.

The revenue bonds may bear such date or dates, may mature at such time or times as the department determines, may bear interest at such rate or rates, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be made subject to such terms of redemption with or without premium, and may contain such other terms and covenants not inconsistent with this chapter as may be provided in the resolution. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, each such revenue bond shall at all times be and shall be treated as a negotiable instrument for all purposes. All such bonds shall be signed by the state treasurer and countersigned by the governor, and any interest coupons appertaining thereto shall bear the signature of the state treasurer. The countersignature of the governor on the bonds and the signature of the state treasurer on the coupons may be their printed or lithographed facsimile signatures.

Pending the issuance of definitive bonds, temporary or interim bonds, certificates, or receipts of any denomination and with or without coupons attached may be issued as may be provided by the resolution. [1984 c 7 § 302; 1973 c 106 § 28; 1970 ex.s. c 56 § 65; 1969 ex.s. c 232 § 34; 1961 c 13 § 47.60.060. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

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

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

47.60.080 Determining amount of bonds to be issued. In determining the amount of bonds required to be issued there may be included any expenses incurred by the depart-

ment in connection with and incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and making inspections and examinations, interest during the estimated construction period, and for six months thereafter, and a reasonable amount for working capital and prepaid insurance. [1984 c 7 § 303; 1961 c 13 § 47.60.080. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

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

47.60.090 Sale of bonds—Deposit, disbursement of proceeds. All bonds issued under or by authority of this chapter shall be sold to the highest and best bidder after such advertising for bids as the department deems proper. However, the department may reject any and all bids so submitted and thereafter sell such bonds so advertised under such terms and conditions as it deems most advantageous to its own interests. The purchase price of all bonds issued under this chapter shall be paid to the state treasurer consistent with the provisions of the resolution pursuant to which the bonds have been issued or to the trustee designated in the bond resolution and held as a separate trust fund to be disbursed on the orders of the department. [1984 c 7 § 304; 1961 c 13 § 47.60.090. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

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

47.60.100 Bonds are legal investment for state moneys. Notwithstanding any other provision of the law, bonds issued by the authority shall be legal investments by the state investment board of any state moneys in its hands, except permanent school funds and motor vehicle funds. [1981 c 3 § 40; 1961 c 13 § 47.60.100. Prior: 1953 c 154 § 14; 1951 c 259 § 3; 1951 c 121 § 14; 1949 c 179 § 8; Rem. Supp. 1949 § 6584-37.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

47.60.110 Bondholders may compel performance. The holder of any bond or the trustee for any bonds designated by resolution may by mandamus or other appropriate proceeding require and compel performance of any duties imposed upon any state department, official or employee, including any duties imposed upon or undertaken by the authority or its officers, agents and employees in connection with the construction, maintenance and operation of the ferry system and in connection with the collection, deposit, investment, application and disbursement of the proceeds of the bonds and the revenue and income derived from the operation of the system. [1961 c 13 § 47.60.110. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

47.60.113 Refunding bonds—Authorization—Amount—Interest—Conditions. The department is authorized to refund, at the maturity thereof, or before the maturity thereof if they are subject to call prior to maturity or if all of the holders thereof consent thereto, upon such terms and conditions as it deems best, any or all of its revenue bonds now or hereafter outstanding, issued for the purpose of acquiring, constructing, or reconstructing any toll bridge, toll road, toll tunnel, ferry system, or any other toll facility of any sort, or

issued for the purpose of refunding such bonds, which revenue bonds are payable out of all or part of the revenues of the toll facility. Refunding bonds may be issued hereunder in a sufficient amount to provide additional funds for acquiring, constructing, reconstructing, rehabilitating, rebuilding, enlarging, or improving any toll bridge, toll road, toll tunnel, ferry system, or any other toll facility of any sort, and to pay all refunding costs and expenses and to provide adequate reserves for the toll facility and for any such refunding bonds. Various issues and series of such outstanding bonds, including refunding bonds, may be combined and refunded by a single issue of refunding bonds. The refunding bonds shall bear interest at such rates and mature at such times, without limitation by the interest rates or maturity of the bonds being refunded, and shall contain such other covenants and conditions as the department determines by resolution. [1984 c 7 § 305; 1961 c 13 § 47.60.113. Prior: 1957 c 152 § 1; 1955 c 17 § 1.]

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

47.60.114 Refunding bonds—Payable from revenues. Any refunding bonds authorized by this chapter constitute obligations of the department only and not of the state of Washington. They shall be payable solely out of all or such part of the revenues derived from the operation of the toll bridge, toll road, toll tunnel, ferry system, or any other toll facility, as shall be provided in the resolution authorizing the issuance of the refunding bonds. [1984 c 7 § 306; 1961 c 13 § 47.60.114. Prior: 1957 c 152 § 2; 1955 c 17 § 2.]

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

47.60.115 Refunding bonds—Disposition—Laws applicable. The bonds herein authorized shall, in the discretion of the department, be exchanged at the best possible price for the bonds being refunded, or any such bonds not exchanged shall be sold in the manner provided in RCW 47.60.090. The bonds herein authorized shall be issued in accordance with, and shall be subject to, the provisions of RCW 47.60.050, 47.60.060, 47.60.080, 47.60.100, 47.60.110, and 47.60.120. [1983 c 3 § 134; 1961 c 13 § 47.60.115. Prior: 1957 c 152 § 3; 1955 c 17 § 3.]

47.60.120 Other crossings—Infringement of existing franchises—Waivers (as amended by 2003 c 83). (1) If the department acquires or constructs, maintains, and operates any ferry crossings upon or toll bridges over Puget Sound or any of its tributary or connecting waters, there shall not be constructed, operated, or maintained any other ferry crossing upon or bridge over any such waters within ten miles of any such crossing or bridge operated or maintained by the department excepting such bridges or ferry crossings in existence, and being operated and maintained under a lawfully issued franchise at the time of the location of the ferry crossing or construction of the toll bridge by the department.

(2) The ten-mile distance in subsection (1) of this section means ten statute miles measured by airline distance. The ten-mile restriction shall be applied by comparing the two end points (termini) of a state ferry crossing to those of a private ferry crossing.

(3) The Washington utilities and transportation commission may, upon written petition of a commercial ferry operator certificated or applying for certification under chapter 81.84 RCW, and upon notice and hearing, grant a waiver from the ten-mile restriction. The waiver must not be detrimental to the public interest. In making a decision to waive the ten-mile restriction, the commission shall consider, but is not limited to, the impact of the waiver on transportation congestion mitigation, air quality improvement, and the overall impact on the Washington state ferry system. The commission shall act upon a request for a waiver within ninety days after the conclusion of the

hearing. A waiver is effective for a period of five years from the date of issuance. At the end of five years the waiver becomes permanent unless appealed within thirty days by the commission on its own motion, the department, or an interested party.

(4) The department shall not maintain and operate any ferry crossing or toll bridge over Puget Sound or any of its tributary or connecting waters that would infringe upon any franchise lawfully issued by the state and in existence and being exercised at the time of the location of the ferry crossing or toll bridge by the department, without first acquiring the rights granted to such franchise holder under the franchise.

(5) This section does not apply to the operation of passenger-only ferry service by public transportation benefit areas meeting the requirements of RCW 36.57A.200 or to the operation of passenger-only ferry service by ferry districts. [2003 c 83 § 204; 1993 c 427 § 1; 1984 c 7 § 307; 1961 c 13 § 47.60.120. Prior: 1949 c 179 § 6; Rem. Supp. 1949 § 6584-35.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

47.60.120 Other crossings—Infringement of existing franchises—Waivers (as amended by 2003 c 373). (1) If the department acquires or constructs, maintains, and operates any ferry crossings upon or toll bridges over Puget Sound or any of its tributary or connecting waters, there shall not be constructed, operated, or maintained any other ferry crossing upon or bridge over any such waters within ten miles of any such crossing or bridge operated or maintained by the department excepting such bridges or ferry crossings in existence, and being operated and maintained under a lawfully issued franchise at the time of the location of the ferry crossing or construction of the toll bridge by the department.

(2) The ten-mile distance in subsection (1) of this section means ten statute miles measured by airline distance. The ten-mile restriction shall be applied by comparing the two end points (termini) of a state ferry crossing to those of a private ferry crossing.

(3) The Washington utilities and transportation commission may, upon written petition of a commercial ferry operator certificated or applying for certification under chapter 81.84 RCW, and upon notice and hearing, grant a waiver from the ten-mile restriction. The waiver must not be detrimental to the public interest. In making a decision to waive the ten-mile restriction, the commission shall consider, but is not limited to, the impact of the waiver on transportation congestion mitigation, air quality improvement, and the overall impact on the Washington state ferry system. The commission shall act upon a request for a waiver within ninety days after the conclusion of the hearing. A waiver is effective for a period of five years from the date of issuance. At the end of five years the waiver becomes permanent unless appealed within thirty days by the commission on its own motion, the department, or an interested party.

(4) The department shall not maintain and operate any ferry crossing or toll bridge over Puget Sound or any of its tributary or connecting waters that would infringe upon any franchise lawfully issued by the state and in existence and being exercised at the time of the location of the ferry crossing or toll bridge by the department, without first acquiring the rights granted to such franchise holder under the franchise.

(5) This section does not apply to operators of passenger-only ferry service. [2003 c 373 § 2; 1993 c 427 § 1; 1984 c 7 § 307; 1961 c 13 § 47.60.120. Prior: 1949 c 179 § 6; Rem. Supp. 1949 § 6584-35.]

Reviser's note: RCW 47.60.120 was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

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

47.60.122 Ferries, terminal facilities—Interim revenue warrants authorized. For the purpose of paying the cost of acquiring, constructing, or reconstructing ferries or ferry terminal facilities, and all costs which may be incurred in connection therewith, the department is authorized to issue interim revenue warrants, which shall constitute obligations only of the department, and which shall not be obligations of the state of Washington. Such warrants shall be payable solely out of part or all of the revenues derived from the operation of the Puget Sound ferry system as shall be provided in

the resolution authorizing their issuance, and shall be drawn upon, and the principal thereof and interest thereon shall be payable out of, such fund or funds as shall be created in and provided by the resolution. The warrants may be interest-bearing coupon warrants with a fixed maturity date, or may be interest-bearing registered warrants payable in order of their issuance whenever there is sufficient money in the fund upon which they were drawn to redeem any of them. [1984 c 7 § 308; 1961 c 13 § 47.60.122. Prior: 1953 c 159 § 1.]

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

47.60.124 Revenue refunding bonds to redeem interim warrants. If it is deemed advisable or found necessary to redeem any or all of such warrants, the department is authorized to issue its revenue refunding bonds for that purpose. The bonds shall constitute obligations only of the department, and shall not be obligations of the state of Washington. The refunding bonds shall be payable solely out of part or all of the revenues derived from the operation of the Puget Sound ferry system as shall be provided in the resolution authorizing their issuance. [1984 c 7 § 309; 1961 c 13 § 47.60.124. Prior: 1953 c 159 § 2.]

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

47.60.126 Interim warrants and refunding bonds—Laws applicable. All provisions of chapter 47.60 RCW pertaining and applicable to the revenue bonds of the department authorized in that chapter are applicable to the warrants and revenue refunding bonds authorized herein except insofar as otherwise provided by RCW 47.60.122 through 47.60.126. [1984 c 7 § 310; 1961 c 13 § 47.60.126. Prior: 1953 c 159 § 3.]

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

47.60.130 Unit or combined operation—Continuous project—Rental, charter, lease of system property—Sale of unneeded property. Such ferry system, including any toll bridges, approaches, and roadways incidental thereto, may be financed and operated in combination or separately as one or more units as the department of transportation may determine, and such ferry system together with any toll bridge hereafter constructed by the department upon or across the waters of Puget Sound or Hood Canal, or any part of either, replacing one or more presently operated ferry routes, is declared to be a continuous project within the meaning of RCW 47.56.070. The department is empowered to rent, lease, or charter any property acquired under this chapter. If the department determines that any real property (including lands, improvements thereon, and any interests or estates) originally acquired for the ferry system is no longer required for the purposes of the ferry system, the department shall offer it for sale in the manner and with the authority authorized to the department by RCW 47.12.063 or 47.12.283. The secretary of transportation may adopt rules further implementing this section. The proceeds of all such sales shall be paid into the separate trust fund of the state treasury established pursuant to RCW 47.60.150. [1979 ex.s. c 189 § 6; 1973 1st ex.s. c 177 § 5; 1961 c 13 § 47.60.130. Prior: 1955 c 22 § 1; 1953 c 32 § 1; 1949 c 179 § 3, part; Rem. Supp. 1949 § 6584-32, part.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

47.60.135 Charter of state ferries—Hazardous materials. (1) The charter use of Washington State Ferry vessels when established route operations and normal user requirements are not disrupted is permissible. In establishing chartering agreements, Washington State Ferries shall consider the special needs of local communities and interested parties. Washington State Ferries shall use sound business judgment and be sensitive to the interests of existing private enterprises.

(2) Consistent with the policy as established in subsection (1) of this section, the chief executive officer of the Washington State Ferries may approve agreements for the chartering of Washington State Ferry vessels to groups or individuals, including hazardous material transporters, in accordance with the following:

(a) Vessels may be committed to charter only when established route operation and normal user requirements are not disrupted or inconvenienced. If a vessel is engaged in the transport of hazardous materials, the transporter shall pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of Washington State Ferries.

(b) Charter rates for vessels must be established at actual vessel operating costs plus a market-rate profit margin. Actual vessel operating costs include, but are not limited to, all labor, fuel, and vessel maintenance costs incurred due to the charter agreement, including deadheading and standby.

(c) Parties chartering Washington State Ferry vessels shall comply with all applicable laws, rules, and regulations during the charter voyage, and failure to so comply is cause for immediate termination of the charter voyage. [2003 c 374 § 1; 1997 c 323 § 2.]

Finding—1997 c 323: "The legislature finds that when established route operations and normal user requirements are not disrupted Washington state ferries may be used for the transportation of hazardous materials under the chartering procedures and rates described in RCW 47.60.135." [1997 c 323 § 1.]

47.60.140 System as self-liquidating undertaking—Powers of department—Concessions. (1) The department is empowered to operate such ferry system, including all operations, whether intrastate or international, upon any route or routes, and toll bridges as a revenue-producing and self-liquidating undertaking. The department has full charge of the construction, rehabilitation, rebuilding, enlarging, improving, operation, and maintenance of the ferry system, including toll bridges, approaches, and roadways incidental thereto that may be authorized by the department, including the collection of tolls and other charges for the services and facilities of the undertaking. The department has the exclusive right to enter into leases and contracts for use and occupancy by other parties of the concessions and space located on the ferries, wharves, docks, approaches, parking lots, and landings, including the selling of commercial advertising space and licenses to use the Washington State Ferries trademarks, but, except as provided in subsection (2) of this section, no such leases or contracts may be entered into for more than ten years, nor without a competitive contract process, except as otherwise provided in this section. The competitive

process shall be either an invitation for bids in accordance with the process established by chapter 43.19 RCW, or a request for proposals in accordance with the process established by RCW 47.56.030. All revenues from commercial advertising, concessions, parking, leases, and contracts must be deposited in the Puget Sound ferry operations account in accordance with RCW 47.60.150.

(2) As part of a joint development agreement under which a public or private developer constructs or installs improvements on ferry system property, the department may lease all or part of such property and improvements to such developers for that period of time, not to exceed fifty-five years, or not to exceed thirty years for those areas located within harbor areas, which the department determines is necessary to allow the developer to make reasonable recovery on its initial investment. Any lease entered into as provided for in this subsection that involves state aquatic lands shall conform with the Washington state Constitution and applicable statutory requirements as determined by the department of natural resources. That portion of the lease rate attributable to the state aquatic lands shall be distributed in the same manner as other lease revenues derived from state aquatic lands as provided in *RCW 79.24.580.

(3) The department shall include in the strategic planning and performance assessment process, as required by RCW 43.88.090, an analysis of the compatibility of public and private partnerships with the state ferry system's core business, and the department's efforts to maximize nonfarebox revenues and provide benefit to the public users of the ferry system facilities. The department shall include an assessment of the need for an open solicitation to identify and select possible public or private partnerships in order to maximize the value of projects and the state's investment in current and future ferry system operations.

(a) When the department determines that an open solicitation is necessary, a request for proposal shall be released, consisting of an open solicitation outlining functional specifications to be used as the basis for selecting partnerships in the project.

(b) Any responses to the request for proposal shall be evaluated, at a minimum, on the basis of compatibility with the state ferry system's core business, potential to maximize nonfarebox revenue, longevity of the possible partnership commitment, and benefit to the public users of the ferry system facilities.

(c) If no responses are received, or those that are received are incompatible with ferry system operations, or do not meet the criteria stated in (b) of this subsection, the state ferry system may proceed with state ferry system operating strategies designed to achieve state ferry system objectives without established partnerships. [2003 c 374 § 2; 1995 1st sp.s. c 4 § 2; 1987 c 69 § 1; 1984 c 7 § 311; 1965 ex.s. c 170 § 58; 1961 c 13 § 47.60.140. Prior: 1951 c 259 § 1; 1949 c 179 § 5, part; Rem. Supp. 1949 § 6584-34, part.]

***Reviser's note:** RCW 79.24.580 was recodified as RCW 79.90.245 pursuant to 2003 c 334 § 569.

Effective date—1995 1st sp.s. c 4: See note following RCW 47.56.030.

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

47.60.145 Historic ferries—Acquisition by qualified persons or organizations. (1) An "historic ferry" is any vessel in the Washington state ferries fleet which has been listed in the Washington state register of historic places.

(2) When the department of transportation determines that an historic ferry is surplus to the needs of Washington state ferries, the department shall call for proposals from persons who wish to acquire the historic ferry. Proposals for the acquisition of an historic ferry shall be accepted only from persons or organizations that (a) are a governmental entity or a nonprofit corporation or association dedicated to the preservation of historic properties; (b) agree to a contract approved by the state historic preservation officer, which requires the preservation and maintenance of the historic ferry and provides that title to the ferry reverts to the state if the secretary of transportation determines that the contract has been violated; and (c) demonstrate the administrative and financial ability successfully to comply with the contract.

(3) The department shall evaluate the qualifying proposals and shall select the proposal which is most advantageous to the state. Factors to be considered in making the selection shall include but not be limited to:

- (a) Extent and quality of restoration;
- (b) Retention of original design and use;
- (c) Public access to the vessel;
- (d) Provisions for historical interpretation;
- (e) Monetary return to the state.

(4) If there are no qualifying proposals, an historic ferry shall be disposed of in the manner provided by state law. [1982 c 210 § 1.]

Severability—1982 c 210: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 210 § 2.]

Archaeology and historic preservation, office of: Chapter 27.34 RCW.

47.60.150 Fixing of charges—Deposit of revenues. Subject to the provisions of RCW 47.60.326, the schedule of charges for the services and facilities of the system shall be fixed and revised from time to time by the commission so that the tolls and other revenues deposited in the Puget Sound ferry operations account for maintenance and operation, and all moneys in the Puget Sound capital construction account available for debt service will yield annual revenue and income sufficient, after allowance for all operating, maintenance, and repair expenses to pay the interest and principal and sinking fund charges for all outstanding revenue bonds, and to create and maintain a fund for ordinary renewals and replacements: PROVIDED, That if provision is made by any resolution for the issuance of revenue bonds for the creation and maintenance of a special fund for rehabilitating, rebuilding, enlarging, or improving all or any part of the ferry system then such schedule of tolls and rates of charges shall be fixed and revised so that the revenue and income will also be sufficient to comply with such provision.

All income and revenues as collected by the ferry system from any source shall be paid to the state treasurer for the account of the department and deposited into the Puget Sound ferry operations account. Nothing in this section requires tolls on the Hood Canal bridge except as may be required by any bond covenants. [2003 c 374 § 3; 1999 c 94

(2004 Ed.)

§ 26; 1990 c 42 § 405. Prior: 1986 c 66 § 2; 1986 c 23 § 1; 1983 c 3 § 135; 1972 ex.s. c 24 § 5; 1961 c 13 § 47.60.150; prior: 1949 c 179 § 5, part; Rem. Supp. 1949 § 6584-34, part.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 66: "This act shall take effect July 1, 1987. The secretary of transportation may immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1986 c 66 § 14.]

Effective date—1986 c 23: "This act shall take effect on July 1, 1987. The secretary of transportation may immediately take such steps as may be necessary to insure that this act is implemented on its effective date." [1986 c 23 § 2.]

47.60.170 Ferries revolving fund—Deposit of excess funds. Nothing in RCW 47.60.150 forbids the establishment by the department of a Washington state ferries revolving fund of not to exceed six hundred thousand dollars from the proceeds of any bonds sold under the provisions of this chapter. The fund may be deposited by the department in such banks or financial institutions as it may select throughout the state. RCW 43.01.050 does not apply to the fund or any deposits therein made by the department under this section. The department may deposit all moneys received under this chapter in the fund. All expenses whatsoever arising in the operations of the Puget Sound ferry system shall be paid from the fund, if established, by check or voucher in such manner as may be prescribed by the department.

All moneys received by the department or any employee under the foregoing sections of this chapter, except an amount of petty cash for each day's needs as fixed by the regulation of the department, shall each day and as often during the day as advisable, be deposited in the nearest authorized depository selected by the department under this section.

Whenever the fund exceeds six hundred thousand dollars, the department shall forthwith transmit the excess to the state treasurer for deposit in the trust fund established by RCW 47.60.150. [1984 c 7 § 313; 1970 ex.s. c 85 § 6; 1961 c 13 § 47.60.170. Prior: 1951 c 259 § 13.]

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

Effective date—1970 ex.s. c 85: See note following RCW 47.60.500.

47.60.200 Consent to liability not general liability of state. Any consent to liability given under the provisions of this chapter creates liability of the department only and does not create any general liability of the state. [1984 c 7 § 314; 1961 c 13 § 47.60.200. Prior: 1951 c 259 § 5.]

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

47.60.210 Seamen may sue for injuries—Venue. The state consents to suits against the department by seamen for injuries occurring upon vessels of the department in accordance with the provisions of section 688, title 46, of the United States code. The venue of such actions may be in the superior court for Thurston county or the county where the injury occurred. [1984 c 7 § 315; 1961 c 13 § 47.60.210. Prior: 1951 c 259 § 6.]

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

47.60.220 Department as common carrier—Rights and liabilities. The department has all the obligations, duties, and rights of a common carrier of persons and property in its operation of ferries, terminals, or other facilities used in its ferry operations, including the right to participate in joint rates and through routes, agreements, and divisions of through and joint rates with railroads and other common carriers and the right to make any filings with the interstate commerce commission, the United States maritime commission, or any other state or federal regulatory or governmental body and to comply with the lawful rules and regulations or requirements of any such body, and is subject to laws relating to carrier's liability for loss or damage to property transported, and for personal injury or death of persons transported. [1984 c 7 § 316; 1961 c 13 § 47.60.220. Prior: 1951 c 259 § 7.]

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

47.60.230 Liability for damages as to persons or property. In case of property loss or damage or personal injuries or death resulting from the operation of any ferry or terminal by the department, any person or the personal representative of any person, subject to and to the extent hereinafter provided, has a right of action against the department for the damage, loss, injury, or death. [1984 c 7 § 317; 1961 c 13 § 47.60.230. Prior: 1951 c 259 § 8.]

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

47.60.240 Liability to persons other than shippers or passengers—Limitation. The right of action extended by this chapter is applicable to loss or damage of property and/or personal injury or death resulting from the operation of ferries or terminals by the department to persons other than shippers or passengers, but any recovery of damages in such cases shall not exceed an amount equal to the limitations of the insurance carried by the department to insure it against loss for such liability. [1984 c 7 § 318; 1961 c 13 § 47.60.240. Prior: 1951 c 259 § 9.]

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

47.60.250 Claim for damages—Filing—Contents—Time limitations. As a condition to a recovery thereon, a verified claim against the department growing out of such damages, loss, injuries, or death must first be presented to the department and filed with the secretary within one hundred twenty days after the time when the claim accrued. If the claimant is incapacitated from verifying and filing a claim within the one hundred twenty days, or if the claimant is a minor, then the claim may be verified and presented on behalf of the claimant by his or her relative, attorney, or agent. Each claim must accurately locate and describe the event or defect that caused the damage, loss, injury, or death, reasonably describe the damage, loss, or injury, and state the time when the damage, loss, or injury occurred, give the claimant's residence for the last six months, and contain the items of damages claimed. No action may be maintained against the department upon the claim until the claim has been presented to, and filed with, the department and sixty days have elapsed after the presentation and filing, nor more than three years after the claim accrued.

With respect to the content of the claims, this section shall be liberally construed so that substantial compliance will be deemed satisfactory. [1984 c 7 § 319; 1967 c 164 § 3; 1961 c 13 § 47.60.250. Prior: 1951 c 259 § 10.]

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

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Claims against the state: Chapter 4.92 RCW.

47.60.260 Payment of claims. The department may upon such terms and conditions as it may impose and under such rules as it may adopt, pay claims arising under its operation of ferries or terminals or compromise or settle the claims. No claim may be paid by the department or any settlement or compromise of it be made except from the operating revenues of the department derived from its operation of ferries or terminals or from the proceeds of insurance recoveries. [1984 c 7 § 320; 1961 c 13 § 47.60.260. Prior: 1951 c 259 § 11.]

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

47.60.270 Venue of actions—Enforcement of judgment. Actions for the recovery of damages under RCW 47.60.220 through 47.60.260 may be brought in Thurston county or in the county in which the aggrieved person resides. No execution upon a judgment or attachment may be levied against the property of the department, nor does the state consent to any maritime lien against vessels of the department, but the department may be required by order of court to pay any judgment. [1984 c 7 § 321; 1961 c 13 § 47.60.270. Prior: 1951 c 259 § 12.]

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

47.60.275 Local law enforcement officers on ferries and terminals. Law enforcement officers of cities, towns, and counties which are served by state ferries shall have, and are hereby authorized to exercise, concurrent jurisdiction and authority with state law enforcement officers in the enforcement of laws of the state and local governmental divisions at those state ferry terminals located within the respective governmental division served by such local law enforcement officers and on state ferries at the terminals and throughout the ferry runs, notwithstanding that the ferry may not be in the officer's governmental division. [1969 ex.s. c 13 § 1.]

47.60.277 "No Smoking" areas on state ferries—Establishment directed. See RCW 47.56.730.

47.60.280 Ferry service—Lummi Island to Orcas Island—Limitation on operation. The department is authorized and directed to establish and operate a ferry service from a suitable point on Lummi Island in Whatcom county to a suitable point on Orcas Island in San Juan county by the most feasible route if and when Whatcom county constructs a bridge from Gooseberry Point on the mainland to Lummi Island. The actual operation of the ferry service shall not begin until Whatcom county has completed the construction of such bridge. [1984 c 7 § 322; 1961 c 13 § 47.60.280. Prior: 1959 c 198 § 1.]

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

47.60.282 Ferry service between Port Townsend and Keystone—Operation authorized, when. The department is authorized to operate a ferry service between Port Townsend and Keystone on Admiralty Inlet if the certificate of convenience and necessity for the ferry operation is theretofore surrendered, rights thereunder are abandoned, and the ferry service is discontinued. In no event may the department undertake such a ferry service preceding events as set forth herein or before April 1, 1973. [1984 c 7 § 323; 1972 ex.s. c 44 § 1.]

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

47.60.283 Ferry service between Port Townsend and Keystone—Purpose. The purpose of RCW 47.60.282 and 47.60.283 is to provide service on the ferry route between Port Townsend and Keystone to be determined by the department. Operation of this route is necessary for the economic health, safety, and welfare of the people of the state. Additionally, state operation of this route will further benefit the people of the state by providing better access to important installations maintained by the United States Navy and the United States Coast Guard. [1984 c 7 § 324; 1972 ex.s. c 44 § 2.]

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

47.60.290 State ferries—Review of tariffs and charges. Subject to the provisions of RCW 47.60.326, the department is hereby authorized and directed to review tariffs and charges as applicable to the operation of the Washington state ferries for the purpose of establishing a more fair and equitable tariff to be charged passengers, vehicles, and commodities on the routes of the Washington state ferries. [1983 c 3 § 136; 1972 ex.s. c 24 § 6; 1961 c 13 § 47.60.290. Prior: 1959 c 199 § 1.]

47.60.300 State ferries—Scope of review—Periodic reviews required. The review shall include but not be limited to tariffs for automobiles, passengers, trucks, commutation rates, and volume discounts. The review shall give proper consideration to time of travel, distance of travel, operating costs, maintenance and repair expenses, and the resultant effect any change in tariff might have on the debt service requirements of the department as specifically provided in existing financing programs. The review shall also include the allocation of vessels to particular runs, the scheduling of particular runs, the adequacy and arrangements of docks and dock facilities, and any other subject deemed by the department to be properly within the scope of the review. The department is further authorized and directed to make a like review within every three-year period. [1984 c 7 § 325; 1961 c 13 § 47.60.300. Prior: 1959 c 199 § 2.]

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

47.60.310 State ferries—Local expressions—Ferry advisory committees. (1) The department is further directed to conduct such review by soliciting and obtaining expressions from local community groups in order to be properly informed as to problems being experienced within the area served by the Washington state ferries. In order that local rep-

resentation may be established, the department shall give prior notice of the review to the ferry advisory committees.

(2) The legislative authorities of San Juan, Skagit, Clallam, and Jefferson counties shall each appoint a committee to consist of five members to serve as an advisory committee to the department or its designated representative in such review. The legislative authorities of other counties that contain ferry terminals shall appoint ferry advisory committees consisting of three members for each terminal area in each county, except for Vashon Island, which shall have one committee, and its members shall be appointed by the Vashon/Maury Island community council. At least one person appointed to each ferry advisory committee shall be representative of an established ferry user group or of frequent users of the ferry system. Each member shall reside in the vicinity of the terminal that the advisory committee represents.

(3) The members of the San Juan, Clallam, and Jefferson county ferry advisory committees shall be appointed for four-year terms. The initial terms shall commence on July 1, 1982, and end on June 30, 1986. Any vacancy shall be filled for the remainder of the unexpired term by the appointing authority. At least one person appointed to the advisory committee shall be representative of an established ferry-user group or of frequent users of the ferry system, at least one shall be representative of persons or firms using or depending upon the ferry system for commerce, and one member shall be representative of a local government planning body or its staff. Every member shall be a resident of the county upon whose advisory committee he or she sits, and not more than three members shall at the time of their appointment be members of the same major political party.

(4) The members of each terminal area committee shall be appointed for four-year terms. The initial terms of the members of each terminal area committee shall be staggered as follows: All terms shall commence September 1, 1988, with one member's term expiring August 31, 1990, one member's term expiring August 31, 1991, and the remaining member's term expiring August 31, 1992. Any vacancy shall be filled for the remainder of the unexpired term by the appointing authority. Not more than two members of any terminal-area committee may be from the same political party at the time of their appointment, and in a county having more than one committee, the overall party representation shall be as nearly equal as possible.

(5) The chairmen of the several committees constitute an executive committee of the Washington state ferry users. The executive committee shall meet twice each year with representatives of the marine division of the department to review ferry system issues.

(6) The committees to be appointed by the county legislative authorities shall serve without fee or compensation. [1988 c 100 § 1; 1983 c 15 § 24; 1983 c 3 § 137; 1977 c 29 § 1; 1961 c 13 § 47.60.310. Prior: 1959 c 199 § 3.]

Severability—1983 c 15: See RCW 47.64.910.

47.60.326 Schedule of charges for state ferries—Review by department, factors considered—Rule making by commission. (1) In order to maintain an adequate, fair, and economically sound schedule of charges for the transportation of passengers, vehicles, and commodities on the Wash-

ington state ferries, the department of transportation each year shall conduct a full review of such charges.

(2) Prior to February 1st of each odd-numbered year the department shall transmit to the transportation commission a report of its review together with its recommendations for the revision of a schedule of charges for the ensuing biennium. The commission on or before July 1st of that year shall adopt as a rule, in the manner provided by the Washington administrative procedure act, a schedule of charges for the Washington state ferries for the ensuing biennium commencing July 1st. The schedule may initially be adopted as an emergency rule if necessary to take effect on, or as near as possible to, July 1st.

(3) The department in making its review and formulating recommendations and the commission in adopting a schedule of charges may consider any of the following factors:

(a) The amount of subsidy available to the ferry system for maintenance and operation;

(b) The time and distance of ferry runs;

(c) The maintenance and operation costs for ferry runs with a proper adjustment for higher costs of operating outmoded or less efficient equipment;

(d) The efficient distribution of traffic between cross-sound routes;

(e) The desirability of reasonable commutation rates for persons using the ferry system to commute daily to work;

(f) The effect of proposed fares in increasing walk-on and vehicular passenger use;

(g) The effect of proposed fares in promoting all types of ferry use during nonpeak periods;

(h) The estimated revenues that are projected to be earned by the ferry system from commercial advertisements, parking, contracts, leases, and other sources;

(i) Such other factors as prudent managers of a major ferry system would consider.

(4) If at any time during the biennium it appears that projected revenues from the Puget Sound ferry operations account and any other operating subsidy available to the Washington state ferries will be less than the projected total cost of maintenance and operation of the Washington state ferries for the biennium, the department shall forthwith undertake a review of its schedule of charges to ascertain whether or not the schedule of charges should be revised. The department shall, upon completion of its review report, submit its recommendation to the transportation commission which may in its sound discretion revise the schedule of charges as required to meet necessary maintenance and operation expenditures of the ferry system for the biennium or may defer action until the regular annual review and revision of ferry charges as provided in subsection (2) of this section.

(5) The provisions of RCW 47.60.330 relating to public participation shall apply to the process of revising ferry tolls under this section.

(6) Under RCW 43.135.055, the transportation commission may increase ferry tolls included in the schedule of charges adopted under this section by a percentage that exceeds the fiscal growth factor.

(7) Notwithstanding the provisions of this section and chapter 81.28 RCW, and using sound business judgment, the chief executive officer of the ferry system may authorize the use of promotional, discounted, and special event fares to the

general public and commercial enterprises for the purpose of maximizing capacity use and the revenues collected by the ferry system. The department shall report to the transportation commission a summary of the promotional, discounted, and special event fares offered during each fiscal year and the financial results from these activities. [2003 c 374 § 4; 2001 1st sp.s. c 1 § 1; 1999 c 94 § 27; 1990 c 42 § 406; 1983 c 15 § 25; 1981 c 344 § 5.]

Effective date—2001 1st sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2001]." [2001 1st sp.s. c 1 § 2.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—1983 c 15: See RCW 47.64.910.

Severability—1981 c 344: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 344 § 8.]

47.60.330 Public participation. (1) Before a substantial expansion or curtailment in the level of service provided to ferry users, or a revision in the schedule of ferry tolls or charges, the department of transportation shall consult with affected ferry users. The consultation shall be: (a) By public hearing in affected local communities; (b) by review with the affected ferry advisory committees pursuant to RCW 47.60.310; (c) by conducting a survey of affected ferry users; or (d) by any combination of (a) through (c). Promotional, discount, and special event fares that are not part of the published schedule of ferry charges or tolls are exempt. The department shall report an accounting of all exempt revenues to the transportation commission each fiscal year.

(2) There is created a ferry system productivity council consisting of a representative of each ferry advisory committee empanelled under RCW 47.60.310, elected by the members thereof, and two representatives of employees of the ferry system appointed by mutual agreement of all of the unions representing ferry employees, which shall meet from time to time with ferry system management to discuss means of improving ferry system productivity.

(3) Before increasing ferry tolls the department of transportation shall consider all possible cost reductions with full public participation as provided in subsection (1) of this section and, consistent with public policy, shall consider adapting service levels equitably on a route-by-route basis to reflect trends in and forecasts of traffic usage. Forecasts of traffic levels shall be developed by the bond covenant traffic engineering firm appointed under the provisions of RCW 47.60.450. Provisions of this section shall not alter obligations under RCW 47.60.450. Before including any toll increase in a budget proposal by the commission, the department of transportation shall consult with affected ferry users in the manner prescribed in (1)(b) of this section plus the procedure of either (1)(a) or (c) of this section. [2003 c 374 § 5; 1983 c 15 § 26.]

Severability—1983 c 15: See RCW 47.64.910.

47.60.400 Refunding bonds authorized, 1961 Act. The Washington toll bridge authority is authorized to issue

revenue bonds to refund all or any part of the authority's outstanding 1955 Washington state ferry system refunding revenue bonds and 1957 ferry and Hood Canal bridge revenue bonds. With respect to the issuing of such bonds and the payment of principal and interest thereon, the payment into reserves, sinking funds, and the fixing and revision of charges for services and facilities of the system, and in managing all its fiscal operations, the authority shall have all the powers and shall follow the same procedures established for it under existing laws, except as otherwise provided herein. [1986 c 66 § 3; 1961 ex.s. c 9 § 1.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

Effective date—1986 c 66: See note following RCW 47.60.150.

Appropriation—1961 ex.s. c 9: "There is hereby appropriated from the motor vehicle fund to the Washington toll bridge authority, for the biennium ending June 30, 1963, the sum of two million six hundred thousand dollars or so much thereof as may be necessary for the operation and maintenance of the Washington state ferries and the payments of principal and interest on outstanding 1955 Washington state ferry system refunding revenue bonds and 1957 ferry and Hood Canal bridge revenue bonds and payments into reserves thereof as required by resolutions adopted by the authority with respect to such bond issues. Whenever such bond issues shall be refunded, any unexpended part of this appropriation shall lapse." [1961 ex.s. c 9 § 8.]

47.60.420 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Prior charge against Puget Sound capital construction account if ferry system revenues insufficient. To the extent that all revenues from the Washington state ferry system available therefor are insufficient to provide for the payment of principal and interest on the bonds authorized and issued under RCW 47.60.400 through 47.60.450 and for sinking fund requirements established with respect thereto and for payment into such reserves as the department has established with respect to the securing of the bonds, there is imposed a first and prior charge against the Puget Sound capital construction account of the motor vehicle fund created by RCW 47.60.505 and, to the extent required, against all revenues required by RCW 46.68.090 to be deposited in the Puget Sound capital construction account.

To the extent that the revenues from the Washington state ferry system available therefor are insufficient to meet required payments of principal and interest on bonds, sinking fund requirements, and payments into reserves, the department shall use moneys in the Puget Sound capital construction account for such purpose. [1999 c 269 § 15; 1990 c 42 § 407; 1986 c 66 § 4; 1984 c 7 § 330; 1961 ex.s. c 9 § 3.]

Effective date—1999 c 269: See note following RCW 36.78.070.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 66: See note following RCW 47.60.150.

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

47.60.430 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Agreement to continue imposition of certain taxes. So long as any bonds issued as authorized herein are outstanding, the state hereby agrees to continue to impose at least one-quarter cent of motor vehicle fuel tax and one-quarter cent of special fuel tax required by law and to deposit the proceeds of these taxes in the Puget

Sound capital construction account of the motor vehicle fund. [1986 c 66 § 5; 1961 ex.s. c 9 § 4.]

Effective date—1986 c 66: See note following RCW 47.60.150.

47.60.440 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Ferry system a revenue-producing undertaking—Debt service—Tolls on ferry system and Hood Canal bridge. The Washington state ferry system shall be efficiently managed, operated, and maintained as a revenue-producing undertaking. Subject to the provisions of RCW 47.60.326 the commission shall maintain and revise from time to time as necessary a schedule of tolls and charges on said ferry system with other moneys deposited in the Puget Sound ferry operations account for maintenance and operation and all moneys in the Puget Sound capital construction account available for debt service will produce net revenue available for debt service, in each fiscal year, in an amount at least equal to minimum annual debt service requirements as hereinafter provided. Minimum annual debt service requirements as used in this section shall include required payments of principal and interest, sinking fund requirements, and payments into reserves on all outstanding revenue bonds authorized by RCW 47.60.400 through *47.60.470.

The provisions of law relating to the revision of tolls and charges to meet minimum annual debt service requirements from net revenues as required by this section shall be binding upon the commission but shall not be deemed to constitute a contract to that effect for the benefit of the holders of such bonds. [1999 c 94 § 28; 1990 c 42 § 408; 1986 c 66 § 6; 1983 c 3 § 139; 1972 ex.s. c 24 § 7; 1963 ex.s. c 3 § 42; 1961 ex.s. c 9 § 5.]

***Reviser's note:** RCW 47.60.470 was repealed by 1998 c 245 § 176.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 66: See note following RCW 47.60.150.

47.60.445 Hood Canal bridge—Tolls, upkeep costs. Notwithstanding the provisions of RCW 47.56.240 and 47.56.245 the transportation commission shall not collect tolls on the Hood Canal bridge for any purpose except where necessary to comply with bond covenants.

The cost of maintenance, upkeep, and repair may be paid from funds appropriated for the construction and maintenance of the primary state highways of the state of Washington. [1990 c 42 § 409.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

47.60.450 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Revision of tolls to meet debt service. If the net revenue together with all moneys in the Puget Sound capital construction account available for debt service in any fiscal year fail to meet minimum annual debt service for the year, as defined in RCW 47.60.440, the commission shall promptly revise the tolls and charges after considering supporting data and recommendations therefor which shall be furnished by a nationally recognized traffic

engineering firm retained by the commission in the manner provided in the bond proceedings.

Tolls and charges shall not be increased in any case when in the opinion of the engineering firm the increase would so reduce traffic that no net gain in revenue would result. This section is a covenant for the benefit of the holders of the bonds. [1986 c 66 § 7; 1984 c 7 § 331; 1961 ex.s. c 9 § 6.]

Effective date—1986 c 66: See note following RCW 47.60.150.

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

47.60.500 Acquisition of additional ferries—Legislative finding—Department authority. (1) The legislature finds that the state's ferry fleet available for mass transportation of people within the urban region of Puget Sound is critically deficient and that substantial financial assistance for the acquisition of new ferries is necessary if the Washington state ferries is to continue to fulfill its role in the Puget Sound regional urban transportation system.

(2) The department is authorized:

(a) To apply to the United States secretary of transportation for a financial grant to assist the state to acquire urgently needed ferries;

(b) To enter into an agreement with the United States secretary of transportation or other duly authorized federal officials and to assent to such conditions as may be necessary to obtain financial assistance for the acquisition of additional ferries. In connection with the agreement the department may pledge any moneys in the Puget Sound capital construction account, not required for debt service, in the motor vehicle fund or any moneys to be deposited in the account for the purpose of paying the state's share of the cost of acquiring ferries. To the extent of the pledge the department shall use the moneys available in the Puget Sound capital construction account to meet the obligations as they arise. [1986 c 66 § 8; 1984 c 7 § 333; 1970 ex.s. c 85 § 1.]

Effective date—1986 c 66: See note following RCW 47.60.150.

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

Effective date—1970 ex.s. c 85: "This 1970 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect April 1, 1970." [1970 ex.s. c 85 § 9.]

47.60.502 Hood Canal bridge—Legislative finding—Authority to restore or replace. The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, the department of transportation is authorized and directed to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas. The department is further authorized and directed to pro-

ceed immediately with all necessary measures to survey the damage to the Hood Canal bridge and to undertake the planning, design, and construction necessary to restore or replace the Hood Canal bridge. [1979 c 27 § 1.]

Severability—1979 c 27: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 27 § 10.]

47.60.503 Hood Canal bridge—Authority to obtain federal emergency relief funds. The department of transportation is authorized and directed to take all necessary steps to obtain federal emergency relief funds to assist the state of Washington in restoring transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas, including both interim measures and the ultimate reconstruction or replacement of the Hood Canal bridge. [1979 c 27 § 2.]

Severability—1979 c 27: See note following RCW 47.60.502.

47.60.505 Puget Sound capital construction account—Created—Use. There is hereby created in the motor vehicle fund the Puget Sound capital construction account. All moneys hereafter deposited in said account shall be used by the department of transportation for:

(1) Reimbursing the motor vehicle fund for all transfers therefrom made in accordance with RCW 47.60.620; and

(2) Improving the Washington state ferry system including, but not limited to, vessel acquisition, vessel construction, major and minor vessel improvements, terminal construction and improvements, and reconstruction or replacement of, and improvements to, the Hood Canal bridge, reimbursement of the motor vehicle fund for any state funds, other than insurance proceeds, expended therefrom for reconstruction or replacement of and improvements to the Hood Canal bridge, pursuant to proper appropriations: PROVIDED, That any funds accruing to the Puget Sound capital construction account after June 30, 1979, which are not required to reimburse the motor vehicle fund pursuant to RCW 47.60.620 as such obligations come due nor are required for capital improvements of the Washington state ferries pursuant to appropriations therefor shall from time to time as shall be determined by the department of transportation be transferred by the state treasurer to the Puget Sound ferry operations account in the motor vehicle fund.

(3) The department may pledge any moneys in the Puget Sound capital construction account or to be deposited in that account to guarantee the payment of principal or interest on bonds issued to refund the outstanding 1955 Washington state ferry system refunding bonds and the 1957 ferry and Hood Canal bridge revenue bonds.

The department may further pledge moneys in the Puget Sound capital construction account to meet any sinking fund requirements or reserves established by the department with respect to any bond issues provided for in this section.

To the extent of any pledge authorized in this section, the department shall use the first moneys available in the Puget Sound capital construction account to meet such obligations as they arise, and shall maintain a balance of not less than one million dollars in the account for this purpose.

(4) The treasurer shall never transfer any moneys from the Puget Sound capital construction account for use by the department for state highway purposes so long as there is due and unpaid any obligations for payment of principal, interest, sinking funds, or reserves as required by any pledge of the Puget Sound capital construction account. Whenever the department has pledged any moneys in the account for the purposes authorized in this section, the state agrees to continue to deposit in the Puget Sound capital construction account the motor vehicle fuel taxes and special fuel taxes as provided in RCW 82.36.020 and 82.38.290 and further agrees that, so long as there exists any outstanding obligations pursuant to such pledge, to continue to impose such taxes.

(5) Funds in the Puget Sound capital construction account of the motor vehicle fund that are not required by the department for payment of principal or interest on bond issues or for any of the other purposes authorized in this chapter may be invested by the department in bonds and obligations of the nature eligible for the investment of current state funds as provided in RCW 43.84.080. [1986 c 66 § 9; 1979 c 27 § 3; 1977 ex.s. c 360 § 10; 1970 ex.s. c 85 § 2.]

Transfer of funds—1986 c 66: "Moneys in the Puget Sound reserve account and ferry improvement fund on July 1, 1987, shall be transferred to the Puget Sound capital construction account." [1986 c 66 § 13.]

Effective date—1986 c 66: See note following RCW 47.60.150.

Severability—1979 c 27: See note following RCW 47.60.502.

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

Effective date—1970 ex.s. c 85: See note following RCW 47.60.500.

47.60.530 Puget Sound ferry operations account—

Created—Use. There is hereby created in the motor vehicle fund the Puget Sound ferry operations account to the credit of which shall be deposited all moneys directed by law to be deposited therein. All moneys deposited in this account shall be expended pursuant to appropriations only for reimbursement of the motor vehicle fund for any state moneys, other than insurance proceeds, expended therefrom for alternate transportation services instituted as a result of the destruction of the Hood Canal bridge, and for maintenance and operation of the Washington state ferries including the Hood Canal bridge, supplementing as required the revenues available from the Washington state ferry system. [1979 c 27 § 4; 1972 ex.s. c 24 § 3.]

Severability—1979 c 27: See note following RCW 47.60.502.

47.60.550 Parking or holding area for ferry patrons in conjunction with municipal off-street parking facilities.

(1) Whenever a county, city, or other municipal corporation acquires or constructs a facility to be used in whole or in part for off-street parking of motor vehicles which is in the immediate vicinity of an existing or planned ferry terminal, the department may enter into an agreement with the local governmental body providing for the use in part or at specified times of the facility as a holding area for traffic waiting to board a ferry or for parking by ferry patrons.

(2) As a part of an agreement authorized by subsection (1) of this section, the department, subject to the limitations contained in RCW 47.60.505, may pledge any moneys in the Puget Sound capital construction account in the motor vehi-

cle fund, or to be deposited in the account, to guarantee the payment of principal and interest on bonds issued by a county, city, or other municipal corporation to finance the acquisition or construction of the parking facility. In making the pledge, the department shall reserve the right to issue its own bonds for the purpose of paying the costs of acquiring ferry vessels with the provision that the bonds shall rank on parity with the bonds authorized by this section as a lien upon moneys in or to be deposited in the Puget Sound capital construction account.

The department shall also reserve the right to pledge moneys in the Puget Sound capital construction account to guarantee subsequent bonds issued by any county, city, or other municipal corporation to finance parking facilities as authorized in subsection (1) of this section with the provision that the subsequent bonds shall rank on parity with prior bonds guaranteed pursuant to this section as a lien upon moneys in or to be deposited in the Puget Sound capital construction account. To the extent of any pledge herein authorized, the department shall use the first moneys available in the Puget Sound capital construction account to meet the obligations as they arise. [1986 c 66 § 10; 1984 c 7 § 335; 1975-'76 2nd ex.s. c 69 § 1.]

Effective date—1986 c 66: See note following RCW 47.60.150.

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

47.60.560 General obligation bonds—Ferries—Authorized—Purposes—Passenger-only vessels—Issuance, sale, and retirement. In order to provide funds necessary for vessel acquisition, vessel construction, major and minor vessel improvements, and terminal construction and improvements for the Washington state ferries, there shall be issued and sold upon the request of the department general obligation bonds of the state of Washington in the sum of one hundred thirty-five million dollars or such amount thereof as may be required (together with other funds available therefor). If the state of Washington is able to obtain matching funds from the urban mass transportation administration or other federal government agencies for the acquisition of passenger-only vessels capable of operating as an integral part of the Washington state ferries on Puget Sound and the Straits of Juan de Fuca, a sufficient amount of the proceeds of the bonds authorized herein shall be used to pay the state's share of the acquisition cost of the passenger-only vessels. Upon request being made by the department, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds in accordance with chapter 39.42 RCW. The bonds may be sold from time to time in such amounts as may be necessary for the orderly progress in constructing the ferries. The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued under this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebt-

edness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [1986 c 290 § 8; 1985 c 176 § 1; 1984 c 7 § 336; 1977 ex.s. c 360 § 1.]

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

Severability—1977 ex.s. c 360: "If any provision of this 1977 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 360 § 13.]

47.60.570 Disposition of proceeds from sale of bonds.

The proceeds from the sale of the bonds shall be deposited in the Puget Sound capital construction account of the motor vehicle fund and such proceeds shall be available only for the purposes enumerated in RCW 47.60.560, for the payment of bond anticipation notes, if any, and for the payment of the expense incurred in the drafting, printing, issuance, and sale of such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1986 c 290 § 9; 1977 ex.s. c 360 § 2.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.580 Bonds—Terms—Principal and interest payable from proceeds of state excise taxes on motor vehicle and special fuels. Bonds issued under the provisions of RCW 47.60.560 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.60.560 through 47.60.640 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.60.560 through 47.60.640 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.60.560 through 47.60.640. [1995 c 274 § 18; 1977 ex.s. c 360 § 3.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.590 Repayment of bonds—Fund sources. Any funds required to repay the bonds authorized by RCW 47.60.560 or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state for expenditure pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cit-

ies, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1977 ex.s. c 360 § 4.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.600 Bonds—Powers and duties of state finance committee. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.60.590, the percentage of the receipts in money of the motor vehicle fund resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments when due and shall notify the treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the ferry bond retirement fund hereby created in the state treasury, which funds shall be available solely for payment of the principal of and interest on the bonds when due. If in any month it shall appear that the estimated percentage of moneys so made is insufficient to meet the requirements for payment of the principal thereof or interest thereon, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for the interest on and principal of all bonds issued shall be fully met at all times. [1977 ex.s. c 360 § 5.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.610 Excess repayment funds—Disposition. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the bond retirement fund proves more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee and with the concurrence of the department, be available for the prior redemption of any bonds or remain available in the fund to reduce requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1984 c 7 § 337; 1977 ex.s. c 360 § 6.]

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

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.620 Reimbursements and transfers of funds. Whenever, pursuant to RCW 47.60.600, the state treasurer shall transfer funds from the motor vehicle fund to the ferry bond retirement fund, the state treasurer shall at the same time reimburse the motor vehicle fund in an identical amount from the Puget Sound capital construction account. After each transfer by the treasurer of funds from the motor vehicle fund to the bond retirement fund and to the extent permitted by RCW 47.60.420, 47.60.505(3), and 47.60.505(4), the obligation to reimburse the motor vehicle fund as required herein shall constitute a first and prior charge against the funds within and accruing to the Puget Sound capital construction

account, including the proceeds of the additional two-tenths of one percent excise tax imposed by *RCW 82.44.020, as amended by chapter 332, Laws of 1977 ex. sess. All funds reimbursed to the motor vehicle fund as provided herein shall be distributed to the state for expenditure pursuant to RCW 46.68.130. [1986 c 66 § 11; 1977 ex.s. c 360 § 7.]

*Reviser's note: RCW 82.44.020 was repealed by 2000 1st sp.s. c 1 § 2.

Effective date—1986 c 66: See note following RCW 47.60.150.

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.630 Bonds legal investment for public funds.

The bonds authorized in RCW 47.60.560 through 47.60.640 shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1977 ex.s. c 360 § 8.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.640 Bonds—Equal charge against revenues from motor vehicle and special fuel excise taxes. Bonds issued under authority of RCW 47.60.560 through 47.60.640 and any subsequent general obligation bonds of the state of Washington which may be authorized and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1977 ex.s. c 360 § 9.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.645 Passenger ferry account. There is hereby established in the transportation fund the passenger ferry account. Money in the account shall be used for capital improvements for passenger ferry projects including, but not limited to, pedestrian and transit facilities at ferry terminals and passenger-only ferry vessels. Moneys in the account shall be expended with legislative appropriation. [1995 2nd sp.s. c 14 § 558.]

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

47.60.649 Passenger-only ferry service—Finding. The legislature finds and declares that there is a compelling need for the construction of additional state ferry vessels and corresponding terminal improvements in order to provide more capacity and frequent service to meet the forecasted travel demands of citizens traveling on Puget Sound ferry routes. The vessel technology required must provide additional travel options for high growth ferry routes through increased passenger-only ferry service.

The 1989 west corridor study evaluated cross-sound travel through the year 2020 and identified the Southworth to Seattle and the Kingston to Seattle passenger-only ferry routes as promising based on criteria evaluating cost-effectiveness, time savings, physical constraints to operation, non-duplication of current service, and ability to relieve congestion.

Furthermore, as a result of legislative direction provided in the 1991-93 transportation budget to the state transporta-

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tion commission to evaluate and determine the location of new passenger-only ferry routes, the commission reviewed several service alternatives, determined that the Southworth to Seattle and Kingston to Seattle routes ranked highest, and directed the Washington state ferries to proceed with the design and permitting processes for passenger-only terminals at both Southworth and Kingston. [1998 c 166 § 1.]

47.60.652 Passenger-only ferry service—Vessel and terminal acquisition, procurement, and construction. The department is authorized to proceed with the acquisition, procurement, and construction of a maximum of four passenger-only vessels that respond to the service demands of state ferry service on the Southworth to Seattle and Kingston to Seattle ferry routes, including the terminal and docking facilities necessary to accommodate such service. The acquisition, procurement, and construction of vessels and terminals authorized herein shall be undertaken in accordance with the authority provided in RCW 47.56.030. [1998 c 166 § 2.]

47.60.654 Passenger-only ferry service—Contingency. The department's authority to proceed with the acquisition, procurement, and construction of vessels and terminals authorized under RCW 47.60.652 is contingent on a legislative appropriation approving that authority: PROVIDED, That the appropriation does not reduce the current level of funding for the maintenance and repair of vessels and terminals in service as of June 11, 1998. [1998 c 166 § 3.]

Reviser's note: Cf. 1998 c 346 § 913.

47.60.656 Passenger-only ferry service—Conveyance of vessels authorized. The department of transportation may enter into contracts with public transportation benefit areas meeting the requirements of RCW 36.57A.200 or county ferry districts to convey passenger-only ferry vessels and other properties associated with passenger-only ferry service that serve to provide passenger-only ferry service, as full or part consideration for the benefit area or ferry district assuming all future maintenance and operation obligations and costs required to maintain and operate the vessel and facilities. The conveyances must provide that the vessels or properties revert to the department if the vessels are not used for providing passenger-only ferry service. [2003 c 83 § 203.]

Reviser's note: 2003 c 83 directed that this section be added to chapter 47.52 RCW. However, codification in chapter 47.60 RCW appears to be more appropriate.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

47.60.680 Prequalification of contractors required. No contract for the construction, improvement, or repair of a ferry, ferry terminal, or other facility operated by the Washington state ferries or for the repair, overhaul, or the dry-docking of any ferry operated by Washington state ferries may be awarded to any contractor who has not first been prequalified to perform the work by the department of transportation. No bid or proposal for such a contract may be received from any contractor who has not first been prequalified to perform the work by the department of transportation. [1983 c 133 § 1.]

47.60.690 Qualifications of contractor—Rules to assure. The secretary of transportation shall adopt rules prescribing standards and criteria to assure that each ferry system construction and repair contract described in RCW 47.60.680 shall be awarded to a competent and responsible contractor who has all of the following qualifications:

- (1) Adequate financial resources, which may take into account the ability of the contractor to secure such resources;
- (2) The necessary organization, personnel, equipment, facilities, experience, and technical qualification[s] to perform ferry system construction and repair contracts generally and with respect to any specific contract such additional special qualifications as may be necessary to perform the contract;
- (3) The ability to comply with the department's performance schedules taking into account the outstanding work on all of the contractor's construction and repair contracts;
- (4) A satisfactory record of performing previous contracts;
- (5) A satisfactory record of integrity, judgment, and skills; and
- (6) Such other qualifications as the secretary may prescribe to assure that prequalified contractors are competent and responsible. [1983 c 133 § 2.]

47.60.700 Application for prequalification—Form. Any contractor desiring to submit bids or proposals for ferry system construction or repair contracts as described in RCW 47.60.680 shall file an application for prequalification with the department. The application shall be on a standard form supplied by the department. The form shall require a complete statement of the applicant's financial ability, including a statement of the applicant's current net assets and working capital. The form shall require such additional information as may be necessary for the department to determine whether or not the applicant is entitled to be prequalified in accordance with RCW 47.60.680 through 47.60.760 and the rules adopted thereunder. [1983 c 133 § 3.]

47.60.710 Department authority to obtain information. Upon request by the department an applicant for prequalification shall authorize the department to obtain any information pertinent to the application, including information relating to the applicant's net worth, assets, and liabilities, from banks or other financial institutions, surety companies, and material and equipment suppliers. [1983 c 133 § 4.]

47.60.720 Additional investigation—Terms of prequalification—Notice of nonqualification. Upon receipt of an application by a contractor for prequalification to perform ferry system construction and repair contracts, the department shall conduct such additional investigation as it deems necessary. If it finds that the applicant is qualified in accordance with the rules as adopted by the secretary, the department shall prequalify the contractor to perform the contracts for a period of one year. The prequalification shall fix the aggregate dollar amount of work, including any contract let by the department, that the contractor may have under contract and uncompleted at any one time and may limit the contractor to the submission of bids or proposals upon a certain class of work. Subject to any restrictions on the

dollar amount or class of work specified thereunder, the prequalification shall authorize a contractor to bid or submit proposals on all ferry system construction and repair contracts mentioned in RCW 47.60.680 except contracts requiring special prequalification. If the department determines that an applicant is not entitled to prequalification, it shall give written notice of the determination to the applicant. [1983 c 133 § 5.]

47.60.730 Renewal of prequalification—Nonrenewal or revocation, notice. A contractor may apply annually for renewal of its prequalification by submission of a new or supplemental questionnaire and financial statement on standard forms provided by the department. Based upon information received at the time of renewal or at any other time the department may amend the prequalification of the contractor as to the dollar amount or class of work that the contractor may perform or may refuse to renew the prequalification or may revoke a prequalification previously approved, all in accordance with the same standards and criteria used for considering an original application for prequalification. The department shall give written notice of any such action to the contractor. [1983 c 133 § 6.]

47.60.740 Rejection of bid despite prequalification—Unqualified bidder. If the department finds, after the opening of bids, that facts exist that would disqualify the lowest bidder, or that the lowest bidder is not competent or responsible in accordance with the standards and criteria for prequalifying contractors, the department shall reject the bid despite the prior prequalification of the bidder. No contract may be awarded to a bidder not qualified to bid on it at the time fixed for receiving bids. [1983 c 133 § 7.]

47.60.750 Appeal of refusal, modification, or revocation of prequalification. The action of the department in refusing, modifying, or revoking the prequalification of any contractor under RCW 47.60.680 through 47.60.740 is conclusive unless an appeal is filed with the Thurston county superior court within ten days after receiving written notice of the refusal, modification, or revocation. The appeal shall be heard summarily within twenty days after the appeal is taken and on five days notice thereof to the department. The court shall hear any such appeal on the administrative record that was before the department. The court may affirm the decision of the department, or it may reverse the decision if it determines the action of the department was arbitrary or capricious. [1983 c 133 § 8.]

47.60.760 Financial information regarding qualifying not public. The department of transportation shall not be required to make available for public inspection and copying financial information supplied by any person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750. [1983 c 133 § 9.]

47.60.770 Jumbo ferry construction—Notice. Whenever the department is authorized to construct one or more

new jumbo ferry vessels under this chapter, it shall publish a notice of its intent once a week for at least two consecutive weeks in at least one trade paper and one other paper, both of general circulation in the state. The notice shall contain, but not be limited to, the following information:

(1) The number of jumbo ferry vessels to be constructed and the proposed delivery date for each vessel;

(2) A short summary of the requirements for prequalification of bidders including a statement that prequalification is a prerequisite to consideration by the department of any bid, and a statement that the bidder shall submit its bid for the vessel in compliance with the plans and specifications supplied by the state; and

(3) An address and telephone number that may be used to obtain the bid package. [1993 c 493 § 1.]

Effective date—1993 c 493: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 18, 1993]." [1993 c 493 § 8.]

47.60.772 Jumbo ferry construction—Bidding documents. The department shall send to any firm that requests it bidding documents specifying the criteria for the jumbo ferry vessels. The bid documents shall include, but not be limited to, the following information:

(1) Solicitation of a bid to deliver to the department vessels that are constructed as specified by the plans and specifications provided by the department;

(2) A requirement that bids submitted should include one bid for the construction of three vessels;

(3) The proposed delivery date for each vessel, the port on Puget Sound where delivery will be taken, and the location where acceptance sea trials will be held;

(4) The amount and form of required contract security under RCW 39.08.100;

(5) A copy of the vessel construction contract that will be signed by the successful bidder;

(6) The date by which bids for ferry vessel construction must be received by the department in order to be considered;

(7) A requirement that the contractor comply with all applicable laws, rules, and regulations including, but not limited to those pertaining to the environment, worker health and safety, and prevailing wages;

(8) A requirement that the vessels be constructed within the boundaries of the state of Washington except that equipment furnished by the state and components, products, and systems that are standard manufactured items are not subject to the in-state requirement under this subsection. For the purposes of this section, "constructed" means: The fabrication, by the joining together by welding or fastening of all steel parts from which the total vessel is constructed, including, but not limited to, all shell frames, longitudinals, bulkheads, webs, piping runs, wire ways, and ducting. "Constructed" also means the installation of all components and systems, including, but not limited to, equipment and machinery, castings, electrical, electronics, deck covering, lining, paint and joiner work, required by the contract. "Constructed" also means the interconnection of all equipment, machinery, and services, such as piping, wiring, and ducting;

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(9) A requirement that all warranty work on the vessel be performed within the boundaries of the state of Washington, insofar as practicable;

(10) A statement that any bid submitted constitutes an offer and remains open until ninety days after the deadline for submitting bids, unless the firm submitting it withdraws it by formal written notice that is received by the department before the date and time specified for opening of the bids, together with an explanation of the requirement that all bids submitted be accompanied by a bid deposit in the amount of five percent of the bid amount; and

(11) A listing of all equipment to be furnished by the state. [1993 c 493 § 2.]

Effective date—1993 c 493: See note following RCW 47.60.770.

47.60.774 Jumbo ferry construction—Procedure on conclusion of evaluation. (1) Upon concluding its evaluation, the department may:

(a) Select the firm submitting the lowest responsible bid for the construction of new jumbo ferries, taking into consideration the requirements stated in the bid documents and rank the remaining firms, judging them by the same standards;

(b) Reject all bids not in compliance with the requirements contained in the bid documents;

(c) Reject all bids.

(2) The department shall immediately notify those firms that were not selected as the firm presenting the lowest responsible bid. The department's selection is conclusive unless appeal from it is taken by an aggrieved firm to the superior court of Thurston county within five days after receiving notice of the department's final decision. The appeal shall be heard summarily within ten days after it is taken and on five days' notice to the department. The court shall hear any appeal on the administrative record that was before the department. The court may affirm the decision of the department, or it may reverse the decision if it determines the action of the department was arbitrary or capricious. [1993 c 493 § 4.]

Effective date—1993 c 493: See note following RCW 47.60.770.

47.60.776 Jumbo ferry construction—Contract. (1) Upon selecting the firm that has submitted the lowest responsible bid for the construction of new jumbo ferries, and ranking the remaining firms in order of preference, the department shall:

(a) Sign a contract with the firm presenting the lowest responsible bid; or

(b) If a final agreement satisfactory to the department cannot be signed with the firm presenting the lowest responsible bid, the department may sign a contract with the firm ranked next lowest bidder. If necessary, the department may repeat this procedure with each firm in order until the list of firms has been exhausted, or reject all bids.

(2) In developing a contract for the construction of ferry vessels, the department may, subject to the provisions of *RCW 39.25.020, authorize the use of foreign-made materials and components, products, and systems that are standard manufactured items in the construction of ferries in order to minimize costs. [1993 c 493 § 5.]

***Reviser's note:** RCW 39.25.020 was repealed by 1994 c 138 § 2.

Effective date—1993 c 493: See note following RCW 47.60.770.

47.60.778 Jumbo ferry construction—Bid deposits—Low bidder claiming error. Bids submitted by firms under this section constitute an offer and shall remain open for ninety days. When submitted, each bid shall be accompanied by a deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the bid amount, and no bid may be considered unless the deposit is enclosed. If the department awards a contract to a firm and the firm fails to enter into a contract or fails to furnish a satisfactory contract security as required by RCW 39.08.100, its deposit shall be forfeited to the state and be deposited by the state treasurer to the credit of the Puget Sound capital construction account. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Upon the execution of a ferry construction contract for the construction of new jumbo ferries, all bid deposits shall be returned. [1996 c 18 § 9; 1993 c 493 § 6.]

Effective date—1993 c 493: See note following RCW 47.60.770.

47.60.780 Jumbo ferry construction—Propulsion system acquisition. (1) The department may enter into a contract for the acquisition of the propulsion system, or any component of it, including diesel engines and spare parts, for installation into one or more of the three Jumbo Class Mark II ferry vessels authorized under this chapter. This authorization does not limit the department from obtaining and installing the propulsion system, or any component of it, as incidental to the overall vessel construction contract authorized under RCW 47.60.770 through 47.60.778, nor from proceeding to complete an existing contract for acquisition of the propulsion system or any component of it.

(2) Acquisition of a propulsion system, or any component of it, for the Jumbo Class Mark II ferries by the department under this section is exempt from chapter 43.19 RCW.

(3) Whenever the department decides to enter into an acquisition contract under this section it shall publish a notice of its intent to negotiate such a contract once a week for at least two consecutive weeks in one trade newspaper and one other newspaper, both of general circulation in the state. The notice must contain, but is not limited to, the following information:

(a) The identity of the propulsion system or components to be acquired and the proposed delivery dates for the propulsion system or components;

(b) An address and telephone number that may be used to obtain the request for proposal.

(4) The department shall send to any firm that requests it, a request for proposal outlining the design and construction requirements for the propulsion system, including any desired components. The request for proposal must include, but is not limited to, the following information:

(a) The proposed delivery date for each propulsion system or desired component and the location where delivery will be taken;

(b) The form and formula for contract security;

(c) A copy of the proposed contract;

(d) The date by which proposals must be received by the department in order to be considered; and

(e) A statement that any proposal submitted constitutes an offer and must remain open until ninety days after the deadline for submitting proposals, together with an explanation of the requirement that all proposals submitted must be accompanied by a deposit in the amount of five percent of the proposed cost.

(5) The department shall evaluate all timely proposals received for: (a) Compliance with the requirements specified in the request for proposal; and (b) suitability of each firm's proposal by applying appropriate criteria to be developed by the department: (i) To assess the ability of the firm to expeditiously and satisfactorily perform and (ii) to accomplish an acquisition that is most advantageous to the department. A portion of the technical requirements addressed in the request for proposal shall include, but is not limited to, user verifications of manufacturer's reliability claims; the quality of engine maintenance documentation; and engine compatibility with ship design.

(6) The criteria to select the most advantageous diesel engine under subsection (5)(b)(ii) shall consist of life-cycle cost factors weighted at forty-five percent; and operational factors weighted as follows: Reliability at twenty percent, maintainability at twenty percent, and engine performance at fifteen percent. For purposes of this subsection, the life-cycle cost factors shall consist of the costs for engine acquisition and warranty, spare parts acquisition and inventory, fuel efficiency and lubricating oil consumption, and commonality. The fuel efficiency and lubricating oil consumption life-cycle cost factors shall receive not less than twenty percent of the total evaluation weighting and shall be evaluated under a format similar to that employed in the 1992 M.V. Tyee engine replacement contract. The reliability factors shall consist of the length of service and reliability record in comparable uses, and mean time between overhauls. The mean time between overhauls evaluation shall be based upon the manufacturer's required hours between change of wear components. The maintainability factors shall consist of spare parts availability, the usual time anticipated to perform typical repair functions, and the quality of factory training programs for ferry system maintenance staff. The performance factors shall consist of load change responsiveness, and air quality of exhaust and engine room emissions.

(7) Upon concluding its evaluation, the department shall:

(a) Select the firm presenting the proposal most advantageous to the department, taking into consideration compliance with the requirements stated in the request for proposal, and the criteria developed by the department, and rank the remaining firms in order of preference, judging them by the same standards; or

(b) Reject all proposals as not in compliance with the requirements contained in the request for proposals.

(8) The department shall immediately notify those firms that were not selected as the firm presenting the most advantageous proposal of the department's decision. The department's decision is conclusive unless an aggrieved firm appeals the decision to the superior court of Thurston county within five days after receiving notice of the department's final decision. The appeal shall be heard summarily within ten days after it is taken and on five days' notice to the department. The court shall hear the appeal on the administrative record that was before the department. The court may affirm

the decision of the department, or it may reverse the decision if it determines the action of the department is arbitrary or capricious.

(9) Upon selecting the firm that has presented the most advantageous proposal and ranking the remaining firms in order of preference, the department shall:

(a) Negotiate a contract with the firm presenting the most advantageous proposal; or

(b) If a final agreement satisfactory to the department cannot be negotiated with the firm presenting the most advantageous proposal, the department may then negotiate with the firm ranked next highest in order of preference. If necessary, the department may repeat this procedure and negotiate with each firm in order of rank until the list of firms has been exhausted.

(10) Proposals submitted by firms under this section constitute an offer and must remain open for ninety days. When submitted, each proposal must be accompanied by a deposit in cash, certified check, cashier's check, or surety bond in the amount equal to five percent of the amount of the proposed contract price, and the department may not consider a proposal that has no deposit enclosed with it. If the department awards a contract to a firm under the procedure set forth in this section and the firm fails to enter into the contract and furnish the required contract security within twenty days, exclusive of the day of the award, its deposit shall be forfeited to the state and deposited by the state treasurer to the credit of the Puget Sound capital construction account. Upon the execution of a contract all proposal deposits shall be returned. [1994 c 181 § 2.]

Finding and intent—1994 c 181: "The legislature finds and declares that:

A 1991 legislative study, conducted by Booz, Allen, Hamilton and M. Rosenblatt and Son, examining the Washington state ferries' management of its vessel refurbishment and construction program, resulted in recommendations for improvements and changes in the vessel refurbishment and construction program. These legislatively adopted recommendations encourage and support input by Washington state ferries' engineers in the development of refurbishment and new construction project requirements.

The recommendations of the Booz, Allen study have been applied to the construction of the Jumbo Class Mark II ferries through the appointment of a Jumbo Class Mark II steering committee comprised of current state ferry engineers responsible for the design, operation, and maintenance of state ferry vessels.

The steering committee, in carrying out the recommendations of the Booz, Allen study, has determined that the procedure for the procurement of equipment, parts, and supplies for the Jumbo Class Mark II ferry vessels authorized by RCW 47.60.770 through 47.60.778, must take into consideration, in addition to life-cycle cost criteria, criteria that are essential to the operation of a public mass transportation system responsive to the needs of Washington state ferries' users, and that assess the reliability, maintainability, and performance of equipment, parts, and supplies to be installed in the Jumbo Mark II ferries.

The construction of the new Jumbo Class Mark II ferry vessels authorized by RCW 47.60.770 through 47.60.778 is critical to the welfare of the state and any delay in the immediate construction of the ferries will result in severe hardship and economic loss to the state and its citizens. Recognizing these findings, it is the intent of the legislature that the vessel construction should not be delayed further because of the acquisition of a propulsion system, or any component of it, for the ferries, and to authorize the department of transportation to acquire all components of a complete propulsion system as soon as possible so that planned construction of the Jumbo Class Mark II ferry vessels can proceed immediately.

The purpose of this chapter is to authorize the use, by the department, of supplemental, alternative contracting procedures for the procurement of a propulsion system, and the components thereof, for the Jumbo Class Mark II ferries; and to prescribe appropriate requirements and criteria to ensure that

contracting procedures for such procurement serve the public interest." [1994 c 181 § 1.]

Effective date—1994 c 181: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 181 § 4.]

47.60.800 General obligation bonds—1992 issue—Purpose—Issuance and sale. In order to provide funds necessary for vessel and terminal acquisition, construction, and major and minor improvements, including long lead time materials acquisition for the Washington state ferries, there shall be issued and sold upon the request of the Washington state transportation commission and legislative appropriation a total of two hundred ten million dollars of general obligation bonds of the state of Washington. [1992 c 158 § 1.]

47.60.802 Bonds—1992 issue—Supervision of sale by state finance committee—Option of short-term obligations. (1) Upon request being made by the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.60.800 through 47.60.808 in accordance with chapter 39.42 RCW. The bonds may be sold from time to time in such amounts as may be necessary for the purposes under RCW 47.60.800. The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

(2) The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [1992 c 158 § 2.]

47.60.804 Bonds—1992 issue—Use of proceeds. The proceeds from the sale of bonds authorized by RCW 47.60.800 through 47.60.808 shall be deposited in the Puget Sound capital construction account of the motor vehicle fund and such proceeds shall be available only for the purposes under RCW 47.60.800, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [1992 c 158 § 3.]

47.60.806 Bonds—1992 issue—Payment of principal and interest from pledged excise taxes. Bonds issued under the authority of RCW 47.60.800 through 47.60.808 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest shall be first payable in the manner provided in RCW 47.60.800 through 47.60.808 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and distributed to the state pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the

motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.60.800 through 47.60.808, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.60.800 through 47.60.808. [1995 c 274 § 19; 1992 c 158 § 4.]

47.60.808 Bonds—1992 issue—Payment from ferry bond retirement fund. Both principal and interest on the bonds issued for the purposes of RCW 47.60.800 through 47.60.808 shall be payable from the ferry bond retirement fund authorized in RCW 47.60.600. Whenever, pursuant to RCW 47.60.800 and 47.60.806, the state treasurer transfers funds from the motor vehicle fund to the ferry bond retirement fund, the state treasurer may at the same time reimburse the motor vehicle fund in an identical amount from the Puget Sound capital construction account. [1992 c 158 § 5.]

47.60.810 Design-build ferries—Authorized—Phases defined. (1) The department may purchase new auto ferries through use of a modified request for proposals process whereby the prevailing shipbuilder and the department engage in a design and build partnership for the design and construction of the auto ferries. The process consists of the three phases described in subsection (2) of this section.

(2) The definitions in this subsection apply throughout RCW 47.60.812 through 47.60.822.

(a) "Phase one" means the evaluation and selection of proposers to participate in development of technical proposals in phase two.

(b) "Phase two" means the preparation of technical proposals by the selected proposers in consultation with the department.

(c) "Phase three" means the submittal and evaluation of bids, the award of the contract to the successful proposer, and the design and construction of the auto ferries. [2001 c 226 § 4.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.812 Design-build ferries—Notice of request for proposals. To commence the request for proposals process, the department shall publish a notice of its intent once a week for at least two consecutive weeks in at least one trade paper and one other paper, both of general circulation in the state. The notice must contain, but is not limited to, the following information:

(1) The number of auto ferries to be procured, the auto and passenger capacities, the delivery dates, and the estimated price range for the contract;

(2) A statement that a modified request for proposals design and build partnership will be used in the procurement process;

(3) A short summary of the requirements for prequalification of proposers including a statement that prequalification is a prerequisite to submittal of a proposal in phase one; and

(4) An address and telephone number that may be used to obtain a prequalification questionnaire and the request for proposals. [2001 c 226 § 5.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.814 Design-build ferries—Issuance of request for proposals. Subject to legislative appropriation for the procurement of vessels, the department shall issue a request for proposals to interested parties that must include, at least, the following:

(1) Solicitation of a proposal to participate in a design and build partnership with the department to design and construct the auto ferries;

(2) Instructions on the prequalification process and procedures;

(3) A description of the modified request for proposals process. Under this process, the department may modify any component of the request for proposals, including the outline specifications, by addendum at any time before the submittal of bids in phase three;

(4) A description of the design and build partnership process to be used for procurement of the vessels;

(5) Outline specifications that provide the requirements for the vessels including, but not limited to, items such as length, beam, displacement, speed, propulsion requirements, capacities for autos and passengers, passenger space characteristics, and crew size. The department will produce notional line drawings depicting hull geometry that will interface with Washington state ferries terminal facilities. Notional lines may be modified in phase two, subject to approval by the department;

(6) Instructions for the development of technical proposals in phase two, and information regarding confidentiality of technical proposals;

(7) The vessel delivery schedule, identification of the port on Puget Sound where delivery must take place, and the location where acceptance trials must be held;

(8) The estimated price range for the contract;

(9) The form and amount of the required bid deposit and contract security;

(10) A copy of the contract that will be signed by the successful proposer;

(11) The date by which proposals in phase one must be received by the department in order to be considered;

(12) A description of information to be submitted in the proposals in phase one concerning each proposer's qualifications, capabilities, and experience;

(13) A statement of the maximum number of proposers that may be selected in phase one for development of technical proposals in phase two;

(14) Criteria that will be used for the phase one selection of proposers to participate in the phase two development of technical proposals;

(15) A description of the process that will be used for the phase three submittal and evaluation of bids, award of the contract, and postaward administrative activities;

(16) A requirement that the contractor comply with all applicable laws, rules, and regulations including but not limited to those pertaining to the environment, worker health and safety, and prevailing wages;

(17) A requirement that the vessels be constructed within the boundaries of the state of Washington except that equipment furnished by the state and components, products, and systems that are standard manufactured items are not subject to the in-state requirement under this subsection. For the purposes of this subsection, "constructed" means the fabrication, by the joining together by welding or fastening of all steel parts from which the total vessel is constructed, including, but not limited to, all shell frames, longitudinals, bulkheads, webs, piping runs, wire ways, and ducting. "Constructed" also means the installation of all components and systems, including, but not limited to, equipment and machinery, castings, electrical, electronics, deck covering, lining, paint, and joiner work required by the contract. "Constructed" also means the interconnection of all equipment, machinery, and services, such as piping, wiring, and ducting; and

(18) A requirement that all warranty work on the vessel must be performed within the boundaries of the state of Washington, insofar as practical. [2001 c 226 § 6.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.816 Design-build ferries—Phase one. Phase one of the request for proposals process consists of evaluation and selection of prequalified proposers to participate in subsequent development of technical proposals in phase two, as follows:

(1) The department shall issue a request for proposals to interested parties.

(2) The request for proposals must require that each proposer prequalify for the contract under chapter 468-310 WAC, except that the department may adopt rules for the financial prequalification of proposers for this specific contract only. The department shall modify the financial prequalification rules in chapter 468-310 WAC in order to maximize competition among financially capable and otherwise qualified proposers. In adopting these rules, the department shall consider factors including, without limitation: (a) Shipyard resources in Washington state; (b) the cost to design and construct multiple vessels under a single contract without options; and (c) the sequenced delivery schedule for the vessels.

(3) The department may use some, or all, of the nonfinancial prequalification factors as part of the evaluation factors in phase one to enable the department to select a limited number of best qualified proposers to participate in development of technical proposals in phase two.

(4) The department shall evaluate submitted proposals in accordance with the selection criteria established in the request for proposals. Selection criteria may include, but are not limited to, the following:

- (a) Shipyard facilities;
- (b) Organization components;
- (c) Design capability;
- (d) Build strategy;
- (e) Experience and past performance;
- (f) Ability to meet vessel delivery dates;

(g) Projected workload; and

(h) Expertise of project team and other key personnel.

(5) Upon concluding its evaluation of proposals, the department shall select the best qualified proposers in accordance with the request for proposals. The selected proposers must participate in development of technical proposals. Selection must be made in accordance with the selection criteria stated in the request for proposals. All proposers must be ranked in order of preference as derived from the same selection criteria. [2001 c 226 § 7.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.818 Design-build ferries—Phase two. Phase two of the request for proposals process consists of preparation of technical proposals in consultation with the department, as follows:

(1) The development of technical proposals in compliance with the detailed instructions provided in the request for proposals, including the outline specifications, and any addenda to them. Technical proposals must include the following:

(a) Design and specifications sufficient to fully depict the ferries' characteristics and identify installed equipment;

(b) Drawings showing arrangements of equipment and details necessary for the proposer to develop a firm, fixed price bid;

(c) Project schedule including vessel delivery dates; and

(d) Other appropriate items.

(2) The department shall conduct periodic reviews with each of the selected proposers to consider and critique their designs, drawings, and specifications. These reviews must be held to ensure that technical proposals meet the department's requirements and are responsive to the critiques conducted by the department during the development of technical proposals.

(3) If, as a result of the periodic technical reviews or otherwise, the department determines that it is in the best interests of the department to modify any element of the request for proposals, including the outline specifications, it shall do so by written addenda to the request for proposals.

(4) Proposers must submit final technical proposals for approval that include design, drawings, and specifications at a sufficient level of detail to fully depict the ferries' characteristics and identify installed equipment, and to enable a proposer to deliver a firm, fixed price bid to the department. The department shall reject final technical proposals that modify, fail to conform to, or are not fully responsive to and in compliance with the requirements of the request for proposals, including the outline specifications, as amended by addenda. [2001 c 226 § 8.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.820 Design-build ferries—Phase three. Phase three consists of the submittal and evaluation of bids and the award of the contract to the successful proposer for the final design and construction of the auto ferries, as follows:

(1) The department shall request bids for detailed design and construction of the vessels after completion of the review of technical proposals in phase two. The department will

review detailed design drawings in phase three for conformity with the technical proposals submitted in phase two. In no case may the department's review replace the builder's responsibility to deliver a product meeting the phase two technical proposal. The department may only consider bids from selected proposers that have qualified to bid by submitting technical proposals that have been approved by the department.

(2) Each qualified proposer must submit its total bid price for all vessels, including certification that the bid is based upon its approved technical proposal and the request for proposals.

(3) Bids constitute an offer and remain open for ninety days from the date of the bid opening. A deposit in cash, certified check, cashier's check, or surety bond in an amount specified in the request for proposals must accompany each bid and no bid may be considered unless the deposit is enclosed.

(4) The department shall evaluate the submitted bids. Upon completing the bid evaluation, the department may select the responsive and responsible proposer that offers the lowest total bid price for all vessels.

(5) The department may waive informalities in the proposal and bid process, accept a bid from the lowest responsive and responsible proposer, reject any or all bids, republish, and revise or cancel the request for proposals to serve the best interests of the department.

(6) The department may:

(a) Award the contract to the proposer that has been selected as the responsive and responsible proposer that has submitted the lowest total bid price;

(b) If a contract cannot be signed with the apparent successful proposer, award the contract to the next lowest responsive and responsible proposer; or

(c) If necessary, repeat this procedure with each responsive and responsible proposer in order of rank until the list of those proposers has been exhausted.

(7) If the department awards a contract to a proposer under this section, and the proposer fails to enter into the contract and furnish satisfactory contract security as required by chapter 39.08 RCW within twenty days from the date of award, its deposit is forfeited to the state and will be deposited by the state treasurer to the credit of the Puget Sound capital construction account. Upon the execution of a ferry design and construction contract all proposal deposits will be returned.

(8) The department may provide an honorarium to reimburse each unsuccessful phase three proposer for a portion of its technical proposal preparation costs at a preset, fixed amount to be specified in the request for proposals. If the department rejects all bids, the department may provide the honoraria to all phase three proposers that submitted bids. [2001 c 226 § 9.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.822 Design-build ferries—Notice to proposers not selected—Appeal. (1) The department shall immediately notify those proposers that are not selected to participate in development of technical proposals in phase one and those proposers who submit unsuccessful bids in phase three.

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(2) The department's decision is conclusive unless an aggrieved proposer files an appeal with the superior court of Thurston county within five days after receiving notice of the department's award decision. The court shall hear any such appeal on the department's administrative record for the project. The court may affirm the decision of the department, or it may reverse or remand the administrative decision if it determines the action of the department was arbitrary and capricious. [2001 c 226 § 10.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

Chapter 47.61 RCW

ACQUISITION OF NEW FERRY VESSELS UNDER URBAN MASS TRANSPORTATION ACT OF 1964

Sections

47.61.010	Authority to enter into agreement and apply for financial assistance.
47.61.020	Bonds for matching funds—Issuance and sale.
47.61.030	Term of bonds—Terms and conditions.
47.61.040	Bonds—Signatures—Registration—Where payable—Negotiable instruments.
47.61.050	Bonds—Denominations—Manner and terms of sale—Legal investment for state funds.
47.61.060	Proceeds of bonds—Deposit and use.
47.61.070	Statement describing nature of bond obligation—Pledge of excise taxes.
47.61.080	Bonds to reflect terms and conditions of grant agreement.
47.61.090	Designation of funds to repay bonds and interest.
47.61.100	Bond repayment procedure—Highway bond retirement fund.
47.61.110	Sums in excess of bond retirement requirements—Use.

47.61.010 Authority to enter into agreement and apply for financial assistance. Recognizing that the Washington state ferries system is an integral part of the state highway system, the department is authorized to enter into an agreement with the administrator of the housing and home finance agency and to make application for a grant for financial assistance for the acquisition by construction or purchase of new vessels pursuant to the provisions of the Urban Mass Transportation Act of 1964. [1984 c 7 § 338; 1965 ex.s. c 56 § 1.]

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

47.61.020 Bonds for matching funds—Issuance and sale. In order to provide necessary state matching funds as required by the Urban Mass Transportation Act of 1964, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of eleven million dollars, or such amount thereof and at such times as determined to be necessary by the state highway commission. No bonds shall be issued under the provisions of this chapter until the administrator of the housing and home finance agency has approved a grant to the Washington state highway commission of not less than fifty percent of the cost of acquisition of vessels referred to in RCW 47.61.010. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as may be necessary for the orderly progress of said project. [1965 ex.s. c 56 § 2.]

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Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.61.030 Term of bonds—Terms and conditions.

Each of such bonds shall be made payable at any time not exceeding twenty-five years from the time of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. [1965 ex.s. c 56 § 3.]

47.61.040 Bonds—Signatures—Registration—Where payable—Negotiable instruments. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1965 ex.s. c 56 § 4.]

47.61.050 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of this chapter shall be legal investment for any of the funds of the state, except the permanent school fund. [1965 ex.s. c 56 § 5.]

47.61.060 Proceeds of bonds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the acquisition by construction or purchase of new ferry vessels and for the payment of all expense incurred in the drafting, printing, issuance, and sale of any such bonds. [1965 ex.s. c 56 § 6.]

47.61.070 Statement describing nature of bond obligation—Pledge of excise taxes. Bonds issued under the provisions of this chapter shall distinctly state that they are not a general obligation of the state but are payable in the manner provided in this chapter from the proceeds of state excise taxes on motor vehicle fuels imposed by chapters 82.36 and *82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of this chapter, and the legislature hereby agrees to continue to impose the same excise taxes on

motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of this chapter. [1965 ex.s. c 56 § 7.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33, effective January 1, 1972.

47.61.080 Bonds to reflect terms and conditions of grant agreement. Bonds issued under the provisions of RCW 47.61.020 shall fully reflect the terms and conditions of the grant agreement to be executed pursuant to the provisions of RCW 47.61.010. [1965 ex.s. c 56 § 8.]

47.61.090 Designation of funds to repay bonds and interest. Funds required to repay the bonds, or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of the funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on the bonds. [1984 c 7 § 339; 1965 ex.s. c 56 § 9.]

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

47.61.100 Bond repayment procedure—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under the provisions of this chapter when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1965 ex.s. c 56 § 10.]

47.61.110 Sums in excess of bond retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, or in the event there is appropriated from time to time additional amounts to be placed in the said bond retirement fund, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the

fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1965 ex.s. c 56 § 11.]

Chapter 47.64 RCW

MARINE EMPLOYEES—PUBLIC EMPLOYMENT RELATIONS

Sections

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47.64.006	Public policy.
47.64.011	Definitions.
47.64.060	Federal social security—State employees' retirement.
47.64.070	Employees subject to industrial insurance laws.
47.64.080	Employee seniority rights.
47.64.090	Other party operating ferry by rent, lease, or charter—Passenger-only ferry service (<i>as amended by 2003 c 91</i>).
47.64.090	Other party operating ferry by rent, lease, or charter (<i>as amended by 2003 c 373</i>).
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47.64.290	Toll bridge employees subject to civil service.
47.64.900	Section captions not part of law—1983 c 15.
47.64.910	Severability—1983 c 15.

47.64.005 Declaration of policy. The state of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state. [1961 c 13 § 47.64.005. Prior: 1949 c 148 § 1; Rem. Supp. 1949 § 6524-22.]

47.64.006 Public policy. The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions. [1989 c 327 § 1; 1983 c 15 § 1.]

47.64.011 Definitions. As used in this chapter, unless the context otherwise requires, the definitions in this section shall apply.

(1) "Arbitration" means the procedure whereby the parties involved in an impasse submit their differences to a third party for a final and binding decision or as provided in this chapter.

(2) "Arbitrator" means either a single arbitrator or a panel of three arbitrators as provided in RCW 47.64.240.

(3) "Collective bargaining representative" means the persons designated by the secretary of transportation and employee organizations to be the exclusive representatives during collective bargaining negotiations.

(4) "Department of transportation" means the department as defined in RCW 47.01.021.

(5) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

(6) "Ferry employee organization" means any labor organization recognized to represent a collective bargaining unit of ferry employees.

(7) "Ferry system management" means those management personnel of the marine transportation division of the department of transportation who have been vested with the day-to-day management responsibilities of the Washington state ferry system by the transportation commission and who are not members of a collective bargaining unit represented by a ferry employee organization.

(8) "Lockout" means the refusal of ferry system management to furnish work to ferry employees in an effort to get ferry employee organizations to make concessions during collective bargaining, grievance, or other labor relation negotiations. Curtailment of employment of ferry employees due to lack of work resulting from a strike or work stoppage, as defined in subsection (11) of this section, shall not be considered a lockout.

(9) "Marine employees' commission" means the commission created in RCW 47.64.280.

(10) "Office of financial management" means the office as created in RCW 43.41.050.

(11) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her wilful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike for the purposes of this chapter.

(12) "Transportation commission" means the commission as defined in RCW 47.01.021. [1983 c 15 § 2.]

47.64.060 Federal social security—State employees' retirement. All employees engaged in the operation of ferries acquired by the department shall remain subject to the

federal social security act and shall be under the state employees' retirement act. The department shall make such deductions from salaries of employees and contributions from revenues of the department as shall be necessary to qualify the employees for benefits under the federal social security act. The appropriate officials are authorized to contract with the secretary of health, education and welfare to effect the coverage. [1984 c 7 § 340; 1961 c 13 § 47.64.060. Prior: 1957 c 271 § 7; 1951 c 82 § 2; 1949 c 148 § 5; Rem. Supp. 1949 § 6524-26.]

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

47.64.070 Employees subject to industrial insurance laws. Employees, except the masters and members of the crews of vessels, shall be subject to and entitled to the benefits of the industrial insurance laws of the state, and are hereby declared to be in extrahazardous employment within the meaning of such laws. [1961 c 13 § 47.64.070. Prior: 1951 c 259 § 2; 1949 c 148 § 6; Rem. Supp. 1949 § 6524-27.]

47.64.080 Employee seniority rights. Employees employed at the time of the acquisition of any ferry or ferry system by the department have seniority rights to the position they occupy aboard the ferries or ferry system. In the event of curtailment of ferry operations for any reason, employees shall be relieved of service on the basis of their duration of employment in any ferry or ferry system acquired by the department. [1984 c 7 § 341; 1961 c 13 § 47.64.080. Prior: 1949 c 148 § 7; Rem. Supp. 1949 § 6524-28.]

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

47.64.090 Other party operating ferry by rent, lease, or charter—Passenger-only ferry service (as amended by 2003 c 91). (1) Except as provided in section 203 (~~of this act~~), chapter 83, Laws of 2003 and subsection (2) of this section, or as provided in section 303 (~~of this act~~), chapter 83, Laws of 2003 and subsection (3) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions, and seniority rights of employees will be established by the marine employees' commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) If a public transportation benefit area meeting the requirements of section 201 (~~of this act~~), chapter 83, Laws of 2003 has voter approval to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase passenger-only vessels, related equipment, or terminal space for purposes of loading and unloading the passenger-only ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A benefit area or subcontractor of that benefit area that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, on any questions concerning representation of employees for collective bargaining pur-

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poses, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer.

(3) If a ferry district is formed under section 301 (~~of this act~~), chapter 83, Laws of 2003 to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase vessels, related equipment, or terminal space for purposes of loading and unloading the ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A ferry district or subcontractor of that district that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) (~~Subject to~~) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) (~~Subject to~~) Unless otherwise prohibited by federal or state law, a requirement(~~to be included by~~) that the ferry district (~~it~~) and any contract with (~~the district's~~) its subcontractors, (~~to~~) give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) (~~Subject to~~) Unless otherwise prohibited by federal or state law, a requirement(~~to be included by~~) that the ferry district (~~it~~) and any contract with (~~the district's~~) its subcontractors, (~~that~~) on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer. [2003 c 91 § 1; 2003 c 83 § 205; 1983 c 15 § 27; 1961 c 13 § 47.64.090. Prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524-29.]

Contingent effective date—2003 c 91: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 23, 2003], but only if Engrossed Substitute House Bill No. 1853 has become law. If Engrossed Substitute House Bill No. 1853 has not become law by June 30, 2003, sections 1 and 2 of this act are null and void." [2003 c 91 § 4.] Engrossed Substitute House Bill No. 1853 became law as 2003 c 83, effective April 23, 2003.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

47.64.090 Other party operating ferry by rent, lease, or charter (as amended by 2003 c 373). (1) Except as provided in subsection (2) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions and seniority rights of employees will be established by the marine employees' commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) The department of transportation shall make its terminal, dock, and pier space available to private operators of passenger-only ferries if the space can be made available without limiting the operation of car ferries operated by the department. These private operators are not bound by the provisions of subsection (1) of this section. Charges for the equipment and space must be fair market value taking into account the public benefit derived from the passenger-only ferry service. [2003 c 373 § 3; 1983 c 15 § 27; 1961 c 13 § 47.64.090. Prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524-29.]

Reviser's note: RCW 47.64.090 was amended three times during the 2003 legislative session, twice without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—Intent—2003 c 373: "The legislature finds that the Washington state department of transportation should focus on its core ferry mission of moving automobiles on Washington state's marine highways. The legislature finds that current statutes impose barriers to entities other than the state operating passenger-only ferries. The legislature intends to lift those barriers to allow entities other than the state to provide passenger-only ferry service. The legislature finds that the provision of this service and the improvement in the mobility of the citizens of Washington state is legally adequate consideration for the use of state facilities in conjunction with the

provision of the service, and the legislature finds that allowing the operators of passenger-only ferries to use state facilities on the basis of legally adequate consideration does not evince donative intent on the part of the legislature." [2003 c 373 § 1.]

Severability—1983 c 15: See RCW 47.64.910.

47.64.120 Scope of negotiations—Interest on retroactive compensation increases. (1) Ferry system management and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times, to negotiate in good faith with respect to wages, hours, working conditions, insurance, and health care benefits as limited by RCW 47.64.270, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining.

(2) Upon ratification of bargaining agreements, ferry employees are entitled to an amount equivalent to the interest earned on retroactive compensation increases. For purposes of this section, the interest earned on retroactive compensation increases is the same monthly rate of interest that was earned on the amount of the compensation increases while held in the state treasury. The interest will be computed for each employee until the date the retroactive compensation is paid, and must be allocated in accordance with appropriation authority. The interest earned on retroactive compensation is not considered part of the ongoing compensation obligation of the state and is not compensation earnable for the purposes of chapter 41.40 RCW. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. [1997 c 436 § 1; 1983 c 15 § 3.]

47.64.130 Unfair labor practices for employer, employee organization. (1) It is an unfair labor practice for ferry system management or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules made by the commission pursuant to RCW 47.64.280, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160: PROVIDED, That nothing prohibits ferry system management from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter: PROVIDED, That this paragraph does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer, when it is the representative of its employees subject to RCW 47.64.170.

(3) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit. [1983 c 15 § 4.]

47.64.140 Strikes, work stoppages, and lockouts prohibited. (1) It is unlawful for any ferry system employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify, or participate in a strike or work stoppage against the ferry system.

(2) It is unlawful for ferry system management to authorize, consent to, or condone a strike or work stoppage; or to conduct a lockout; or to pay or agree to pay any ferry system employee for any day in which the employee participates in a strike or work stoppage; or to pay or agree to pay any increase in compensation or benefits to any ferry system employee in response to or as a result of any strike or work stoppage or any act that violates subsection (1) of this section. It is unlawful for any official, director, or representative of the ferry system to authorize, ratify, or participate in any violation of this subsection. Nothing in this subsection prevents new or renewed bargaining and agreement within the scope of negotiations as defined by this chapter, at any time. No collective bargaining agreement provision regarding suspension or modification of any court-ordered penalty provided in this section is binding on the courts.

(3) In the event of any violation or imminently threatened violation of subsection (1) or (2) of this section, any citizen domiciled within the jurisdictional boundaries of the state may petition the superior court for Thurston county for an injunction restraining the violation or imminently threatened violation. Rules of civil procedure regarding injunctions apply to the action. However, the court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened; the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure him or her; and no bond may be required of the plaintiff unless the court determines that a bond is necessary in the public interest. Failure to comply with any temporary or permanent injunction granted under this section is a contempt of court as provided in chapter 7.21 RCW. The court may impose a penalty of up to ten thousand dollars for

an employee organization or the ferry system, for each day during which the failure to comply continues. The sanctions for a ferry employee found to be in contempt shall be as provided in chapter 7.21 RCW. An individual or an employee organization which makes an active good faith effort to comply fully with the injunction shall not be deemed to be in contempt.

(4) The right of ferry system employees to engage in strike or work slowdown or stoppage is not granted and nothing in this chapter may be construed to grant such a right.

(5) Each of the remedies and penalties provided by this section is separate and several, and is in addition to any other legal or equitable remedy or penalty.

(6) In addition to the remedies and penalties provided by this section the successful litigant is entitled to recover reasonable attorney fees and costs incurred in the litigation.

(7) Notwithstanding the provisions of chapter 88.04 RCW and chapter 88.08 RCW, the department of transportation shall promulgate rules and regulations allowing vessels, as defined in *RCW 88.04.300, as well as other watercraft, to engage in emergency passenger service on the waters of Puget Sound in the event ferry employees engage in a work slowdown or stoppage. Such emergency rules and regulations shall allow emergency passenger service on the waters of Puget Sound within seventy-two hours following a work slowdown or stoppage. Such rules and regulations that are promulgated shall give due consideration to the needs and the health, safety, and welfare of the people of the state of Washington. [1989 c 373 § 25; 1983 c 15 § 5.]

***Reviser's note:** RCW 88.04.300 was repealed by 1989 c 295 § 16. For later enactment, see RCW 88.04.015.

Severability—1989 c 373: See RCW 7.21.900.

47.64.150 Grievance procedures. An agreement with a ferry employee organization that is the exclusive representative of ferry employees in an appropriate unit may provide procedures for the consideration of ferry employee grievances and of disputes over the interpretation and application of agreements. Negotiated procedures may provide for binding arbitration of ferry employee grievances and of disputes over the interpretation and application of existing agreements. An arbitrator's decision on a grievance shall not change or amend the terms, conditions, or applications of the collective bargaining agreement. The procedures shall provide for the invoking of arbitration only with the approval of the employee organization. The costs of arbitrators shall be shared equally by the parties.

Ferry system employees shall follow either the grievance procedures provided in a collective bargaining agreement, or if no such procedures are so provided, shall submit the grievances to the marine employees' commission as provided in RCW 47.64.280. [1983 c 15 § 6.]

47.64.160 Union security provisions. A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions shall

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safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. [1983 c 15 § 7.]

47.64.170 Collective bargaining procedures. (1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

(2) A ferry employee organization or organizations and the secretary of transportation may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of ferry system management or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties. Any meeting of the transportation commission, during which a collective bargaining agreement is subject to ratification, shall be open to the public.

(4) Terms of any collective bargaining agreement may be enforced by civil action in Thurston county superior court upon the initiative of either party.

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with a member of the transportation commission if the commission has appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative, unless the member of the commission is the designated bargaining representative of the ferry system.

(6) The negotiation of a proposed collective bargaining agreement by representatives of ferry system management and a ferry employee organization shall commence in each odd-numbered year immediately following adoption by the legislature and approval by the governor of the biennial budget.

(7) Until a new collective bargaining agreement is negotiated, or until an award is made by the arbitrator, the terms and conditions of the previous collective bargaining agreement shall remain in force. The wage and benefit provisions of any collective bargaining agreement, or arbitrator's award in lieu thereof, that is concluded after July 1st of an odd-numbered year shall be retroactive to July 1st. It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical.

(8) Any ferry union contract terminating before July 1, 1983, shall, with the agreement of the parties, remain in

effect until a contract can be concluded under RCW 47.64.006, 47.64.011, and 47.64.120 through 47.64.280. The contract may be retroactive to the expiration date of the prior contract, and the cost to the department of three months retroactive compensation and benefits for this 1983 contract negotiation only shall not be included in calculating the limitation imposed by RCW 47.64.180. If the parties cannot agree to contract extension, any increase agreed to for the three-month period shall be included in calculating the limit imposed by RCW 47.64.180.

(9) Any ferry union contract which would terminate after July 1, 1983, may, by agreement of the parties, be terminated as of July 1, 1983, and a new contract concluded pursuant to RCW 47.64.006, 47.64.011, and 47.64.120 through 47.64.280. Any contract terminating after July 1, 1983, is subject to this chapter only upon its expiration and shall not be renewed for a period beyond July 1, 1985. [1983 c 15 § 8.]

47.64.180 Agreements and awards limited by appropriation. (1) No collective bargaining agreement or arbitrator's award is valid or enforceable if its implementation would be inconsistent with any statutory limitation on the department of transportation's funds, spending, or budget. The department of transportation shall, in good faith, exercise its administrative discretion with full public participation as required by *RCW 47.60.330, subject only to legislative limitations and conditions, to implement the terms of any collective bargaining agreement or arbitrator's award.

(2) In no event may the transportation commission or the department of transportation authorize an increase in tolls after the enactment of the budget that is in excess of the Seattle consumer price index for the preceding twelve months for the purpose of providing revenue to fund a collective bargaining agreement or arbitrator's award. The commission or the department may increase tolls after the first fiscal year of the biennium by the amount that the Seattle consumer price index increased after the previous toll increase. This subsection shall not be construed to prevent increases due to items that are not labor-related and that are beyond the direct control of the department. [1983 c 15 § 9.]

***Reviser's note:** The reference in 1983 c 15 § 9 to "section 25 of this act" has been translated to "RCW 47.60.330." A literal translation of the session law reference would have been "RCW 47.60.326," which appears to be erroneous. A floor amendment to Substitute Senate Bill No. 3108 added a new section 24 to the bill and directed that internal references be corrected accordingly. The correction was not made in the preparation of Engrossed Substitute Senate Bill No. 3108, but has been made in codification.

47.64.190 Marine employees' commission review for compliance with fiscal limitations—Effective date of agreements and arbitration orders. (1) No negotiated agreement or arbitration order may become effective and in force until five calendar days after an agreement has been negotiated or an arbitration order entered for each and every ferry employee bargaining unit.

(2) Upon the conclusion of negotiations or arbitration procedures with all ferry employee bargaining units, the secretary shall ascertain whether the cumulative fiscal requirements of all such agreements and arbitration orders are within the limitations imposed by RCW 47.64.180.

(3) If the secretary finds that budgetary or fare restrictions will be exceeded, he shall, within five calendar days of

completion of negotiations or arbitration with the last bargaining unit to conclude an agreement, submit all agreements and arbitration awards to the marine employees' commission for a binding determination whether the limitations of RCW 47.64.180 have been exceeded.

(4) The marine employees' commission shall review all negotiated agreements and arbitration orders, and may take written or oral testimony from the parties, regarding compliance with RCW 47.64.180. Within fifteen calendar days of receiving the secretary's request for review, the commission shall determine by a majority vote of its members whether or not the cumulative effect of all such agreements and orders exceeds the limitations of RCW 47.64.180.

(5) If the marine employees' commission determines that the limitations of RCW 47.64.180 would be exceeded if all agreements and arbitration orders were given full force and effect, it shall order the minimum percentage reduction in straight time wage provisions applied equally across the board to all agreements or arbitration orders which will result in compliance with RCW 47.64.180.

(6) Whenever the secretary requests a determination by the marine employees' commission pursuant to this section, the effect of all agreements and arbitration orders shall be stayed, pending the commission's final determination. [1983 c 15 § 10.]

47.64.200 Impasse procedures. As the first step in the performance of their duty to bargain, ferry system management and the employee organization shall endeavor to agree upon impasse procedures. The agreement shall provide for implementation of these impasse procedures not later than July 1st in each odd-numbered year following enactment of the biennial budget. If the parties fail to agree upon impasse procedures under this section, the impasse procedures provided in RCW 47.64.210 through 47.64.230 apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in RCW 47.64.210 through 47.64.230. [1983 c 15 § 11.]

47.64.210 Mediation. In the absence of an impasse agreement between the parties or the failure of either party to utilize its procedures by August 1st in each odd-numbered year, the marine employees' commission shall, upon the request of either party, appoint an impartial and disinterested person to act as mediator pursuant to RCW 47.64.280. It is the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator shall not compel the parties to agree. [1983 c 15 § 12.]

47.64.220 Salary survey, fact-finding. (1) Prior to collective bargaining, the marine employees' commission shall conduct a salary survey. The results of the survey shall be published in a report which shall be a public document comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved. Such survey report shall be for

the purpose of disclosing generally prevailing levels of compensation, benefits, and conditions of employment. It shall be used to guide generally but not to define or limit collective bargaining between the parties. The commission shall make such other findings of fact as the parties may request during bargaining or impasse.

(2) Except as provided in subsection (3) of this section, salary and employee benefit information collected from private employers that identifies a specific employer with the salary and employee benefit rates which that employer pays to its employees is not subject to public disclosure under chapter 42.17 RCW.

(3) A person or entity, having reason to believe that the salary survey results are inaccurate, may submit a petition to the state auditor requesting an audit of the data upon which the salary survey results are based. The state auditor shall review and analyze all data collected for the salary survey, including proprietary information, but is prohibited from disclosing the salary survey data to any other person or entity, except by court order. [1999 c 256 § 1; 1989 c 327 § 2; 1983 c 15 § 13.]

Retroactive application—1999 c 256 § 1: "Section 1, chapter 256, Laws of 1999 is a clarification of existing law and applies retroactively." [1999 c 256 § 3.]

47.64.230 Waiver of mediation and fact-finding. By mutual agreement, the parties may waive mediation and fact-finding, as provided for in RCW 47.64.210 and 47.64.220, and proceed with binding arbitration as provided for in RCW 47.64.240. The waiver shall be in writing and be signed by the representatives of the parties. [1983 c 15 § 14.]

47.64.240 Binding arbitration. (1) If impasse persists fourteen days after the mediator has been appointed, or beyond any other date mutually agreed to by the parties, all impasse items shall be submitted to arbitration pursuant to this section, and that arbitration shall be binding upon the parties.

(2) Each party shall submit to the other within four days of request, a final offer on the impasse items with proof of service of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached and the name of its selected arbitrator. The parties may continue to negotiate all offers until an agreement is reached or a decision rendered by the panel of arbitrators.

As an alternative procedure, the two parties may agree to submit the dispute to a single arbitrator. If the parties cannot agree on the arbitrator within four days, the selection shall be made pursuant to subsection (5) of this section. The full costs of arbitration under this provision shall be shared equally by the parties to the dispute.

(3) The submission of the impasse items to the arbitrators shall be limited to those issues upon which the parties have not reached agreement. With respect to each such item, the arbitration panel award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board on each impasse item.

(4) The panel of arbitrators shall consist of three members appointed in the following manner:

(a) One member shall be appointed by the secretary of transportation;

(b) One member shall be appointed by the ferry employee organization;

(c) One member shall be appointed mutually by the members appointed by the secretary of transportation and the employee organization. The last member appointed shall be the chairman of the panel of arbitrators. No member appointed may be an employee of the parties;

(d) Ferry system management and the employee organization shall each pay the fees and expenses incurred by the arbitrator each selected. The fee and expenses of the chairman of the panel shall be shared equally by each party.

(5) If the third member has not been selected within four days of notification as provided in subsection (2) of this section, a list of seven arbitrators shall be submitted to the parties by the marine employees' commission. The two arbitrators selected by ferry system management and the ferry employee organization shall determine by lot which arbitrator shall remove the first name from the list submitted by the marine employees' commission. The second arbitrator and the first arbitrator shall alternately remove one additional name until only one name remains. The person whose name remains shall become the chairman of the panel of arbitrators and shall call a meeting within thirty days, or at such time mutually agreed to by the parties, at a location designated by him or her. In lieu of a list of seven nominees for the third member being submitted by the marine employees' commission, the parties may mutually agree to have either the Federal Mediation and Conciliation Service or the American Arbitration Association submit a list of seven nominees.

(6) If a vacancy occurs on the panel of arbitrators, the selection for replacement of that member shall be in the same manner and within the same time limits as the original member was chosen. No final award under subsection (3) of this section may be made by the panel until three arbitrators have been chosen.

(7) The panel of arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.

(8) From the time of appointment until such time as the panel of arbitrators makes its final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the members of the panel of arbitrators with parties other than those who are direct parties to the dispute. The panel of arbitrators may conduct formal or informal hearings to discuss offers submitted by both parties.

(9) The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

(a) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

(b) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;

(c) The interests and welfare of the public, the ability of the ferry system to finance economic adjustments, and the effect of the adjustments on the normal standard of services;

(d) The right of the legislature to appropriate and to limit funds for the conduct of the ferry system; and

(e) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature.

(10) The chairman of the panel of arbitrators may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such powers to other members of the panel of arbitrators. The chairman of the panel of arbitrators may petition the superior court in Thurston county, or any county in which any hearing is held, to enforce the order of the chairman compelling the attendance of witnesses and the production of records.

(11) A majority of the panel of arbitrators shall within thirty days after its first meeting select the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties.

(12) The selections by the panel of arbitrators and items agreed upon by the ferry system management and the employee organization shall be deemed to be the collective bargaining agreement between the parties.

(13) The determination of the panel of arbitrators shall be by majority vote and shall be final and binding, subject to RCW 47.64.180 and 47.64.190. The panel of arbitrators shall give written explanation for its selection and inform the parties of its decision. [1989 c 327 § 3; 1983 c 15 § 15.]

47.64.250 Legal actions. (1) Any ferry employee organization and the department of transportation may sue or be sued as an entity under this chapter. Service upon any party shall be in accordance with law or the rules of civil procedure. Nothing in this chapter may be construed to make any individual or his assets liable for any judgment against the department of transportation or a ferry employee organization if the individual was acting in his official capacity.

(2) Any legal action by any ferry employee organization or the department of transportation under this chapter shall be filed in Thurston county superior court within ten days of when the cause of action arose. The court shall consider those actions on a priority basis and determine the merits of the actions within thirty days of filing. [1983 c 15 § 16.]

47.64.260 Notice and service. Any notice required under this chapter shall be in writing, but service thereof is sufficient if mailed by certified mail, return receipt requested, addressed to the last known address of the parties, or sent by electronic facsimile transmission with transaction report verification and same-day United States postal service mailing of copies or service as specified in Title 316 WAC, unless otherwise provided in this chapter. Refusal of certified mail by any party shall be considered service. Prescribed time periods commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice. [2001 c 19 § 1; 1983 c 15 § 17.]

47.64.270 Insurance and health care. Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and

health care plans for ferry system employees and dependents, as determined by the state health care authority, under chapter 41.05 RCW; and the ferry system management and employee organizations may collectively bargain for other insurance and health care plans, and employer contributions may exceed that of other state agencies as provided in RCW 41.05.050, subject to RCW 47.64.180. To the extent that ferry employees by bargaining unit have absorbed the required offset of wage increases by the amount that the employer's contribution for employees' and dependents' insurance and health care plans exceeds that of other state general government employees in the 1985-87 fiscal biennium, employees shall not be required to absorb a further offset except to the extent the differential between employer contributions for those employees and all other state general government employees increases during any subsequent fiscal biennium. If such differential increases in the 1987-89 fiscal biennium or the 1985-87 offset by bargaining unit is insufficient to meet the required deduction, the amount available for compensation shall be reduced by bargaining unit by the amount of such increase or the 1985-87 shortage in the required offset. Compensation shall include all wages and employee benefits. [1995 1st sp.s. c 6 § 6; 1993 c 492 § 224; 1988 c 107 § 21; 1987 c 78 § 2; 1983 c 15 § 18.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Intent—1987 c 78: "The legislature finds that the provisions of RCW 47.64.270 have been subject to misinterpretation. The objective of this act is to clarify the intent of RCW 47.64.270 as originally enacted." [1987 c 78 § 1.]

Effective date—1987 c 78: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 78 § 3.]

47.64.280 Marine employees' commission. (1) There is created the marine employees' commission. The governor shall appoint the commission with the consent of the senate. The commission shall consist of three members: One member to be appointed from labor, one member from industry, and one member from the public who has significant knowledge of maritime affairs. The public member shall be chairman of the commission. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Commission members are eligible for reappointment. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission. Members of the commission shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for official travel and other expenses at the same rate and on the same terms as

provided for the transportation commission by RCW 47.01.061. The payments shall be made from the Puget Sound ferry operations account.

(2) The marine employees' commission shall: (a) Adjust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system as provided in RCW 47.64.150; (b) provide for impasse mediation as required in RCW 47.64.210; (c) conduct fact-finding and provide salary surveys as required in RCW 47.64.220; and (d) provide for the selection of an impartial arbitrator as required in RCW 47.64.240(5).

(3) In adjudicating all complaints, grievances, and disputes, the party claiming labor disputes shall, in writing, notify the marine employees' commission, which shall make careful inquiry into the cause thereof and issue an order advising the ferry employee, or the ferry employee organization representing him or her, and the department of transportation, as to the decision of the commission.

The parties are entitled to offer evidence relating to disputes at all hearings conducted by the commission. The orders and awards of the commission are final and binding upon any ferry employee or employees or their representative affected thereby and upon the department.

The commission shall adopt rules of procedure under chapter 34.05 RCW.

The commission has the authority to subpoena any ferry employee or employees, or their representatives, and any member or representative of the department, and any witnesses. The commission may require attendance of witnesses and the production of all pertinent records at any hearings held by the commission. The subpoenas of the commission are enforceable by order of any superior court in the state of Washington for the county within which the proceeding may be pending. The commission may hire staff as necessary, appoint consultants, enter into contracts, and conduct studies as reasonably necessary to carry out this chapter. [1984 c 287 § 95; 1983 c 15 § 19.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Compensation of class four groups: RCW 43.03.250.

47.64.290 Toll bridge employees subject to civil service. Notwithstanding any other provisions of this chapter, toll bridge employees of the marine transportation division are subject to chapter 41.06 RCW. [1984 c 48 § 2.]

47.64.900 Section captions not part of law—1983 c 15. Section captions used in this act constitute no part of the law. [1983 c 15 § 29.]

47.64.910 Severability—1983 c 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 15 § 30.]

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Chapter 47.66 RCW

MULTIMODAL TRANSPORTATION PROGRAMS

Sections

47.66.010	Legislative declaration.
47.66.030	Transportation improvement board—Authority—Expenses.
47.66.040	Selection process—Local matching funds.
47.66.070	Multimodal transportation account.
47.66.900	Effective date—1993 c 393.

47.66.010 Legislative declaration. There is significant state interest in assuring that viable multimodal transportation programs are available throughout the state. The legislature recognizes the need to create a mechanism to fund multimodal transportation programs and projects. The legislature further recognizes the complexities associated with current funding mechanisms and seeks to create a process that would allow for all transportation programs and projects to compete for limited resources. [1993 c 393 § 3.]

47.66.030 Transportation improvement board—Authority—Expenses. (1)(a) The transportation improvement board is authorized and responsible for the final selection of programs and projects funded from the central Puget Sound public transportation account; public transportation systems account; and the intermodal surface transportation and efficiency act of 1991, surface transportation program, statewide competitive.

(b) The board may establish subcommittees as well as technical advisory committees to carry out the mandates of this chapter.

(2) Expenses of the board, including administrative expenses for managing the program, shall be paid in accordance with RCW 47.26.140. [1996 c 49 § 3; 1995 c 269 § 2604; 1993 c 393 § 5.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

47.66.040 Selection process—Local matching funds. (1) The transportation improvement board shall select programs and projects based on a competitive process consistent with the mandates governing each account or source of funds. The competition shall be consistent with the following criteria:

- (a) Local, regional, and state transportation plans;
- (b) Local transit development plans; and
- (c) Local comprehensive land use plans.

(2) The following criteria shall be considered by the board in selecting programs and projects:

(a) Objectives of the growth management act, the high capacity transportation act, the commute trip reduction act, transportation demand management programs, federal and state air quality requirements, and federal Americans with disabilities act and related state accessibility requirements; and

(b) Energy efficiency issues, freight and goods movement as related to economic development, regional significance, rural isolation, the leveraging of other funds including funds administered by this board, and safety and security issues.

(3) The board shall determine the appropriate level of local match required for each program and project based on the source of funds. [1995 c 269 § 2606; 1993 c 393 § 6.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

47.66.070 Multimodal transportation account. The multimodal transportation account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for transportation purposes. [2000 2nd sp.s. c 4 § 2.]

Effective date—2000 2nd sp.s. c 4 §§ 1-3, 20: See note following RCW 82.08.020.

47.66.900 Effective date—1993 c 393. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]. [1993 c 393 § 10.]

Chapter 47.68 RCW

AERONAUTICS

(Formerly: Chapter 14.04 RCW, Aeronautics commission)

Sections

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47.68.380	Search and rescue.
47.68.900	Severability—1947 c 165.

Recycling at airports: RCW 70.93.095.

47.68.010 Statement of policy. It is hereby declared that the purpose of this chapter is to further the public interest and aeronautical progress by providing for the protection and promotion of safety in aeronautics; by cooperating in effecting uniformity of the laws and regulations relating to the development and regulation of aeronautics in the several states consistent with federal aeronautics laws and regulations; by granting to a state agency such powers and imposing upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, assist in the development of a statewide system of airports, cooperate with and assist the municipalities of this state and others engaged in aeronautics, and encourage and develop aeronautics; by establishing only such regulations as are essential in order that persons engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and by providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state. [1947 c 165 § 2; Rem. Supp. 1947 § 10964-82. Formerly RCW 14.04.010.]

47.68.015 Change of meaning, certain terms. Unless the language specifically indicates otherwise, or unless the context plainly requires a different interpretation:

Wherever in any provision in the Revised Code of Washington the term "Washington state aeronautics commission", "the state aeronautics commission", "the aeronautics commission of the state", "the aeronautics commission", or "the commission" (when referring to the Washington state aeronautics commission) is used, it shall mean the department of transportation created in RCW 47.01.031.

Wherever in any provision in the Revised Code of Washington the term "state director of aeronautics", "director of aeronautics", or "director" (when referring to the state director of aeronautics) is used, it shall mean the secretary of transportation whose office is created in RCW 47.01.041. [1977 ex.s. c 151 § 22.]

47.68.020 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Aeronautics" means the science and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(2) "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(3) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or

right-of-way, together with all airport buildings and facilities located thereon.

(4) "Department" means the state department of transportation.

(5) "Secretary" means the state secretary of transportation.

(6) "State" or "this state" means the state of Washington.

(7) "Air navigation facility" means any facility, other than one owned or operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(8) "Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft in the airspace over this state or upon any airport within this state.

(9) "Airman or airwoman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, airframes, propellers, or appliances, and any individual who serves in the capacity of aircraft dispatcher or air-traffic control tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, airframes, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the person.

(10) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics, but excludes any instructor in a public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, while in the performance of his or her duties at such school, university, or institution.

(11) "Air school" means any person who advertises, represents, or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics whether for or without hire or reward; but excludes any public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work.

(12) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(13) "Municipal" means pertaining to a municipality, and "municipality" means any county, city, town, authority, district, or other political subdivision or public corporation of this state.

(14) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the airspace required for the flight of aircraft in landing or taking off at an

airport or is otherwise hazardous to such landing or taking off.

(15) "State airway" means a route in the navigable airspace over and above the lands or waters of this state, designated by the department as a route suitable for air navigation. [1993 c 208 § 4; 1984 c 7 § 342; 1947 c 165 § 1; Rem. Supp. 1947 § 10964-81. Formerly RCW 14.04.020.]

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

47.68.060 Offices. Suitable offices and office equipment shall be provided by the state for the aeronautics division of the department of transportation in a city in the state that it may designate, and the department may incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the administration of this chapter. [1984 c 7 § 343; 1947 c 165 § 6; Rem. Supp. 1947 § 10964-86. Formerly RCW 14.04.060.]

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

47.68.070 General powers. The department has general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and to encourage the establishment of airports and air navigation facilities. It shall cooperate with and assist the federal government, the municipalities of this state, and other persons in the development of aeronautics, and shall seek to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the department in the development of aeronautics and aeronautical facilities in this state. [1984 c 7 § 344; 1947 c 165 § 7; Rem. Supp. 1947 § 10964-87. Formerly RCW 14.04.070.]

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

47.68.080 Drafts of legislation, other duties. The department may draft and recommend necessary legislation to advance the interests of the state in aeronautics, represent the state in aeronautical matters before federal agencies and other state agencies, and participate as party plaintiff or defendant or as intervener on behalf of the state or any municipality or citizen thereof in any controversy which involves the interest of the state in aeronautics. [1984 c 7 § 345; 1947 c 165 § 8; 1945 c 252 § 5; Rem. Supp. 1947 § 10964-88. Formerly RCW 14.04.080.]

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

47.68.090 Aid to municipalities, Indian tribes—Federal aid. The department of transportation may make available its engineering and other technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports or air navigation facilities.

The department may render financial assistance by grant or loan or both to any municipality or municipalities acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities, or to any Indian tribe recognized as such by the federal government or such tribes acting jointly in the

planning, acquisition, construction, improvement, maintenance or operation of an airport, owned or controlled, or to be owned or controlled by such tribe or tribes and to be held available for the general use of the public, out of appropriations made by the legislature for such purposes. Such financial assistance may be furnished in connection with federal or other financial aid for the same purposes: PROVIDED, That no grant or loan or both shall be in excess of two hundred fifty thousand dollars for any one project: PROVIDED FURTHER, That no grant or loan or both shall be granted unless the municipality or municipalities acting jointly, or the tribe or tribes acting jointly shall from their own funds match any funds made available by the department upon such ratio as the department may prescribe.

The department is authorized to act as agent of any municipality or municipalities acting jointly or any tribe or tribes acting jointly, upon the request of such municipality or municipalities, or such tribe or tribes in accepting, receiving, receipting for and disbursing federal moneys, and other moneys public or private, made available to finance, in whole or in part, the planning, acquisition, construction, improvement, maintenance or operation of an airport or air navigation facility; and if requested by such municipality or municipalities, or tribe or tribes, may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance, or operation; and all municipalities and tribes are authorized to designate the department as their agent for the foregoing purposes. The department, as principal on behalf of the state, and any municipality on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the department upon such terms and conditions as are prescribed by the United States. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available: PROVIDED, That any landing fee or charge imposed by any Indian tribe or tribes for the privilege of use of an airport facility planned, acquired, constructed, improved, maintained, or operated with financial assistance from the department pursuant to this section must apply equally to tribal and nontribal members: PROVIDED FURTHER, That in the event any municipality or municipalities or Indian tribe or tribes, or any distributor of aircraft fuel as defined by RCW 82.42.020 which operates in any airport facility which has received financial assistance pursuant to this section, fails to collect the aircraft fuel excise tax as specified in chapter 82.42 RCW, all funds or value of technical assistance given or paid to such municipality or municipalities or Indian tribe or tribes under the provisions of this section shall revert to the department, and shall be due and payable to the department immediately. [1980 c 67 § 1; 1975 1st

ex.s. c 161 § 1; 1947 c 165 § 9; Rem. Supp. 1947 § 10964-89. Formerly RCW 14.04.090.]

Distributor of aircraft fuel defined: RCW 82.42.010(7).

47.68.100 Acquisition and disposal of airports, facilities, etc. The department is authorized on behalf of and in the name of the state, out of appropriations and other moneys made available for such purposes, to plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports, air navigation facilities, and air markers and/or air marking systems, either within or without the state, including the construction, installation, equipment, maintenance, and operation at the airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers. For such purposes the department may by purchase, gift, devise, lease, condemnation, or otherwise, acquire property, real or personal, or any interest therein, including easements or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or to permit the removal, elimination, marking, or lighting of obstructions or airport hazards, or to prevent the establishment of airport hazards. In like manner the department may acquire existing airports and air navigation facilities. However, it shall not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of the municipality. The department may by sale, lease, or otherwise, dispose of any property, airport, air navigation facility, or portion thereof or interest therein. The disposal by sale, lease, or otherwise shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposals to any municipality or state government or the United States for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the department deems in the best interest of the state. The department may exercise any powers granted by this section jointly with any municipalities, agencies, or departments of the state government, with other states or their municipalities, or with the United States. [1984 c 7 § 346; 1947 c 165 § 10; Rem. Supp. 1947 § 10964-90. Formerly RCW 14.04.100.]

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

47.68.110 Zoning powers not interfered with. Nothing contained in this chapter shall be construed to limit any right, power or authority of the state or a municipality to regulate airport hazards by zoning. [1947 c 165 § 11; Rem. Supp. 1947 § 10964-91. Formerly RCW 14.04.110.]

Planning commissions: Chapter 35.63 RCW.

47.68.120 Condemnation, how exercised. In the condemnation of property authorized by this chapter, the department shall proceed in the name of the state in the manner that property is acquired by the department for public uses. [1984 c 7 § 347; 1947 c 165 § 12; Rem. Supp. 1947 § 10964-92. Formerly RCW 14.04.120.]

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

Acquisition of highway property: Chapter 47.12 RCW.

Eminent domain by state: Chapter 8.04 RCW.

47.68.130 Contracts or leases of facilities in operating airports. In operating an airport or air navigation facility owned or controlled by the state, the department may enter into contracts, leases, and other arrangements for a term not exceeding twenty-five years with any persons. The department may grant the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes, confer the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility, or make available services to be furnished by the department or its agents at the airport or air navigation facility. In each case the department may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the cost of operation to the state. In no case shall the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion or facility thereof. [1984 c 7 § 348; 1947 c 165 § 13; Rem. Supp. 1947 § 10964-93. Formerly RCW 14.04.130.]

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

47.68.140 Lease of airports. The department may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed twenty-five years the privilege of operating, as agent of the state or otherwise, any airport owned or controlled by the state: PROVIDED, That no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the department might not have undertaken under RCW 47.68.130. [1983 c 3 § 141; 1947 c 165 § 14; Rem. Supp. 1947 § 10964-94. Formerly RCW 14.04.140.]

47.68.150 Lien for state's charges. To enforce the payment of any charges for repairs to, improvements, storage, or care of any personal property made or furnished by the department or its agents in connection with the operation of an airport or air navigation facility owned or operated by the state, the state shall have liens on such property, which shall be enforceable by the department as provided by law. [1984 c 7 § 349; 1947 c 165 § 15; Rem. Supp. 1947 § 10964-95. Formerly RCW 14.04.150.]

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

47.68.160 Acceptance of federal moneys. The department is authorized to accept, receive, receipt for, disburse, and expend federal moneys, and other moneys public or private, made available to accomplish, in whole or in part, any of the purposes of this section. All federal moneys accepted under this section shall be accepted and expended by the department upon such terms and conditions as are prescribed by the United States. In accepting federal moneys under this section, the department shall have the same authority to enter into contracts on behalf of the state as is granted to the department under RCW 47.68.090 with respect to federal moneys accepted on behalf of municipalities. All moneys received by

the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purpose of which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available. [1983 c 3 § 142; 1947 c 165 § 16; 1945 c 252 § 7; Rem. Supp. 1947 § 10964-96. Formerly RCW 14.04.160.]

47.68.170 State airways system. The department may designate, design, and establish, expand, or modify a state airways system that will best serve the interest of the state. It may chart the airways system and arrange for publication and distribution of such maps, charts, notices, and bulletins relating to the airways as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned, if the facilities conform to federal safety standards. [1984 c 7 § 350; 1947 c 165 § 17; Rem. Supp. 1947 § 10964-97. Formerly RCW 14.04.170.]

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

47.68.180 Execution of necessary contracts. The department may enter into any contracts necessary to the execution of the powers granted it by this chapter. All contracts made by the department, either as the agent of the state or as the agent of any municipality, shall be made pursuant to the laws of the state governing the making of like contracts. Where the planning, acquisition, construction, improvement, maintenance, or operation of any airport or air navigation facility is financed wholly or partially with federal moneys, the department as agent of the state or of any municipality, may let contracts in the manner prescribed by the federal authorities acting under the laws of the United States and any rules or regulations made thereunder. [1984 c 7 § 351; 1947 c 165 § 18; Rem. Supp. 1947 § 10964-98. Formerly RCW 14.04.180.]

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

47.68.185 Establishment of procedures required by conditions of federal transfers of facilities. The department is authorized to establish the necessary accounts or administrative procedures required by conditions attached to transfers of airport facilities from the federal government to the state of Washington. [1984 c 7 § 352; 1963 c 73 § 1. Formerly RCW 14.04.185.]

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

47.68.190 Exclusive grants prohibited. The department shall not grant any exclusive right for the use of any landing area or air navigation facility under its jurisdiction. This section shall not be construed to prevent the making of contracts, leases, and other arrangements pursuant to this chapter. [1984 c 7 § 353; 1947 c 165 § 19; Rem. Supp. 1947 § 10964-99. Formerly RCW 14.04.190.]

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

47.68.200 Exercise of powers, public and governmental purpose. The acquisition of any lands or interest therein pursuant to this chapter, the planning, acquisition, establishment, construction, improvement, maintenance, equipment, and operation of airports and air navigation facilities, whether by the state separately or jointly with any municipality or municipalities, and the exercise of any other powers herein granted to the department are public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the state in the manner and for the purposes enumerated in this chapter shall and are declared to be acquired and used for public and governmental purposes and as a matter of public necessity. [1984 c 7 § 354; 1947 c 165 § 20; Rem. Supp. 1947 § 10964-100. Formerly RCW 14.04.200.]

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

47.68.210 Rules—Standards. The department of transportation may perform such acts, issue and amend such orders, make, promulgate, and amend such reasonable general rules, and procedures, and establish such minimum standards, consistent with the provisions of this chapter, as it shall deem necessary to perform its duties hereunder; all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons operating, using or traveling in aircraft or persons receiving instruction in flying or ground subjects pertaining to aeronautics, and the safety of persons and property on land or water, and developing and promoting aeronautics in this state. No rule of the department shall apply to airports or air navigation facilities owned or operated by the United States.

The department shall keep on file with the code reviser, and at the principal office of the department, a copy of all its rules for public inspection.

The department shall provide for the publication and general distribution of all its orders, rules, and procedures having general effect. [1982 c 35 § 198; 1947 c 165 § 21; Rem. Supp. 1947 § 10964-101. Formerly RCW 14.04.210.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Notice of meetings: Chapter 42.30 RCW.

47.68.220 Operating aircraft recklessly or under influence of intoxicants or drugs. It shall be unlawful for any person to operate an aircraft in the air, or on the ground or water, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air or on the ground or water, in a careless manner so as to endanger the life or property of another. In any proceeding charging careless or reckless operation of aircraft in violation of this section, the court in determining whether the operation was careless or reckless may consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics. [1947 c 165 § 22; Rem. Supp. 1947 § 10964-102. Formerly RCW 14.04.220.]

47.68.230 Aircraft, airman, and airwoman certificates required. It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective cer-

tificate, permit or license issued by the United States, if such certificate, permit or license is required by the United States, and a current registration certificate issued by the secretary of transportation, if registration of the aircraft with the department of transportation is required by this chapter. It shall be unlawful for any person to engage in aeronautics as an airman or airwoman in the state unless the person has an appropriate effective airman or airwoman certificate, permit, rating or license issued by the United States authorizing him or her to engage in the particular class of aeronautics in which he or she is engaged, if such certificate, permit, rating or license is required by the United States and a current airman's or airwoman's registration certificate issued by the department of transportation as required by RCW 47.68.233 or 47.68.234.

Where a certificate, permit, rating or license is required for an airman or airwoman by the United States or by RCW 47.68.233 or 47.68.234, it shall be kept in his or her personal possession when he or she is operating within the state. Where a certificate, permit or license is required by the United States or by this chapter for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state and shall be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors. Such certificates shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official or employee of the department of transportation authorized pursuant to this chapter to enforce the aeronautics laws, or any official, manager or person in charge of any airport, or upon the reasonable request of any person. [1993 c 208 § 5; 1987 c 220 § 1; 1979 c 158 § 205; 1967 ex.s. c 68 § 2; 1967 ex.s. c 9 § 7; 1949 c 49 § 11; 1947 c 165 § 23; Rem. Supp. 1949 § 10964-103. Formerly RCW 14.04.230.]

47.68.233 Registration of pilots—Certificates—Fees—Exemptions—Use of fees. (1) The department shall require that every pilot who is a resident of this state and every nonresident pilot who regularly operates any aircraft in this state be registered with the department. The department shall charge an annual fee of fifteen dollars for each registration. For the period of July 1, 2003, through June 30, 2005, seven dollars of each registration fee collected shall be deposited into the aeronautics account, to be used solely for airport maintenance. All registration certificates issued under this section shall be renewed annually during the month of the registrant's birthdate.

(2) Except as provided in the paragraph above, the registration fee imposed by this section shall be used by the department for the purpose of (a) search and rescue of lost and downed aircraft and airmen under the direction and supervision of the secretary, (b) safety and education, and (c) volunteer recognition and support.

(3) Registration shall be effected by filing with the department a certified written statement that contains the information reasonably required by the department. The department shall issue certificates of registration and in connection therewith shall prescribe requirements for the possession and exhibition of the certificates.

(4) The provisions of this section do not apply to:

(a) A pilot who operates an aircraft exclusively in the service of any government or any political subdivision

thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia;

(b) A pilot registered under the laws of a foreign country;

(c) A pilot engaged exclusively in commercial flying constituting an act of interstate or foreign commerce;

(d) A person piloting an aircraft equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a bona fide prospective purchaser.

(5) Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties set forth in RCW 47.68.240(2). [2003 c 375 § 1; 2003 c 53 § 263; 2000 c 176 § 1; 1987 c 220 § 2; 1984 c 7 § 355; 1983 c 3 § 143; 1967 c 207 § 2. Formerly RCW 14.04.233.]

Reviser's note: This section was amended by 2003 c 53 § 263 and by 2003 c 375 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 375: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 375 § 7.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1987 c 220: See note following RCW 47.68.230.

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

47.68.234 Registration of airman and airwoman. (1) The department shall require that every airman or airwoman that is not registered under RCW 47.68.233 and who is a resident of this state, or every nonresident airman or airwoman who is regularly performing duties as an airman or airwoman within this state, be registered with the department. The department shall charge an annual fee of fifteen dollars for each registration. For the period of July 1, 2003, through June 30, 2005, seven dollars of which shall be deposited into the aeronautics account, to be used solely for airport maintenance. A registration certificate issued under this section is to be renewed annually during the month of the registrant's birthdate.

(2) Except as provided in the paragraph above, the department shall use the registration fee imposed under this section for the purposes of: (a) Search and rescue of lost and downed aircraft and airmen or airwomen under the direction and supervision of the secretary; and (b) safety and education.

(3) Registration is effected by filing with the department a certified written statement that contains the information reasonably required by the department. The department shall issue certificates of registration and, in connection with the certificates, shall provide requirements for the possession and exhibition of the certificates.

(4) Failure to register as provided in this section is a violation of RCW 47.68.230 and subjects the offender to the penalties set forth in RCW 47.68.240(2). [2003 c 375 § 2; 2003 c 53 § 264; 1993 c 208 § 3.]

Reviser's note: This section was amended by 2003 c 53 § 264 and by 2003 c 375 § 2, each without reference to the other. Both amendments are (2004 Ed.)

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 375: See note following RCW 47.68.233.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

47.68.235 License or certificate suspension—Non-compliance with support order—Reissuance. The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 859.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

47.68.236 Aircraft search and rescue, safety, and education account. There is hereby created in the transportation fund of the state treasury an account to be known as the aircraft search and rescue, safety, and education account. All moneys received by the department under RCW 47.68.233 shall be deposited in such account. [1995 c 170 § 4; 1991 sp.s. c 13 § 38; 1985 c 57 § 63; 1983 c 3 § 144; 1967 c 207 § 3. Formerly RCW 14.04.236.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

47.68.240 Penalties for violations. (1) Except as provided in subsection (2) of this section, any person violating any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant thereto, is guilty of a misdemeanor.

(2)(a) Any person violating any of the provisions of RCW 47.68.220, 47.68.230, or 47.68.255 is guilty of a gross misdemeanor.

(b) In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, for violations of RCW 47.68.220 and 47.68.230, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court.

(3) In addition to the provisions of subsection[s] (1) [and (2)] of this section, failure to register an aircraft, as required by this chapter is subject to the following civil penalties:

(a) If the aircraft registration is sixty days to one hundred nineteen days past due, the civil penalty is one hundred dollars.

(b) If the aircraft registration is one hundred twenty days to one hundred eighty days past due, the civil penalty is two hundred dollars.

(c) If the aircraft registration is over one hundred eighty days past due, the civil penalty is four hundred dollars.

(4) In addition to the provisions in subsection[s] (1) [and (2)] of this section, failure to register as a pilot, airman, or airwoman, as required by this chapter, is subject to a civil penalty of four times the fees that are due. If the pilot registration is sixty days past due, the pilot, airman, or airwoman is subject to the [a] civil penalty of four times the fees that are due.

(5) The revenue from penalties prescribed in subsection (3) of this section must be deposited into the aeronautics account under RCW 82.42.090. The revenue from penalties prescribed in subsection (4) of this section must be deposited into the aircraft search and rescue, safety, and education account under RCW 47.68.236. [2003 c 375 § 3; 2003 c 53 § 265; 2000 c 229 § 2; 1999 c 277 § 5; 1993 c 238 § 3; 1987 c 202 § 216; 1983 c 3 § 145; 1947 c 165 § 24; Rem. Supp. 1947 § 10964-104. Formerly RCW 14.04.240.]

Reviser's note: This section was amended by 2003 c 53 § 265 and by 2003 c 375 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 375: See note following RCW 47.68.233.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2000 c 229: See note following RCW 46.16.010.

Intent—1987 c 202: See note following RCW 2.04.190.

47.68.250 Registration of aircraft. Every aircraft shall be registered with the department for each calendar year in which the aircraft is operated or is based within this state. A fee of fifteen dollars shall be charged for each such registration and each annual renewal thereof.

Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section shall be the only requisites for registration of an aircraft under this section.

The registration fee imposed by this section shall be payable to and collected by the secretary. The fee for any calendar year must be paid during the month of January, and shall be collected by the secretary at the time of the collection by him or her of the said excise tax. If the secretary is satisfied that the requirements for registration of the aircraft have been met, he or she shall thereupon issue to the owner of the aircraft a certificate of registration therefor. The secretary shall pay to the state treasurer the registration fees collected under this section, which registration fees shall be credited to the aeronautics account in the transportation fund.

It shall not be necessary for the registrant to provide the secretary with originals or copies of federal certificates, permits, ratings, or licenses. The secretary shall issue certificates of registration, or such other evidences of registration or payment of fees as he or she may deem proper; and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

The provisions of this section shall not apply to:

(1) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft registered under the laws of a foreign country;

(3) An aircraft which is owned by a nonresident and registered in another state: PROVIDED, That if said aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

(4) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(5) An aircraft owned by the commercial manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(6) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW;

(7) An aircraft based within the state that is in an unairworthy condition, is not operated within the registration period, and has obtained a written exemption issued by the secretary.

The secretary shall be notified within thirty days of any change in ownership of a registered aircraft. The notification shall contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the secretary, the registration of that aircraft may be canceled by the secretary, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner.

A municipality or port district that owns, operates, or leases an airport, as defined in RCW 47.68.020, with the intent to operate, shall require from an aircraft owner proof of aircraft registration as a condition of leasing or selling tiedown or hanger space for an aircraft. It is the responsibility of the lessee or purchaser to register the aircraft. The airport shall work with the aviation division to assist in its efforts to register aircraft by providing information about based aircraft on an annual basis as requested by the division. [2003 c 375 § 4; 1999 c 302 § 2; 1998 c 188 § 1; 1995 c 170 § 3; 1993 c 208 § 7; 1987 c 220 § 3; 1979 c 158 § 206; 1967 ex.s. c 9 § 8; 1955 c 150 § 11; 1949 c 49 § 12; 1947 c 165 § 25; Rem. Supp. 1949 § 10964-105. Formerly RCW 14.04.250.]

Effective date—2003 c 375: See note following RCW 47.68.233.

Severability—1987 c 220: See note following RCW 47.68.230.

Aircraft dealers: Chapter 14.20 RCW.

Definition of terms: RCW 14.20.010, 47.68.020.

47.68.255 Evasive registration. A person who is required to register an aircraft under this chapter and who registers an aircraft in another state or foreign country evading the Washington aircraft excise tax is guilty of a gross misdemeanor. For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, no part of which may be suspended or deferred. Excise taxes owed and fines assessed will be deposited in the manner provided under RCW 46.16.010(4). [2003 c 53 § 266; 2000 c 229 § 3; 1999 c 277 § 6; 1996 c 184 § 3; 1993 c 238 § 2.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—2000 c 229: See note following RCW 46.16.010.

Effective date—1996 c 184: See note following RCW 46.16.010.

47.68.280 Investigations, hearings, etc.—Subpoenas—Compelling attendance. The department or any officer or employee of the department designated by it has the power to hold investigations, inquiries, and hearings concerning matters covered by this chapter including accidents in aeronautics within this state. Hearings shall be open to the public and, except as hereinafter provided, shall be held upon such call or notice as the department deems advisable. The department and every officer or employee of the department designated by it to hold any inquiry, investigation, or hearing has the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and order the attendance of witnesses and the production of papers, books and documents. In case of the failure of a person to comply with a subpoena or order issued under the authority of this section, the department or its authorized representatives may invoke the aid of a competent court of general jurisdiction. The court may thereupon order the person to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof. [1984 c 7 § 356; 1947 c 165 § 28; Rem. Supp. 1947 § 10964-108. Formerly RCW 14.04.280.]

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

47.68.290 Joint hearings—Cooperation. The department may confer with or hold joint hearings with any agency of the United States in connection with any matter arising under this chapter or relating to the development of aeronautics.

The department may avail itself of the cooperation, services, records, and facilities of the agencies of the United States as fully as may be practicable in the administration and enforcement of this chapter, and shall furnish to the agencies of the United States such services, records, and facilities as are practicable.

The department shall report to the appropriate agency of the United States all accidents in aeronautics in this state of which it is informed, and shall in so far as is practicable preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until the federal agency institutes an investigation.

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[1984 c 7 § 357; 1947 c 165 § 29; Rem. Supp. 1947 § 10964-109. Formerly RCW 14.04.290.]

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

47.68.300 State and municipal agencies to cooperate. In carrying out this chapter the department may use the facilities and services of other agencies of the state and of the municipalities of the state to the utmost extent possible, and the agencies and municipalities are authorized and directed to make available their facilities and services. [1984 c 7 § 358; 1947 c 165 § 30; Rem. Supp. 1947 § 10964-110. Formerly RCW 14.04.300.]

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

47.68.310 Enforcement of aeronautics laws. It is the duty of the secretary, the department, the officers and employees of the department, and every state and municipal officer charged with the enforcement of state and municipal laws to enforce and assist in the enforcement of this chapter and of all other laws of this state relating to aeronautics. The secretary and those officers or employees of the department designated by the secretary in writing are granted police powers solely for the enforcement of state aeronautics laws and the rules having the effect of law. [1984 c 7 § 359; 1955 c 204 § 1; 1947 c 165 § 31; Rem. Supp. 1947 § 10964-111. Formerly RCW 14.04.310.]

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

47.68.320 Service of orders—Hearings—Review. Every order of the department requiring performance of certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate, or license shall set forth the reasons and shall state the acts to be done or requirements to be met before approval by the department will be given or the approval, license, or certificate granted or restored, or the order modified or changed. Orders issued by the department under this chapter shall be served upon the persons affected either by certified mail or in person. In every case where notice and opportunity for a hearing are required under this chapter, the order of the department shall, on not less than ten days notice, specify a time when and place where the person affected may be heard, or the time within which the person may request a hearing, and the order shall become effective upon the expiration of the time for exercising the opportunity for a hearing, unless a hearing is held or requested within the time provided, in which case the order shall be suspended until the department affirms, disaffirms, or modifies the order after a hearing has been held or default by the person has been affected. To the extent practicable, hearings on the orders shall be in the county where the affected person resides or does business. Any person aggrieved by an order of the department or by the grant, denial, or revocation of an approval, license, or certificate may have the action of the department reviewed by the courts of this state under chapter 34.05 RCW. [1984 c 7 § 360; 1947 c 165 § 32; Rem. Supp. 1947 § 10964-112. Formerly RCW 14.04.320.]

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

47.68.330 Exchange of data, reports of violations, etc.

The department is authorized to report to the appropriate federal agencies and agencies of other states all proceedings instituted charging violation of RCW 47.68.220 and 47.68.230 and all penalties, of which it has knowledge, imposed upon airmen or the owners or operators of aircraft for violations of the law of this state relating to aeronautics or for violations of the rules, regulations, or orders of the department. The department is authorized to receive reports of penalties and other data from agencies of the federal government and other states and, when necessary, to enter into agreements with federal agencies and the agencies of other states governing the delivery, receipt, exchange, and use of reports and data. The department may make the reports and data of the federal agencies, the agencies of other states, and the courts of this state available, with or without request therefor, to any and all courts of this state. [1983 c 3 § 146; 1947 c 165 § 33; Rem. Supp. 1947 § 10964-113. Formerly RCW 14.04.330.]

47.68.340 Hazardous structures and obstacles—Marking—Hearing to determine hazard.

A structure or obstacle that obstructs the air space above ground or water level, when determined by the department after a hearing to be a hazard or potential hazard to the safe flight of aircraft, shall be plainly marked, illuminated, painted, lighted, or designated in a manner to be approved in accordance with the general rules of the department so that the structure or obstacle will be clearly visible to airmen. In determining which structures or obstacles constitute a safety hazard, or a hazard to flight, the department shall take into account those obstacles located at a river, lake, or canyon crossing, and in other low-altitude flight paths usually traveled by aircraft including, but not limited to, airport areas and runway departure and approach areas as defined by federal air regulations. [1995 c 153 § 2; 1984 c 7 § 361; 1961 c 263 § 2. Formerly RCW 14.04.340.]

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

47.68.350 Hazardous structures and obstacles—Reporting location—Subpoenas.

The secretary may require owners, operators, lessees, or others having the control or management of structures or obstacles over one hundred fifty feet above ground or water level and that are or may become a hazard to air flight to report the location of the existing or proposed structures or obstacles to the department. For that purpose the secretary may issue subpoenas and subpoenas duces tecum returnable within twenty days to the department. If a person refuses to obey the secretary's subpoena, the department may certify to the superior court all facts of the refusal. The court shall summarily hear evidence on the refusal, and, if the evidence warrants, punish the person refusing in the same manner and to the same extent as a contempt committed before the court. [1984 c 7 § 362; 1961 c 263 § 3. Formerly RCW 14.04.350.]

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

47.68.360 Hazardous structures and obstacles—Exemption of structures required by federal law to be marked. RCW 47.68.340 and 47.68.350 shall not apply to

structures required to be marked by federal regulations. [1983 c 3 § 147; 1961 c 263 § 4. Formerly RCW 14.04.360.]

47.68.380 Search and rescue. The aviation division is responsible for the conduct and management of all aerial search and rescue within the state. This includes search and rescue efforts involving aircraft and airships. The division is also responsible for search and rescue activities involving electronic emergency signaling devices such as emergency locator transmitters (ELT's) and emergency position indicating radio beacons (EPIRB's). [1995 c 153 § 1.]

47.68.900 Severability—1947 c 165. If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable. [1947 c 165 § 35. Formerly RCW 14.04.900.]

Chapter 47.72 RCW**NAVIGATION CANALS**

(Formerly: Chapter 91.12 RCW, Canal commission)

Sections

47.72.010	Declaration of purpose.
47.72.050	Powers and duties.
47.72.060	"Canal" defined.

47.72.010 Declaration of purpose. The purposes of this chapter are to aid commerce and navigation, including the development of recreational facilities related thereto, and to otherwise promote the general welfare by the development of navigation canals within the boundaries of the state of Washington. [1965 ex.s. c 123 § 1. Formerly RCW 91.12.010.]

47.72.050 Powers and duties. In its capacity as successor to the canal commission, the department of transportation may:

(1) Adopt rules and regulations necessary to carry out the purposes of this chapter.

(2) Make such investigations, surveys, and studies it deems necessary to determine the feasibility of the development of a navigation canal, or systems of navigation canals within the state of Washington.

(3) Construct, maintain, and/or operate any navigation canal, or navigation canal systems deemed feasible by the department of transportation.

(4) Acquire by gift, purchase, or condemnation from any person, municipal, public, or private corporation, or the state of Washington, or lease from the United States of America, any lands, rights of way, easements, or property rights in, over, or across lands or waters necessary for the construction, operation, or maintenance of any navigation canal, or navigation canal system. The acquisition of such rights is for a public use. The exercise of the right of eminent domain shall be in the manner provided by chapter 8.04 RCW, and all actions initiated thereunder shall be brought in the name of the department of transportation.

(5) Hold public hearings. Prior to a determination of feasibility for any proposed project, the department shall hold a public hearing so that members of the public may present their views thereon.

(6) Accept and expend moneys appropriated by the legislature or received from any public or private source, including the federal government, in carrying out the purposes of this chapter.

(7) Negotiate and cooperate with the United States of America for the purpose of inducing the United States to undertake the construction, operation, or maintenance of any navigation canal, or navigation canal system provided for in this chapter.

(8) As a local sponsor cooperate, contract, and otherwise fully participate on behalf of the state of Washington with the United States of America, in any study relating to a determination of feasibility of a navigation canal or navigation canal system, and in any project relating to the construction, operation, or maintenance of a navigation canal, or navigation canal system to be undertaken by the United States of America.

The authority granted herein includes, but is not limited to, contributing such moneys to the United States of America as may be required and appropriated for that purpose by the legislature and furnishing without cost to the United States of America all lands, easements, and rights of way, performing all necessary alterations to utilities arising from any project, and holding the United States of America free from any claims for damages arising out of the construction of any project. [1977 ex.s. c 151 § 75; 1965 ex.s. c 123 § 5. Formerly RCW 91.12.050.]

47.72.060 "Canal" defined. For the purposes of this chapter, "canal" is defined as any waterway for navigation created by construction of reservoirs or construction of channels by excavation in dry ground, in streams, rivers or in tidal waters and any existing waterway incorporated into such a canal and including any appurtenant features necessary for operation and maintenance of the canal. [1965 ex.s. c 123 § 6. Formerly RCW 91.12.060.]

**Chapter 47.74 RCW
MULTISTATE HIGHWAY
TRANSPORTATION AGREEMENT**

Sections

- 47.74.010 Multistate Highway Transportation Agreement enacted, terms.
- 47.74.020 Appointment of delegates to represent state.

47.74.010 Multistate Highway Transportation Agreement enacted, terms. The Multistate Highway Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining therein as follows:

**MULTISTATE HIGHWAY
TRANSPORTATION AGREEMENT**

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting

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by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

**ARTICLE I
Findings and Purposes**

SECTION 1. Findings. The participating jurisdictions find that:

- (a) The expanding regional economy depends on expanding transportation capacity;
- (b) Highway transportation is the major mode for movement of people and goods in the western states;
- (c) Uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;
- (d) A number of western states, already having adopted substantially the 1964 Bureau of Public Roads recommended vehicle size and weight standards, still find current federal limits more restrictive;
- (e) The 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and widths are increased, even though the interstate system is nearly ninety-two percent complete; and
- (f) The participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

SECTION 2. Purposes. The purposes of this agreement are to:

- (a) Adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system;
- (b) Establish a system authorizing the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards;
- (c) Promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement;
- (d) Secure uniformity insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards;
- (e) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

**ARTICLE II
Definitions**

SECTION 1. As used in this agreement:

- (a) "Designated representative" means a legislator or other person authorized to represent the jurisdiction;
- (b) "Jurisdiction" means a state of the United States or the District of Columbia;
- (c) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards which operates in two or more participating jurisdictions.

ARTICLE III
General Provisions

SECTION 1. Qualifications for Membership. Participation in this agreement is open to jurisdictions which subscribe to the findings, purposes, and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

SECTION 2. Cooperation. The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

SECTION 3. Effect of Headings. Article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

SECTION 4. Vehicle Laws and Regulations. This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

SECTION 5. Interpretation. The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

SECTION 6. Amendment. This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, article III. Any amendment shall be placed in writing and become a part hereof.

SECTION 7. Restrictions, Conditions, or Limitations. Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition, or limitation on the general terms of this agreement, if any.

SECTION 8. Additional Jurisdictions. Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

ARTICLE IV
Cooperating Committee

SECTION 1. Pursuant to section 2, article III, the designated representatives of the participating jurisdictions shall constitute a committee which shall have the power to:

(a) Collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters;

(b) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken;

(c) Recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules or regulations which would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

SECTION 2. Each participating jurisdiction shall be entitled to one vote only. No action of the committee shall be

binding unless a majority of the total number of votes cast by participating jurisdictions are in favor thereof.

SECTION 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman, and a secretary.

SECTION 4. The committee shall submit annually to the legislature of each participating jurisdiction, no later than November 1st, a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable. Copies of all such reports shall be made available to the Transportation Committee of the Western Conference, Council of State Governments, and to the Western Association of State Highway and Transportation Officials.

ARTICLE V
Objectives of the Participating Jurisdictions

SECTION 1. Objectives. The participating jurisdictions hereby declare that:

(a) It is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight of 20,000 pounds, a tandem-axle weight of 34,000 pounds, and a gross vehicle or combination weight of that resulting from application of the formula:

$$W = 500 ((LN/N - 1) + 12N + 36)$$

where

W = maximum weight in pounds carried on any group of two or computed to nearest 500 pounds.

L = distance in feet between the extremes of any group of two or more consecutive axles.

N = number of axles in group under consideration.

(b) It is the further objective of the participating jurisdictions that in the event the operation of a vehicle or combination of vehicles according to the provisions of subsection (a) of this section would result in withholding or forfeiture of federal-aid funds pursuant to section 127, title 23, U.S. Code, the operation of such vehicle or combination of vehicles at axle and gross weights within the limits set forth in subsection (a) of this section will be authorized under special permit authority by each participating jurisdiction which could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956, are adhered to.

(c) The objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions and/or weights in excess of the maximum statutory limits in each participating jurisdiction will not be affected.

(d) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or

combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including, but not limited to, the development of: uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent.

(e) In recognition of the limited prospects of federal revision of section 127, title 23, U.S. Code, and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal-aid highway funds, it is the further objective of the participating jurisdictions to secure congressional approval of this agreement and, specifically of the vehicle size and weight standards set forth in subsection (a) of this section.

(f) In recognition of desire for a degree of national uniformity of size and weight regulations, it is the further objective to encourage development of broad, uniform size and weight standards on a national basis, and further that procedures adopted under this agreement be compatible with national standards.

ARTICLE VI

Entry Into Force and Withdrawal

SECTION 1. This agreement shall enter into force when enacted into law by any two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, article III.

SECTION 2. Any participating jurisdiction may withdraw from this agreement by canceling the same, but no such withdrawal shall take effect until thirty days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

ARTICLE VII

Construction and Severability

SECTION 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

SECTION 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

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ARTICLE VIII
Filing of Documents

SECTION 1. A copy of this agreement, its amendments, and rules or regulations promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

ARTICLE IX
Existing Statutes Not Repealed

SECTION 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

ARTICLE X
State Government Departments
Authorized to Cooperate with Cooperating Committee

SECTION 1. Within appropriations available therefor, the departments, agencies, and officers of the government of this state shall cooperate with and assist the cooperating committee within the scope contemplated by article IV, section 1 (a) and (b) of the agreement. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said cooperating committee. [1983 c 82 § 1.]

47.74.020 Appointment of delegates to represent state. The chairman of the legislative transportation committee shall appoint a delegate and such alternates as may be appropriate to represent the state on the cooperating committee established by the Multistate Highway Transportation Agreement. [1983 c 82 § 2.]

Chapter 47.76 RCW
RAIL FREIGHT SERVICE

Sections

- 47.76.200 Legislative findings.
- 47.76.210 State freight rail program.
- 47.76.220 State rail plan—Contents.
- 47.76.230 Freight rail planning.
- 47.76.240 Rail preservation program.
- 47.76.250 Essential rail assistance account—Purposes.
- 47.76.270 Essential rail banking account merged into essential rail assistance account.
- 47.76.280 Sale or lease for use as rail service—Time limit.
- 47.76.290 Sale or lease for other use—Authorized buyers, notice, terms, deed, deposit of moneys.
- 47.76.300 Sale for other use—Governmental entity.
- 47.76.310 Rent or lease of lands.
- 47.76.320 Sale at public auction.
- 47.76.330 Eminent domain exemptions.
- 47.76.340 Evaluating program performance.
- 47.76.350 Monitoring federal rail policies.
- 47.76.400 Produce railcar pool—Findings—Intent.
- 47.76.410 Produce railcar pool—Definition.
- 47.76.420 Produce railcar pool—Departmental authority.
- 47.76.430 Produce railcar pool—Funding.
- 47.76.440 Produce railcar pool—Management.
- 47.76.450 Produce railcar pool account.
- 47.76.900 Captions not law.

47.76.200 Legislative findings. The legislature finds that a balanced multimodal transportation system is required to maintain the state's commitment to the growing mobility

needs of its citizens and commerce. The state's freight rail system, including branch lines, mainlines, rail corridors, terminals, yards, and equipment, is an important element of this multimodal system. Washington's economy relies heavily upon the freight rail system to ensure movement of the state's agricultural, chemical, and natural resources and manufactured products to local, national, and international markets and thereby contributes to the economic vitality of the state.

Since 1970, Washington has lost over one-third of its rail miles to abandonment and bankruptcies. The combination of rail abandonments and rail system capacity constraints may alter the delivery to market of many commodities. In addition, the resultant motor vehicle freight traffic increases the burden on state highways and county roads. In many cases, the cost of maintaining and upgrading the state highways and county roads exceeds the cost of maintaining rail freight service. Thus, the economy of the state will be best served by a policy of maintaining and encouraging a healthy rail freight system by creating mechanisms that keep rail freight lines operating if the benefits of the service outweigh the cost.

Recognizing the implications of this trend for freight mobility and the state's economic future, the legislature finds that better freight rail planning, better cooperation to preserve rail lines, and increased financial assistance from the state are necessary to maintain and improve the freight rail system within the state. [1995 c 380 § 1; 1993 c 224 § 1; 1983 c 303 § 4. Formerly RCW 47.76.010.]

Severability—1983 c 303: See RCW 36.60.905.

47.76.210 State freight rail program. The Washington state department of transportation shall implement a state freight rail program that supports the freight rail service objectives identified in the state's multimodal transportation plan required under chapter 47.06 RCW. The support may be in the form of projects and strategies that support branch lines and light-density lines, provide access to ports, maintain adequate mainline capacity, and preserve or restore rail corridors and infrastructure. [1995 c 380 § 2; 1990 c 43 § 2. Formerly RCW 47.76.110.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.220 State rail plan—Contents. (1) The department of transportation shall prepare and periodically update a state rail plan, the objective of which is to identify, evaluate, and encourage essential rail services. The plan shall:

- (a) Identify and evaluate mainline capacity issues;
- (b) Identify and evaluate port-to-rail access and congestion issues;
- (c) Identify and evaluate those rail freight lines that may be abandoned or have recently been abandoned;
- (d) Quantify the costs and benefits of maintaining rail service on those lines that are likely to be abandoned;
- (e) Establish priorities for determining which rail lines should receive state support. The priorities should include the anticipated benefits to the state and local economy, the anticipated cost of road and highway improvements necessitated by the abandonment or capacity constraints of the rail line, the likelihood the rail line receiving funding can meet operating costs from freight charges, surcharges on rail traffic, and other funds authorized to be raised by a county or port dis-

trict, and the impact of abandonment or capacity constraints on changes in energy utilization and air pollution;

- (f) Identify and describe the state's rail system;
- (g) Prepare a state freight rail system map;
- (h) Identify and evaluate rail commodity flows and traffic types;
- (i) Identify lines and corridors that have been rail banked or preserved; and
- (j) Identify and evaluate other issues affecting the state's rail traffic.

(2) The state rail plan may be prepared in conjunction with the rail plan prepared by the department pursuant to the federal Railroad Revitalization and Regulatory Reform Act. [1995 c 380 § 3; 1993 c 224 § 2; 1985 c 432 § 1; 1983 c 303 § 5. Formerly RCW 47.76.020.]

Severability—1983 c 303: See RCW 36.60.905.

47.76.230 Freight rail planning. (1) The department of transportation shall continue its responsibility for the development and implementation of the state rail plan and programs, and the utilities and transportation commission shall continue its responsibility for intrastate rates, service, and safety issues.

(2) The department of transportation shall maintain an enhanced data file on the rail system. Proprietary annual station traffic data from each railroad and the modal use of major shippers shall be obtained to the extent that such information is available.

(3) The department of transportation shall provide technical assistance, upon request, to state agencies and local interests. Technical assistance includes, but is not limited to, the following:

- (a) Rail project cost-benefit analyses conducted in accordance with methodologies recommended by the Federal Railroad Administration;
- (b) Assistance in the formation of county rail districts and port districts; and
- (c) Feasibility studies for rail service continuation and/or rail service assistance.

(4) With funding authorized by the legislature, the department of transportation, in collaboration with the department of community, trade, and economic development, and local economic development agencies, and other interested public and private organizations, shall develop a cooperative process to conduct community and business information programs and to regularly disseminate information on rail matters. [1995 c 380 § 4; 1990 c 43 § 3. Formerly RCW 47.76.120.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.240 Rail preservation program. The state, counties, local communities, ports, railroads, labor, and shippers all benefit from continuation of rail service and should participate in its preservation. Lines that provide benefits to the state and local jurisdictions, such as avoided roadway costs, reduced traffic congestion, economic development potential, environmental protection, and safety, should be assisted through the joint efforts of the state, local jurisdictions, and the private sector.

State funding for rail service, rail preservation, and corridor preservation projects must benefit the state's interests. The state's interest is served by reducing public roadway maintenance and repair costs, increasing economic development opportunities, increasing domestic and international trade, preserving jobs, and enhancing safety. State funding for projects is contingent upon appropriate local jurisdiction and private sector participation and cooperation. Before spending state moneys on projects the department shall seek federal, local, and private funding and participation to the greatest extent possible.

(1) The department of transportation shall continue to monitor the status of the state's mainline and branchline common carrier railroads and preserved rail corridors through the state rail plan and various analyses, and shall seek alternatives to abandonment prior to interstate commerce commission proceedings, where feasible.

(2) The utilities and transportation commission shall intervene in interstate commerce commission proceedings on abandonments, when necessary, to protect the state's interest.

(3) The department of transportation, in consultation with the Washington state freight rail policy advisory committee, shall establish criteria for evaluating rail projects and corridors of significance to the state.

(4) Local jurisdictions may implement rail service preservation projects in the absence of state participation.

(5) The department of transportation shall continue to monitor projects for which it provides assistance. [1995 c 380 § 5; 1993 c 224 § 3; 1990 c 43 § 4. Formerly RCW 47.76.130.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.250 Essential rail assistance account—Purposes. (1) The essential rail assistance account is created in the state treasury. Moneys in the account may be appropriated only for the purposes specified in this section.

(2) Moneys appropriated from the account to the department of transportation may be used by the department or distributed by the department to cities, county rail districts, counties, economic development councils, and port districts for the purpose of:

(a) Acquiring, rebuilding, rehabilitating, or improving rail lines;

(b) Purchasing or rehabilitating railroad equipment necessary to maintain essential rail service;

(c) Constructing railroad improvements to mitigate port access or mainline congestion;

(d) Construction of loading facilities to increase business on light density lines or to mitigate the impacts of abandonment;

(e) Preservation, including operation, of light density lines, as identified by the Washington state department of transportation, in compliance with this chapter; or

(f) Preserving rail corridors for future rail purposes by purchase of rights of way. The department shall first pursue transportation enhancement program funds, available under the federal surface transportation program, to the greatest extent practicable to preserve rail corridors. Purchase of rights of way may include track, bridges, and associated elements, and must meet the following criteria:

(i) The right of way has been identified and evaluated in the state rail plan prepared under this chapter;

(ii) The right of way may be or has been abandoned; and

(iii) The right of way has potential for future rail service.

(3) The department or the participating local jurisdiction is responsible for maintaining any right of way acquired under this chapter, including provisions for drainage management, fire and weed control, and liability associated with ownership.

(4) Nothing in this section impairs the reversionary rights of abutting landowners, if any, without just compensation.

(5) The department, cities, county rail districts, counties, and port districts may grant franchises to private railroads for the right to operate on lines acquired under this chapter.

(6) The department, cities, county rail districts, counties, and port districts may grant trackage rights over rail lines acquired under this chapter.

(7) If rail lines or rail rights of way are used by county rail districts, port districts, state agencies, or other public agencies for the purposes of rail operations and are later abandoned, the rail lines or rail rights of way cannot be used for any other purposes without the consent of the underlying fee title holder or reversionary rights holder, or until compensation has been made to the underlying fee title holder or reversionary rights holder.

(8) The department of transportation shall develop criteria for prioritizing freight rail projects that meet the minimum eligibility requirements for state assistance under RCW 47.76.240. The department shall develop criteria in consultation with the Washington state freight rail policy advisory committee. Project criteria should consider the level of local financial commitment to the project as well as cost/benefit ratio. Counties, local communities, railroads, shippers, and others who benefit from the project should participate financially to the greatest extent practicable.

(9) Moneys received by the department from franchise fees, trackage rights fees, and loan payments shall be redeposited in the essential rail assistance account. Repayment of loans made under this section shall occur within a period not longer than fifteen years, as set by the department. The repayment schedule and rate of interest, if any, shall be determined before the distribution of the moneys.

(10) The state shall maintain a contingent interest in any equipment, property, rail line, or facility that has outstanding grants or loans. The owner may not use the line as collateral, remove track, bridges, or associated elements for salvage, or use it in any other manner subordinating the state's interest without permission from the department.

(11) Moneys distributed under this chapter should be provided as loans wherever practicable. Except as provided by section 3, chapter 73, Laws of 1996, for improvements on or to privately owned railroads, railroad property, or other private property, moneys distributed shall be provided solely as loans. [1996 c 73 § 2; 1995 c 380 § 6; 1993 c 224 § 4; 1991 sp.s. c 13 § 22; 1991 c 363 § 125; 1990 c 43 § 11. Prior: 1985 c 432 § 2; 1985 c 57 § 64; 1983 c 303 § 6. Formerly RCW 47.76.030.]

Effective date—1996 c 73: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [March 13, 1996]." [1996 c 73 § 4.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

Effective date—1985 c 57: See note following RCW 18.04.105.

Severability—1983 c 303: See RCW 36.60.905.

County rail districts: Chapter 36.60 RCW.

Port districts, acquisition and operation of facilities: RCW 53.08.020.

47.76.270 Essential rail banking account merged into essential rail assistance account. The essential rail banking account is merged into the essential rail assistance account created under RCW 47.76.250. Any appropriations made to the essential rail banking account are transferred to the essential rail assistance account, and are subject to the restrictions of that account. [1995 c 380 § 7; 1993 c 224 § 6; 1991 sp.s. c 13 § 120; 1991 c 363 § 127; 1990 c 43 § 7. Formerly RCW 47.76.160.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.280 Sale or lease for use as rail service—Time limit. The department may sell or lease property acquired under this chapter to a county rail district established under chapter 36.60 RCW, a county, a port district, or any other public or private entity authorized to operate rail service. Any public or private entity that originally donated funds to the department under this chapter shall receive credit against the purchase price for the amount donated to the department, less management costs, in the event such public or private entity purchases the property from the department.

If no county rail district, county, port district, or other public or private entity authorized to operate rail service purchases or leases the property within six years after its acquisition by the department, the department may sell or lease such property in the manner provided in RCW 47.76.290. Failing this, the department may sell or convey all such property in the manner provided in RCW 47.76.300 or 47.76.320. [1995 c 380 § 8; 1993 c 224 § 7; 1991 sp.s. c 15 § 61; 1991 c 363 § 126; 1985 c 432 § 3. Formerly RCW 47.76.040.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

47.76.290 Sale or lease for other use—Authorized buyers, notice, terms, deed, deposit of moneys. (1) If real property acquired by the department under this chapter is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may sell or lease the property at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;

(c) Any other municipal corporation;

(d) The former owner, heir, or successor of the property from whom the property was acquired;

(e) Any abutting private owner or owners.

(2) Notice of intention to sell under this section shall be given by publication in one or more newspapers of general circulation in the area in which the property is situated not less than thirty days prior to the intended date of sale.

(3) Sales to purchasers may, at the department's option, be for cash or by real estate contract.

(4) Conveyances made under this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) All moneys received under this section shall be deposited in the essential rail banking account of the general fund. [1993 c 224 § 8; 1991 sp.s. c 15 § 62; 1985 c 432 § 4. Formerly RCW 47.76.050.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

47.76.300 Sale for other use—Governmental entity.

If real property acquired by the department under this chapter is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may transfer and convey the property to the United States, its agencies or instrumentalities, to any other state agency, or to any county or city or port district of this state when, in the judgment of the secretary, the transfer and conveyance is consistent with the public interest. Whenever the secretary makes an agreement for any such transfer or conveyance, the secretary shall execute and deliver to the grantee a deed of conveyance, easement, or other instrument, duly acknowledged, as necessary to fulfill the terms of the agreement. All moneys paid to the state of Washington under this section shall be deposited in the essential rail banking account of the general fund. [1993 c 224 § 9; 1991 sp.s. c 15 § 63; 1985 c 432 § 5. Formerly RCW 47.76.060.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

47.76.310 Rent or lease of lands. The department is authorized subject to the provisions and requirements of zoning ordinances of political subdivisions of government, to rent or lease any lands acquired under this chapter, upon such terms and conditions as the department determines. [1993 c 224 § 10; 1991 sp.s. c 15 § 64; 1985 c 432 § 6. Formerly RCW 47.76.070.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

47.76.320 Sale at public auction. (1) If real property acquired by the department under this chapter is not sold, conveyed, or leased to a public or private entity within six years of its acquisition by the department, the department may, in its discretion, sell the property at public auction in accordance with subsections (2) through (5) of this section.

(2) The department shall first give notice of the sale by publication on the same day of the week for two consecutive weeks, with the first publication at least two weeks before the date of the auction, in a legal newspaper of general circulation in the area where the property to be sold is located. The

notice shall be placed in both the legal notices section and the real estate classified section of the newspaper. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) In accordance with the terms set forth in the notice, the department shall sell the property at the public auction to the highest and best bidder if the bid is equal to or higher than the appraised fair market value of the property.

(4) If no bids are received at the auction or if all bids are rejected, the department may, in its discretion, enter into negotiations for the sale of the property or may list the property with a licensed real estate broker. No property may be sold by negotiations or through a broker for less than the property's appraised fair market value. Any offer to purchase real property under this subsection shall be in writing and may be rejected at any time before written acceptance by the department.

(5) Conveyances made under this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(6) All moneys received under this section shall be deposited in the essential rail banking account of the general fund. [1993 c 224 § 11; 1991 sp.s. c 15 § 65; 1985 c 432 § 7. Formerly RCW 47.76.080.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

47.76.330 Eminent domain exemptions. Transfers of ownership of property acquired under this chapter are exempt from chapters 8.25 and 8.26 RCW. [1993 c 224 § 12; 1991 sp.s. c 15 § 66; 1985 c 432 § 8. Formerly RCW 47.76.090.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

47.76.340 Evaluating program performance. The department shall evaluate the state freight rail program performance at the end of six years (in 1996) with respect to past and current conditions and future needs. The results of this evaluation shall be presented to the legislative transportation committee. [1993 c 224 § 13; 1990 c 43 § 8. Formerly RCW 47.76.170.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.350 Monitoring federal rail policies. The department of transportation shall continue to monitor federal rail policies and congressional action and communicate to Washington's congressional delegation and federal transportation agencies the need for a balanced transportation system and associated funding. [1990 c 43 § 10. Formerly RCW 47.76.190.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.400 Produce railcar pool—Findings—Intent. The legislature finds that an actively coordinated and cooperatively facilitated railcar pool for transportation of perishable agricultural commodities is necessary for the continued viability and competitiveness of Washington's agricultural industry. The legislature also finds that the rail transportation

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model established by the Washington Grain Train program has been successful in serving the shipping needs of the wheat industry.

It is, therefore, the intent of the legislature to authorize and direct the Washington department of transportation to develop a railcar program for Washington's perishable commodity industries to be known as the Washington Produce Railcar Pool. This railcar program should be modeled from the Washington Grain Train program, but be made flexible enough to work with entities outside state government in order to fulfill its mission, including, but not limited to, the federal and local governments, commodity commissions, and private entities. [2003 c 191 § 1.]

47.76.410 Produce railcar pool—Definition. As used in RCW 47.76.400 through 47.76.450 "short line railroad" means a Class II or Class III railroad as defined by the United States Surface Transportation Board. [2003 c 191 § 2.]

47.76.420 Produce railcar pool—Departmental authority. In addition to powers otherwise granted by law, the department may establish a Washington Produce Railcar Pool to promote viable, cost-effective rail service for Washington produce, including but not limited to apples, onions, pears, and potatoes, both processed and fresh.

To the extent that funds are appropriated, the department may:

(1) Operate the Washington Produce Railcar Pool program while working in close coordination with the department of agriculture, interested commodity commissions, port districts, and other interested parties;

(2) For the purposes of this program:

(a) Purchase or lease new or used refrigerated railcars;

(b) Accept donated refrigerated railcars; and

(c) Refurbish and remodel the railcars;

(3) Hire, in consultation with affected stakeholders, including but not limited to short line railroads, commodity commissions, and port districts, a transportation management firm to perform the function outlined in RCW 47.76.440; and

(4) Contribute the efforts of a short line rail-financing expert to find funding for the project to help interested short line railroads in this state to accomplish the necessary operating arrangements once the railcars are ready for service. [2003 c 191 § 3.]

47.76.430 Produce railcar pool—Funding. To the extent that funds are appropriated, the department shall fund the program as follows: The department may accept funding from the federal government, or other public or private sources, to purchase or lease new or used railcars and to refurbish and remodel the railcars as needed. Nothing in this section precludes other entities, including but not limited to short line railroads, from performing the remodeling under RCW 47.76.400 through 47.76.450. [2003 c 191 § 4.]

47.76.440 Produce railcar pool—Management. (1) The transportation management firm hired under RCW 47.76.420(3) shall manage the day-to-day operations of the railcars, such as monitoring the location of the cars, returning them to this state, distributing them, arranging for pretrips

and repairs, and arranging for per diem, mileage allowances, and other freight billing charges with the railroads.

(2) The railcar pool must be managed over the life of the railcars so that the railcars will be distributed to railroads and port districts around the state for produce loadings as market conditions warrant or to other users, including out-of-state users by contractual agreement, during times of excess capacity.

(3) To maximize railcar availability and use, the department or the transportation management firm may make agreements with the transcontinental railroad systems to pool Washington-owned or Washington-managed railcars with those of the railroads. In such instances, the railroad must agree to provide immediately an equal number of railcars to the Washington railcar pool.

(4) The department shall act in an oversight role to verify that the railcar pool is managed in accordance with subsections (2) and (3) of this section. [2003 c 191 § 5.]

47.76.450 Produce railcar pool account. The produce railcar pool account is created in the custody of the state treasurer. All receipts from per diem charges, mileage charges, and freight billing charges paid by railroads and shippers that use the railcars in the Washington Produce Railcar Pool must be deposited into the account. Expenditures from the account may be used only for the purposes of RCW 47.76.400 through 47.76.440. Only the secretary of transportation or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 191 § 6.]

47.76.900 Captions not law. Section captions used in RCW 47.76.400 through 47.76.450 are not part of the law. [2003 c 191 § 8.]

Chapter 47.78 RCW

HIGH CAPACITY TRANSPORTATION DEVELOPMENT

(Formerly: Rail service development)

Sections

47.78.010 High capacity transportation account.

47.78.010 High capacity transportation account. There is hereby established in the state treasury the high capacity transportation account. Money in the account shall be used, after appropriation, for local high capacity transportation purposes including rail freight, activities associated with freight mobility, and commute trip reduction activities. [1997 c 457 § 513; (1995 2nd sp.s. c 14 § 528 expired June 30, 1997); 1991 sp.s. c 13 §§ 66, 121; 1990 c 43 § 47; 1987 c 428 § 1.]

Severability—1997 c 457: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 457 § 701.]

Effective date—1997 c 457: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 457 § 702.]

[Title 47 RCW—page 242]

Expiration date—1995 2nd sp.s. c 14 §§ 511-523, 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

Effective date—1987 c 428: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 428 § 4.]

Chapter 47.79 RCW

HIGH-SPEED GROUND TRANSPORTATION

Sections

47.79.010	Legislative declaration.
47.79.020	Program established—Goals.
47.79.030	Project priority—Funding sources.
47.79.040	Rail passenger plan.
47.79.050	Facility acquisition and management.
47.79.060	Gifts.
47.79.070	Adjacent real property.
47.79.110	King Street station—Findings.
47.79.120	King Street station—Acquisition.
47.79.130	King Street station—Department's powers and duties.
47.79.140	King Street station—Leases and contracts for multimodal terminal.
47.79.150	King Street railroad station facility account.
47.79.900	Effective date—1993 c 381.

47.79.010 Legislative declaration. The legislature recognizes that major intercity transportation corridors in this state are becoming increasingly congested. In these corridors, population is expected to grow by nearly forty percent over the next twenty years, while employment will grow by nearly fifty percent. The estimated seventy-five percent increase in intercity travel demand must be accommodated to ensure state economic vitality and protect the state's quality of life.

The legislature finds that high-speed ground transportation offers a safer, more efficient, and environmentally responsible alternative to increasing highway capacity. High-speed ground transportation can complement and enhance existing air transportation systems. High-speed ground transportation can be compatible with growth management plans in counties and cities served by such a system. Further, high-speed ground transportation offers a reliable, all-weather service capable of significant energy savings over other intercity modes. [1993 c 381 § 1.]

47.79.020 Program established—Goals. The legislature finds that there is substantial public benefit to establishing a high-speed ground transportation program in this state. The program shall implement the recommendations of the high-speed ground transportation steering committee report dated October 15, 1992. The program shall be administered by the department of transportation in close cooperation with the utilities and transportation commission and affected cities and counties.

The high-speed ground transportation program shall have the following goals:

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(1) Implement high-speed ground transportation service offering top speeds over 150 m.p.h. between Everett and Portland, Oregon by 2020. This would be accomplished by meeting the intermediate objectives of a maximum travel time between downtown Portland and downtown Seattle of two hours and thirty minutes by the year 2000 and maximum travel time of two hours by the year 2010;

(2) Implement high-speed ground transportation service offering top speeds over 150 m.p.h. between Everett and Vancouver, B.C. by 2025;

(3) Implement high-speed ground transportation service offering top speeds over 150 m.p.h. between Seattle and Spokane by 2030.

The department of transportation shall, subject to legislative appropriation, implement such projects as necessary to achieve these goals in accordance with the implementation plans identified in RCW 47.79.030 and 47.79.040. [1993 c 381 § 2.]

47.79.030 Project priority—Funding sources. The legislature finds it important to develop public support and awareness of the benefits of high-speed ground transportation by developing high-quality intercity passenger rail service as a first step. This high-quality intercity passenger rail service shall be developed through incremental upgrading of the existing service. The department of transportation shall, subject to legislative appropriation, develop a prioritized list of projects to improve existing passenger rail service and begin new passenger rail service, to include but not be limited to:

- (1) Improvement of depots;
- (2) Improved grade crossing protection or grade crossing elimination;
- (3) Enhanced train signals to improve rail corridor capacity and increase train speeds;
- (4) Revised track geometry or additional trackage to improve ride quality and increase train speeds; and
- (5) Contract for new or improved service in accordance with federal requirements to improve service frequency.

Service enhancements and station improvements must be based on the extent to which local comprehensive plans contribute to the viability of intercity passenger rail service, including providing efficient connections with other transportation modes such as transit, intercity bus, and roadway networks. Before spending state moneys on these projects, the department of transportation shall seek federal, local, and private funding participation to the greatest extent possible. Funding priorities for station improvements must also be based on the level of local and private in-kind and cash contributions. [1993 c 381 § 3.]

47.79.040 Rail passenger plan. The legislature recognizes the need to plan for the high-speed ground transportation service and the high-quality intercity rail passenger service set forth in RCW 47.79.020 and 47.79.030. The department of transportation shall, subject to legislative appropriation, develop a rail passenger plan through the conduct of studies addressing, but not limited to, the following areas:

- (1) Refined ridership estimates;

(2) Preliminary location and environmental analysis on new corridors;

(3) Detailed station location assessments in concert with affected local jurisdictions;

(4) Coordination with the air transportation commission on statewide air transportation policy and its effects on high-speed ground transportation service; and

(5) Coordination with the governments of Oregon and British Columbia, when appropriate, on alignment, station location, and environmental analysis. [1993 c 381 § 4.]

47.79.050 Facility acquisition and management. Subject to appropriation, the department is authorized to acquire by purchase, lease, condemnation, gift, devise, bequest, grant, or exchange, title to or any interests or rights in real property adjacent to or used in association with state intercity passenger rail service which may include, but are not limited to, depots, platforms, parking areas, and maintenance facilities. The department is authorized to contract with a public or private entity for the operation, maintenance, and/or management of these facilities. [1999 c 253 § 1.]

47.79.060 Gifts. Subject to appropriation, the department is authorized to accept and expend or use gifts, grants, and donations for the benefit of any depot, platform, parking area, maintenance facility, or other associated rail facility. However, such an expenditure shall be for the public benefit of the state's intercity passenger rail service. [1999 c 253 § 2.]

47.79.070 Adjacent real property. Subject to appropriation, the department is authorized to exercise all the powers and perform all the duties necessary, convenient, or incidental to the planning, designing, constructing, improving, repairing, operating, and maintaining real property adjacent to or used in association with the state intercity passenger rail service which may include, but are not limited to, depots, platforms, parking areas, and maintenance facilities, even if such real property is owned or controlled by another entity. However, any expenditure of public funds for these purposes shall be directly related to public benefit of the state's intercity passenger rail service. The department shall enter into a written contract with the affected real property owners to secure the public's investment. [1999 c 253 § 3.]

47.79.110 King Street station—Findings. The legislature finds that a balanced, multimodal transportation system is an essential element of the state's infrastructure, and that effective rail passenger service is an integral part of a balanced, multimodal transportation system. The legislature further finds that the King Street railroad station is the key hub for both Puget Sound's intermodal passenger transportation system and the state's rail passenger system. The legislature recognizes that the redevelopment of the King Street railroad station depot, along with necessary and related properties, is critical to its continued functioning as a transportation hub and finds that innovative funding arrangements can materially assist in furthering the redevelopment at reduced public expense. [2001 c 62 § 1.]

Effective date—2001 c 62: "Due to the irrevocable expiration of federal and Amtrak funds critical to the redevelopment of the King Street railroad station on or before June 30, 2001, sections 1 through 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 18, 2001]." [2001 c 62 § 7.]

47.79.120 King Street station—Acquisition. The department may acquire, or contract to acquire, by purchase, lease, option to lease or purchase, condemnation, gift, devise, bequest, grant, or exchange of title, the King Street railroad station depot located in Seattle, or any interests or rights in it, and other real property and improvements adjacent to, or used in association with, the King Street railroad station depot. The property may include, but not be limited to, the depot, platforms, parking areas, pedestrian and vehicle access areas, and maintenance facilities. These properties, in the aggregate, will be known as the King Street railroad station. [2001 c 62 § 2.]

Effective date—2001 c 62: See note following RCW 47.79.110.

47.79.130 King Street station—Department's powers and duties. During all periods that the department contracts to own or lease some, or all, of the King Street railroad station properties, the department may exercise all the powers and perform all the duties necessary, convenient, or incidental for planning, designing, constructing, improving, repairing, renovating, restoring, operating, and maintaining the King Street railroad station properties. These powers also include authority to lease or sell, assign, sublease, or otherwise transfer all, or portions of, the King Street railroad station properties for transportation or other public or private purposes and to contract with other public or private entities for the operation, administration, maintenance, or improvement of the King Street railroad station properties after the department takes possession of some, or all, of the properties, as the secretary deems appropriate. If the department transfers any of its fee ownership interests in the King Street railroad station properties, proceeds from the transaction must be placed in an account that supports multimodal programs, but not into an account restricted by Article II, section 40 of the state Constitution. [2001 c 62 § 3.]

Effective date—2001 c 62: See note following RCW 47.79.110.

47.79.140 King Street station—Leases and contracts for multimodal terminal. To facilitate tax exempt financing for the acquisition and improvement of the King Street railroad station, the department may lease from or contract with public or private entities for the acquisition, lease, operation, maintenance, financing, renovation, restoration, or management of some, or all, of the King Street railroad station properties as a multimodal terminal that supports the state intercity passenger rail service. The leases or contracts are not subject to either chapter 39.94 or 43.82 RCW. The leases and contracts will expire no later than fifty years from the time they are executed, and at that time the department will either receive title or have the right to receive title to the financed property without additional obligation to compensate the owner of those properties for the acquisition of them. The secretary may take all actions necessary, convenient, or incidental to the financing. [2001 c 62 § 4.]

[Title 47 RCW—page 244]

Effective date—2001 c 62: See note following RCW 47.79.110.

47.79.150 King Street railroad station facility account. (1) The department may establish the King Street railroad station facility account as an interest-bearing local account. Receipts from the sources listed in subsection (2) of this section must be deposited into the account. Nothing in this section is a pledge of funds deposited to the account for repayment of tax exempt financing related to the King Street railroad station. The department may invest funds from the account as permitted by law and may enter into contracts with financial advisors as deemed necessary for that purpose. Only the secretary or the secretary's designee may authorize expenditures from the account.

(2) All funds appropriated to the King Street railroad station facility account by the legislature; all contributions, payments, grants, gifts, and donations to the account from other public or private entities; all receipts from departmental transactions involving capital facility sales, transfers, property leases and rents, incomes, and parking fees associated with the King Street railroad station; as well as all investment income associated with the account must be deposited into the King Street railroad station facility account for purposes specified in subsection (3) of this section.

(3) All funds deposited into the King Street railroad station facility account must be expended by the department solely to pay the following expenses:

- (a) Costs for management of the account;
- (b) Purchase and acquisition costs for King Street railroad station properties;
- (c) Payments, including incidental expenses, relating to the King Street railroad station depot as required by a lease or contract under RCW 47.79.140;
- (d) Maintenance and operating costs for the King Street railroad station properties; and
- (e) Capital improvement projects initiated by the department associated with, and for the benefit of, the King Street railroad station depot occurring after the date of the department's beneficial occupancy of the renovated King Street railroad station depot, and for capital improvement projects initiated at any time by the department for the benefit of King Street railroad station properties other than the depot including, but not limited to, improvements to associated platforms, parking areas, temporary buildings, maintenance facilities, pedestrian access, and other improvements essential to the operation of the station as a multimodal terminal.

(4) Nothing in this section is intended to restrict the right of the department from otherwise funding purchase, acquisition, capital improvement, maintenance, rental, operational, and other incidental costs relating to the King Street railroad station from appropriations and resources that are not designated for deposit in the King Street railroad station facility account. [2001 c 62 § 5.]

Effective date—2001 c 62: See note following RCW 47.79.110.

47.79.900 Effective date—1993 c 381. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 381 § 5.]

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Chapter 47.80 RCW

REGIONAL TRANSPORTATION
PLANNING ORGANIZATIONS

Sections

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47.80.010 Findings—Declaration. The legislature finds that while the transportation system in Washington is owned and operated by numerous public jurisdictions, it should function as one interconnected and coordinated system. Transportation planning, at all jurisdictional levels, should be coordinated with local comprehensive plans. Further, local jurisdictions and the state should cooperate to achieve both statewide and local transportation goals. To facilitate this coordination and cooperation among state and local jurisdictions, the legislature declares it to be in the state's interest to establish a coordinated planning program for regional transportation systems and facilities throughout the state. [1990 1st ex.s. c 17 § 53.]

47.80.011 Legislative intent. The legislature recognizes that recent legislative enactments have significantly added to the complexity of and to the potential for benefits from integrated transportation and comprehensive planning and that there is currently a unique opportunity for integration of local comprehensive plans and regional goals with state and local transportation programs. Further, approaches to transportation demand management initiatives and local and state transportation funding can be better coordinated to insure an efficient, effective transportation system that insures mobility and accessibility, and addresses community needs.

The legislature further finds that transportation and land use share a critical relationship that policy makers can better utilize to address regional strategies.

Prudent and cost-effective investment by the state and by local governments in highway facilities, local streets and arterials, rail facilities, marine facilities, nonmotorized transportation facilities and systems, public transit systems, transportation system management, transportation demand management, and the development of high capacity transit systems can help to effectively address mobility needs. Such investment can also enhance local and state objectives for effective comprehensive planning, economic development strategies, and clean air policies.

The legislature finds that addressing public initiatives regarding transportation and comprehensive planning necessitates an innovative approach. Improved integration between

transportation and comprehensive planning among public institutions, particularly in the state's largest metropolitan areas is considered by the state to be imperative, and to have significant benefit to the citizens of Washington. [1994 c 158 § 1.]

47.80.020 Regional transportation planning organizations authorized. The legislature hereby authorizes creation of regional transportation planning organizations within the state. Each regional transportation planning organization shall be formed through the voluntary association of local governments within a county, or within geographically contiguous counties. Each organization shall:

- (1) Encompass at least one complete county;
- (2) Have a population of at least one hundred thousand, or contain a minimum of three counties; and
- (3) Have as members all counties within the region, and at least sixty percent of the cities and towns within the region representing a minimum of seventy-five percent of the cities' and towns' population.

The state department of transportation must verify that each regional transportation planning organization conforms with the requirements of this section.

In urbanized areas, the regional transportation planning organization is the same as the metropolitan planning organization designated for federal transportation planning purposes. [1990 1st ex.s. c 17 § 54.]

47.80.023 Organization's duties. Each regional transportation planning organization shall have the following duties:

(1) Prepare and periodically update a transportation strategy for the region. The strategy shall address alternative transportation modes and transportation demand management measures in regional corridors and shall recommend preferred transportation policies to implement adopted growth strategies. The strategy shall serve as a guide in preparation of the regional transportation plan.

(2) Prepare a regional transportation plan as set forth in RCW 47.80.030 that is consistent with county-wide planning policies if such have been adopted pursuant to chapter 36.70A RCW, with county, city, and town comprehensive plans, and state transportation plans.

(3) Certify by December 31, 1996, that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region reflect the guidelines and principles developed pursuant to RCW 47.80.026, are consistent with the adopted regional transportation plan, and, where appropriate, conform with the requirements of RCW 36.70A.070.

(4) Where appropriate, certify that county-wide planning policies adopted under RCW 36.70A.210 and the adopted regional transportation plan are consistent.

(5) Develop, in cooperation with the department of transportation, operators of public transportation services and local governments within the region, a six-year regional transportation improvement program which proposes regionally significant transportation projects and programs and transportation demand management measures. The regional transportation improvement program shall be based on the

programs, projects, and transportation demand management measures of regional significance as identified by transit agencies, cities, and counties pursuant to RCW 35.58.2795, 35.77.010, and 36.81.121, respectively. The program shall include a priority list of projects and programs, project segments and programs, transportation demand management measures, and a specific financial plan that demonstrates how the transportation improvement program can be funded. The program shall be updated at least every two years for the ensuing six-year period.

(6) Designate a lead planning agency to coordinate preparation of the regional transportation plan and carry out the other responsibilities of the organization. The lead planning agency may be a regional organization, a component county, city, or town agency, or the appropriate Washington state department of transportation district office.

(7) Review level of service methodologies used by cities and counties planning under chapter 36.70A RCW to promote a consistent regional evaluation of transportation facilities and corridors.

(8) Work with cities, counties, transit agencies, the department of transportation, and others to develop level of service standards or alternative transportation performance measures. [1998 c 171 § 8; 1994 c 158 § 2.]

47.80.026 Comprehensive plans, transportation guidelines, and principles. Each regional transportation planning organization, with cooperation from component cities, towns, and counties, shall establish guidelines and principles by July 1, 1995, that provide specific direction for the development and evaluation of the transportation elements of comprehensive plans, where such plans exist, and to assure that state, regional, and local goals for the development of transportation systems are met. These guidelines and principles shall address at a minimum the relationship between transportation systems and the following factors: Concentration of economic activity, residential density, development corridors and urban design that, where appropriate, supports high capacity transit, freight transportation and port access, development patterns that promote pedestrian and nonmotorized transportation, circulation systems, access to regional systems, effective and efficient highway systems, the ability of transportation facilities and programs to retain existing and attract new jobs and private investment and to accommodate growth in demand, transportation demand management, joint and mixed use developments, present and future railroad right-of-way corridor utilization, and intermodal connections.

Examples shall be published by the organization to assist local governments in interpreting and explaining the requirements of this section. [1994 c 158 § 3.]

47.80.030 Regional transportation plan—Contents, review, use. (1) Each regional transportation planning organization shall develop in cooperation with the department of transportation, providers of public transportation and high capacity transportation, ports, and local governments within the region, adopt, and periodically update a regional transportation plan that:

(a) Is based on a least cost planning methodology that identifies the most cost-effective facilities, services, and programs;

(b) Identifies existing or planned transportation facilities, services, and programs, including but not limited to major roadways including state highways and regional arterials, transit and nonmotorized services and facilities, multimodal and intermodal facilities, marine ports and airports, railroads, and noncapital programs including transportation demand management that should function as an integrated regional transportation system, giving emphasis to those facilities, services, and programs that exhibit one or more of the following characteristics:

(i) Crosses member county lines;

(ii) Is or will be used by a significant number of people who live or work outside the county in which the facility, service, or project is located;

(iii) Significant impacts are expected to be felt in more than one county;

(iv) Potentially adverse impacts of the facility, service, program, or project can be better avoided or mitigated through adherence to regional policies;

(v) Transportation needs addressed by a project have been identified by the regional transportation planning process and the remedy is deemed to have regional significance; and

(vi) Provides for system continuity;

(c) Establishes level of service standards for state highways and state ferry routes, with the exception of transportation facilities of statewide significance as defined in RCW 47.06.140. These regionally established level of service standards for state highways and state ferries shall be developed jointly with the department of transportation, to encourage consistency across jurisdictions. In establishing level of service standards for state highways and state ferries, consideration shall be given for the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local commuters using state facilities;

(d) Includes a financial plan demonstrating how the regional transportation plan can be implemented, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques to finance needed facilities, services, and programs;

(e) Assesses regional development patterns, capital investment and other measures necessary to:

(i) Ensure the preservation of the existing regional transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit, railroad systems and corridors, and nonmotorized facilities; and

(ii) Make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods;

(f) Sets forth a proposed regional transportation approach, including capital investments, service improvements, programs, and transportation demand management

measures to guide the development of the integrated, multi-modal regional transportation system; and

(g) Where appropriate, sets forth the relationship of high capacity transportation providers and other public transit providers with regard to responsibility for, and the coordination between, services and facilities.

(2) The organization shall review the regional transportation plan biennially for currency and forward the adopted plan along with documentation of the biennial review to the state department of transportation.

(3) All transportation projects, programs, and transportation demand management measures within the region that have an impact upon regional facilities or services must be consistent with the plan and with the adopted regional growth and transportation strategies. [1998 c 171 § 9; 1994 c 158 § 4; 1990 1st ex.s. c 17 § 55.]

47.80.040 Transportation policy boards. Each regional transportation planning organization shall create a transportation policy board. Transportation policy boards shall provide policy advice to the regional transportation planning organization and shall allow representatives of major employers within the region, the department of transportation, transit districts, port districts, and member cities, towns, and counties within the region to participate in policy making. Any members of the house of representatives or the state senate whose districts are wholly or partly within the boundaries of the regional transportation planning organization are considered ex officio, nonvoting policy board members of the regional transportation planning organization. This does not preclude legislators from becoming full-time, voting board members. [2003 c 351 § 1; 1990 1st ex.s. c 17 § 56.]

47.80.050 Allocation of regional transportation planning funds. Biennial appropriations to the department of transportation to carry out the regional transportation planning program shall set forth the amounts to be allocated as follows:

(1) A base amount per county for each county within each regional transportation planning organization, to be distributed to the lead planning agency;

(2) An amount to be distributed to each lead planning agency on a per capita basis; and

(3) An amount to be administered by the department of transportation as a discretionary grant program for special regional planning projects, including grants to allow counties which have significant transportation interests in common with an adjoining region to also participate in that region's planning efforts. [1990 1st ex.s. c 17 § 57.]

47.80.060 Executive board membership. In order to qualify for state planning funds available to regional transportation planning organizations, the regional transportation planning organizations containing any county with a population in excess of one million shall provide voting membership on its executive board to the state transportation commission, the state department of transportation, and the three largest public port districts within the region as determined by gross operating revenues. It shall further assure that at

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least fifty percent of the county and city local elected officials who serve on the executive board also serve on transit agency boards or on a regional transit authority. [1992 c 101 § 31.]

Section headings not part of law—Severability—Effective date—1992 c 101: See RCW 81.112.900 through 81.112.902.

47.80.070 Statewide consistency. In order to ensure statewide consistency in the regional transportation planning process, the state department of transportation, in conformance with chapter 34.05 RCW, shall:

(1) In cooperation with regional transportation planning organizations, establish minimum standards for development of a regional transportation plan;

(2) Facilitate coordination between regional transportation planning organizations; and

(3) Through the regional transportation planning process, and through state planning efforts as required by RCW 47.01.071, identify and jointly plan improvements and strategies within those corridors important to moving people and goods on a regional or statewide basis. [1994 c 158 § 5.]

47.80.080 Majority vote on state matters. When voting on matters solely affecting Washington state, a regional transportation planning organization must obtain a majority vote of the Washington residents serving as members of the regional transportation planning organization before a matter may be adopted. [2003 c 351 § 2.]

47.80.900 Severability—1990 1st ex.s. c 17. See RCW 36.70A.900.

47.80.901 Part, section headings not law—1990 1st ex.s. c 17. See RCW 36.70A.901.

47.80.902 Captions not part of law—1994 c 158. Captions used in this act do not constitute any part of the law. [1994 c 158 § 11.]

47.80.903 Severability—1994 c 158. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 158 § 12.]

47.80.904 Effective date—1994 c 158. This act shall take effect July 1, 1994. [1994 c 158 § 13.]

Chapter 47.82 RCW AMTRAK

Sections

47.82.010	Service improvement program.
47.82.020	Depot upgrading.
47.82.030	Service extension.
47.82.040	Coordination with other rail systems and common carriers.
47.82.900	Construction—Severability—Headings—1990 c 43.

47.82.010 Service improvement program. The department, in conjunction with local jurisdictions, shall coordinate as appropriate with the designated metropolitan

planning organizations to develop a program for improving Amtrak passenger rail service. The program may include:

- (1) Determination of the appropriate level of Amtrak passenger rail service;
- (2) Implementation of higher train speeds for Amtrak passenger rail service, where safety considerations permit;
- (3) Recognition, in the state's long-range planning process, of potential higher speed intercity passenger rail service, while monitoring socioeconomic and technological conditions as indicators for higher speed systems; and
- (4) Identification of existing intercity rail rights of way which may be used for public transportation corridors in the future. [1990 c 43 § 36.]

47.82.020 Depot upgrading. The department shall, when feasible, assist local jurisdictions in upgrading Amtrak depots. Multimodal use of these facilities shall be encouraged. [1990 c 43 § 37.]

47.82.030 Service extension. (1) The department, in conjunction with local jurisdictions, shall coordinate as appropriate with designated metropolitan and provincial transportation organizations to pursue resumption of Amtrak service from Seattle to Vancouver, British Columbia, via Everett, Mount Vernon, and Bellingham.

(2) The department, in conjunction with local jurisdictions, shall study potential Amtrak service on the following routes:

- (a) Daytime Spokane-Wenatchee-Everett-Seattle service;
- (b) Daytime Spokane-Tri-Cities-Vancouver-Portland service;
- (c) Tri-Cities-Yakima-Ellensburg-Seattle service, if the Stampede Pass route is reopened; and
- (d) More frequent Portland-Vancouver-Kelso-Centralia-Olympia-Tacoma-Seattle service or increments thereof. [1990 c 43 § 38.]

47.82.040 Coordination with other rail systems and common carriers. The department, with other state and local agencies shall coordinate as appropriate with designated metropolitan planning organizations to provide public information with respect to common carrier passenger transportation. This information may include maps, routes, and schedules of passenger rail service, local transit agencies, air carriers, private ground transportation providers, and international, state, and local ferry services.

The state shall continue its cooperative relationship with Amtrak and Canadian passenger rail systems. [1990 c 43 § 39.]

47.82.900 Construction—Severability—Headings—1990 c 43. See notes following RCW 81.100.010.

Chapter 47.98 RCW CONSTRUCTION

Sections

- 47.98.010 Continuation of existing law.
47.98.020 Provisions to be construed in pari materia.

- 47.98.030 Title, chapter, section headings not part of law.
47.98.040 Invalidation of part of title not to affect remainder.
47.98.041 Severability—1963 ex.s. c 3.
47.98.042 Severability—1965 ex.s. c 170.
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47.98.045 Severability—1969 ex.s. c 281.
47.98.050 Repeals and saving.
47.98.060 Emergency—1961 c 13.
47.98.070 Federal requirements.
47.98.080 Severability—1977 ex.s. c 151.
47.98.090 Liberal construction.

47.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. Nothing in this 1961 reenactment of this title shall be construed as authorizing any new bond issues or new or additional appropriations of moneys but the bond issue authorizations herein contained shall be construed only as continuations of bond issues authorized by prior laws herein repealed and reenacted, and the appropriations of moneys herein contained are continued herein for historical purposes only and this act shall not be construed as a reappropriation thereof and no appropriation contained herein shall be deemed to be extended or revived hereby and such appropriation shall lapse or shall have lapsed in accordance with the original enactment: PROVIDED, That this act shall not operate to terminate, extend, or otherwise affect any appropriation for the biennium commencing July 1, 1959 and ending June 30, 1961. [1961 c 13 § 47.98.010.]

47.98.020 Provisions to be construed in pari materia. The provisions of this title shall be construed in pari materia even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title shall also be construed in pari materia with the provisions of Title 46 RCW, and with other laws relating to highways, roads, streets, bridges, ferries and vehicles. This section shall not operate retroactively. [1961 c 13 § 47.98.020.]

47.98.030 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 13 § 47.98.030.]

47.98.040 Invalidation of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 13 § 47.98.040.]

47.98.041 Severability—1963 ex.s. c 3. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1963 ex.s. c 3 § 57.]

47.98.042 Severability—1965 ex.s. c 170. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 170 § 70.]

47.98.043 Severability—1967 ex.s. c 145. If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 145 § 73.]

47.98.044 Severability—1967 c 108. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 108 § 14.]

47.98.045 Severability—1969 ex.s. c 281. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 281 § 64.]

47.98.050 Repeals and saving. See 1961 c 13 § 47.98.050.

47.98.060 Emergency—1961 c 13. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing institutions and shall take effect immediately: PROVIDED, That the effective date of sections *47.16.160, 47.20.110, and 47.20.380 shall be July 1, 1961. [1961 c 13 § 47.98.060.]

***Reviser's note:** RCW 47.16.160, 47.20.110, and 47.20.380 were repealed by 1970 ex.s. c 51.

47.98.070 Federal requirements. If any part of this title or any section of this 1977 amendatory act is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds to the state, or to any department or agencies thereof, such conflicting part or section is declared to be inoperative solely to the extent of the conflict. No such ruling shall affect the operation of the remainder of the act. Any internal reorganization carried out under the terms of this title or any section of this 1977 amendatory act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1977 ex.s. c 151 § 76.]

47.98.080 Severability—1977 ex.s. c 151. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 151 § 77.]

47.98.090 Liberal construction. The rule of strict construction shall have no application to this title, and it shall be liberally construed in order to carry out the objectives for which it is designed. Any ambiguities arising from its inter-

pretation should be resolved consistently with the broad purposes set forth in *RCW 47.01.011. [1977 ex.s. c 151 § 78.]

***Reviser's note:** RCW 47.01.011 was decodified pursuant to 1985 c 6 § 26.

Title 48

INSURANCE

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48.01.270	PACE programs—Exemption.

48.01.010 Short title. Title 48 RCW constitutes the insurance code. [1975 1st ex.s. c 266 § 2; 1947 c 79 § .01.01; Rem. Supp. 1947 § 45.01.01.]

Severability—1975 1st ex.s. c 266: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 266 § 21.]

48.01.020 Scope of code. All insurance and insurance transactions in this state, or affecting subjects located wholly or in part or to be performed within this state, and all persons having to do therewith are governed by this code. [1947 c 79 § .01.02; Rem. Supp. 1947 § 45.01.02.]

48.01.030 Public interest. The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance. [1995 c 285 § 16; 1947 c 79 § .01.03; Rem. Supp. 1947 § 45.01.03.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.01.035 "Developmental disability" defined. The term "developmental disability" as used in this title means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological condition closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual. [1985 c 264 § 1.]

48.01.040 "Insurance" defined. Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. [1947 c 79 § .01.04; Rem. Supp. 1947 § 45.01.04.]

48.01.050 "Insurer" defined. "Insurer" as used in this code includes every person engaged in the business of making contracts of insurance, other than a fraternal benefit soci-

ety. A reciprocal or interinsurance exchange is an "insurer" as used in this code. Two or more hospitals that join and organize as a mutual corporation pursuant to chapter 24.06 RCW for the purpose of insuring or self-insuring against liability claims, including medical liability, through a contributing trust fund are not an "insurer" under this code. Two or more local governmental entities, under any provision of law, that join together and organize to form an organization for the purpose of jointly self-insuring or self-funding are not an "insurer" under this code. Two or more persons engaged in the business of commercial fishing who enter into an arrangement with other such persons for the pooling of funds to pay claims or losses arising out of loss or damage to a vessel or machinery used in the business of commercial fishing and owned by a member of the pool are not an "insurer" under this code. [2003 c 248 § 1; 1990 c 130 § 1; 1985 c 277 § 9; 1979 ex.s. c 256 § 13; 1975-'76 2nd ex.s. c 13 § 1; 1947 c 79 § .01.05; Rem. Supp. 1947 § 45.01.05.]

Retrospective application—1985 c 277: "This act applies retrospectively to group self-funded plans formed on or after January 1, 1983." [1985 c 277 § 10.]

"Domestic," "foreign," "alien" insurers defined: RCW 48.05.010.

Merger, rehabilitation, liquidation situations—"Insurer" defined: RCW 48.31.020, 48.99.010.

"Reciprocal insurance, insurer" defined: RCW 48.10.010, 48.10.020.

48.01.053 "Issuer" defined. "Issuer" as used in this title and chapter 26.18 RCW means insurer, fraternal benefit society, certified health plan, health maintenance organization, and health care service contractor. [1995 c 34 § 1.]

48.01.060 "Insurance transaction" defined. "Insurance transaction" includes any:

- (1) Solicitation.
- (2) Negotiations preliminary to execution.
- (3) Execution of an insurance contract.
- (4) Transaction of matters subsequent to execution of the contract and arising out of it.
- (5) Insuring. [1947 c 79 § .01.06; Rem. Supp. 1947 § 45.01.06.]

48.01.070 "Person" defined. "Person" means any individual, company, insurer, association, organization, reciprocal or interinsurance exchange, partnership, business trust, or corporation. [1947 c 79 § .01.07; Rem. Supp. 1947 § 45.01.07.]

48.01.080 Penalties. Except as otherwise provided in this code, any person violating any provision of this code is guilty of a gross misdemeanor and will, upon conviction, be fined not less than ten dollars nor more than one thousand dollars, or imprisoned for not more than one year, or both, in addition to any other penalty or forfeiture provided herein or otherwise by law. [2003 c 250 § 1; 1947 c 79 § .01.08; Rem. Supp. 1947 § 45.01.08.]

Severability—2003 c 250: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 250 § 15.]

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48.01.090 Severability—1947 c 79. If any provision of this code or the application thereof to any circumstance is held invalid, the remainder of the code, or the application of the provision to other circumstances, is not affected thereby. [1947 c 79 § .01.09; Rem. Supp. 1947 § 45.01.09.]

48.01.100 Existing officers. Continuation by this code of any office existing under any act repealed herein preserves the tenure of the individual holding the office at the effective date of this code. [1947 c 79 § .01.10; Rem. Supp. 1947 § 45.01.10.]

48.01.110 Existing licenses. Every license or certificate of authority in force immediately prior to the effective date of this code and existing under any act herein repealed is valid until its original expiration date, unless earlier terminated in accordance with this code. [1947 c 79 § .01.11; Rem. Supp. 1947 § 45.01.11.]

48.01.120 Existing insurance forms. Every form of insurance document in use at the effective date of this code in accordance with the commissioner's approval pursuant to any act herein repealed, may continue to be so used unless the commissioner otherwise prescribes in accordance with this code. [1947 c 79 § .01.12; Rem. Supp. 1947 § 45.01.12.]

48.01.130 Existing actions, violations. No action or proceeding commenced, and no violation of law existing, under any act herein repealed is affected by the repeal, but all procedure hereafter taken in reference thereto shall conform to this code as far as possible. [1947 c 79 § .01.13; Rem. Supp. 1947 § 45.01.13.]

48.01.140 Headings. The meaning or scope of any provision is not affected by chapter, section, or paragraph headings. [1947 c 79 § .01.14; Rem. Supp. 1947 § 45.01.14.]

48.01.150 Particular provisions prevail. Provisions of this code relating to a particular kind of insurance or a particular type of insurer or to a particular matter prevail over provisions relating to insurance in general or insurers in general or to such matter in general. [1947 c 79 § .01.15; Rem. Supp. 1947 § 45.01.15.]

48.01.160 Repealed acts not revived. Repeal by this code of any act shall not revive any law heretofore repealed or superseded. [1947 c 79 § .01.16; Rem. Supp. 1947 § 45.01.16.]

48.01.170 Effective date—1947 c 79. This code shall become effective on the first day of October, 1947. [1947 c 79 § .01.17; Rem. Supp. 1947 § 45.01.17.]

48.01.180 Adopted children—Insurance coverage. (1) A child of an insured, subscriber, or enrollee shall be considered a dependent child for insurance purposes under this title upon assumption by the insured, subscriber, or enrollee of a legal obligation for total or partial support of a child in anticipation of adoption of the child. Upon the termination of

such legal obligations, the child shall not be considered a dependent child for insurance purposes.

(2) Every policy or contract providing coverage for health benefits to a resident of this state shall provide coverage for dependent children placed for adoption under the same terms and conditions as apply to the natural, dependent children of the insured, subscriber, or enrollee whether or not the adoption has become final.

(3) No policy or contract may restrict coverage of any dependent child adopted by, or placed for adoption with, an insured, subscriber, or enrollee solely on the basis of a preexisting condition of the child at the time that the child would otherwise become eligible for coverage under the plan if the adoption or placement for adoption occurs while the insured, subscriber, or enrollee is eligible for coverage under the plan. [1995 c 34 § 4; 1986 c 140 § 1.]

Effective date, application—1986 c 140: "This act shall take effect January 1, 1987, and shall apply to all contracts or agreements issued, renewed, or delivered on or after January 1, 1987." [1986 c 140 § 6.]

Severability—1986 c 140: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 140 § 7.]

48.01.190 Immunity from civil liability. (1) Any person who files reports, or furnishes other information, required under Title 48 RCW, required by the commissioner under authority granted by Title 48 RCW, useful to the commissioner in the administration of Title 48 RCW, or furnished to the National Association of Insurance Commissioners at the request of the commissioner or pursuant to Title 48 RCW, shall be immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

(2) The commissioner and the National Association of Insurance Commissioners, and the agents and employees of each, are immune from liability in any civil action or suit arising from the publication of any report or bulletin or dissemination of information related to the official activities of the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

(3) Any licensee under chapter 48.17 RCW and any trade association of the licensees under chapter 48.15 RCW, and any officer, director, employee, agent, or committee of the licensee or association who furnishes information to or for the commissioner or to or for the association regarding unauthorized insurers or regarding attempts by any person to place or actual placement by any person of business with the insurers, whether in compliance with chapter 48.15 RCW or not, shall be immune from each and every kind of liability in any civil action or suit arising in whole or in part from the information or from the furnishing of the information.

(4) The immunity granted by this section is in addition to any common law or statutory privilege or immunity enjoyed by such person, and nothing in this section is intended to abrogate or modify in any way such common law or statutory privilege or immunity. [1995 c 10 § 1; 1987 c 51 § 1.]

48.01.220 Mental health regional support networks—Limited exemption. The activities and operations of mental health regional support networks, to the extent they pertain to the operation of a medical assistance managed care system in accordance with chapters 71.24 and 74.09 RCW, are exempt from the requirements of this title. [1993 c 462 § 104.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.01.230 Eligibility for coverage or making payments may not be contingent on eligibility for medical assistance. An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not consider the availability of eligibility for medical assistance in this state under medical assistance, RCW 74.09.500, or any other state under 42 U.S.C. Sec. 1396a, section 1902 of the social security act, in considering eligibility for coverage or making payments under its plan for eligible enrollees, subscribers, policyholders, or certificate holders. [1995 c 34 § 2.]

48.01.235 Enrollment of a child under the health plan of the child's parent—Requirements—Restrictions.

(1) An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not deny enrollment of a child under the health plan of the child's parent on the grounds that:

- (a) The child was born out of wedlock;
- (b) The child is not claimed as a dependent on the parent's federal tax return; or
- (c) The child does not reside with the parent or in the issuer's, or insured or self funded employee welfare benefit plan's service area.

(2) Where a child has health coverage through an issuer, or an insured or self funded employee welfare benefit plan of a noncustodial parent, the issuer, or insured or self funded employee welfare benefit plan, shall:

- (a) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;
- (b) Permit the provider or the custodial parent to submit claims for covered services without the approval of the noncustodial parent. If the provider submits the claim, the provider will obtain the custodial parent's assignment of insurance benefits or otherwise secure the custodial parent's approval.

For purposes of this subsection the department of social and health services as the state medicaid agency under RCW 74.09.500 may reassign medical insurance rights to the provider for custodial parents whose children are eligible for services under RCW 74.09.500; and

(c) Make payments on claims submitted in accordance with (b) of this subsection directly to the custodial parent, to the provider, or to the department of social and health services as the state medicaid agency under RCW 74.09.500.

(3) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by

policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's service area.

(4) Where a parent is required by a court order to provide health coverage for a child, and the parent is eligible for family health coverage, the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(b) Enroll the child under family coverage upon application of the child's other parent, department of social and health services as the state medicaid agency under RCW 74.09.500, or child support enforcement program, if the parent is enrolled but fails to make application to obtain coverage for such child; and

(c) Not disenroll, or eliminate coverage of, such child who is otherwise eligible for the coverage unless the issuer or insured or self funded employee welfare benefit plan is provided satisfactory written evidence that:

(i) The court order is no longer in effect; or

(ii) The child is or will be enrolled in comparable health coverage through another issuer, or insured or self funded employee welfare benefit plan, which will take effect not later than the effective date of disenrollment.

(5) An issuer, or insured or self funded employee welfare benefit plan, that has been assigned the rights of an individual eligible for medical assistance under medicaid and coverage for health benefits from the issuer, or insured or self funded employee welfare benefit plan, may not impose requirements on the department of social and health services that are different from requirements applicable to an agent or assignee of any other individual so covered. [2003 c 248 § 2; 1995 c 34 § 3.]

48.01.250 Assistance or services in exchange for dues, assessments, or periodic or lump-sum payments—Certificate of authority required—Certain travel or automobile services excepted—Violations. (1) Any person, firm, partnership, corporation, or association promising, in exchange for dues, assessments, or periodic or lump-sum payments, to furnish members or subscribers with assistance in matters relating to trip cancellation, bail bond service or any accident, sickness, or death insurance benefit program must:

(a) Have a certificate of authority, issued by the insurance commissioner, authorizing the person, firm, partnership, corporation, or association to sell that coverage in this state; or

(b) Purchase the service or insurance from a company that holds a certificate of authority, issued by the insurance commissioner, authorizing the company to sell that coverage in this state. If coverage cannot be procured from an authorized insurer holding a certificate of authority issued by the insurance commissioner, insurance may be procured from an unauthorized insurer subject to chapter 48.15 RCW.

(2) Travel or automobile related products or assistance including but not limited to community traffic safety service, travel and touring service, theft or reward service, map service, towing service, emergency road service, lockout or lost key service, reimbursement of emergency expenses due to a

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vehicle disabling accident, or legal fee reimbursement service in the defense of traffic offenses shall not be considered to be insurance for the purposes of Title 48 RCW.

(3) Violation of this section is subject to the enforcement provisions of RCW 48.02.080 and to the hearing and appeal provisions of chapter 48.04 RCW. [1998 c 303 § 1.]

48.01.260 Health benefit plans—Carriers—Clarification. (1) Except as required in RCW 48.21.045, 48.44.023, and 48.46.066, nothing in this title shall be construed to require a carrier, as defined in RCW 48.43.005, to offer any health benefit plan for sale.

(2) Nothing in this title shall prohibit a carrier as defined in RCW 48.43.005 from ceasing sale of any or all health benefit plans to new applicants if the closed plans are closed to all new applicants.

(3) This section is intended to clarify, and not modify, existing law. [2000 c 79 § 40.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.01.270 PACE programs—Exemption. The activities and operations of PACE programs, as defined in RCW 74.09.523 and as authorized under sections 1894, 1905(a), and 1934 of the social security act, when registered, certified, licensed, or otherwise recognized or designated as a PACE program by the Washington state department of social and health services, are exempt from the requirements of this title. [2001 c 191 § 3.]

Finding—Effective date—2001 c 191: See notes following RCW 74.09.523.

Chapter 48.02 RCW

INSURANCE COMMISSIONER

Sections

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Salary of insurance commissioner: RCW 43.03.010.

48.02.010 Insurance commissioner. (1) There shall be an insurance commissioner of this state who shall be elected at the time and in the manner that other state officers are elected.

(2) The commissioner in office at the effective date of this code shall continue in office for the remainder of the term for which he was elected and until his successor is duly elected and qualified.

(3) "Commissioner," where used in this code, means the insurance commissioner of this state. [1947 c 79 § .02.01; Rem. Supp. 1947 § 45.02.01.]

48.02.020 Term of office. The term of office of the commissioner shall be four years, commencing on the Wednesday after the second Monday in January after his election. [1947 c 79 § .02.02; Rem. Supp. 1947 § 45.02.02.]

48.02.030 Bond. Before entering upon his duties the commissioner shall execute a bond to the state in the sum of twenty-five thousand dollars, to be approved by the state treasurer and the attorney general, conditioned upon the faithful performance of the duties of his office. [1947 c 79 § .02.03; Rem. Supp. 1947 § 45.02.03.]

48.02.050 Seal. The official seal of the commissioner shall be a vignette of George Washington, with the words "Insurance Commissioner, State of Washington" surrounding the vignette. [1947 c 79 § .02.05; Rem. Supp. 1947 § 45.02.05.]

48.02.060 General powers and duties. (1) The commissioner shall have the authority expressly conferred upon him by or reasonably implied from the provisions of this code.

(2) The commissioner shall execute his duties and shall enforce the provisions of this code.

(3) The commissioner may:

(a) Make reasonable rules and regulations for effectuating any provision of this code, except those relating to his election, qualifications, or compensation. No such rules and regulations shall be effective prior to their being filed for public inspection in the commissioner's office.

(b) Conduct investigations to determine whether any person has violated any provision of this code.

(c) Conduct examinations, investigations, hearings, in addition to those specifically provided for, useful and proper for the efficient administration of any provision of this code. [1947 c 79 § .02.06; Rem. Supp. 1947 § 45.02.06.]

48.02.065 Confidentiality of documents, materials, or other information. (1) Documents, materials, or other information as described in subsection (5) of this section are confidential by law and privileged, are not subject to public disclosure under chapter 42.17 RCW, and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

The confidentiality and privilege created by this section and RCW 42.17.31916 applies only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(b) May receive documents, materials, or information, including otherwise either confidential or privileged, or both, documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities and shall maintain as confidential and privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Documents, materials, or information, which is either confidential or privileged, or both, which has been provided to the commissioner by (a) the national association of insurance commissioners and its affiliates and subsidiaries, (b) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities, or (c) agencies of this state, is confidential and privileged only if the documents, materials, or information is protected from disclosure by the applicable laws of the jurisdiction that is the source of the document, material, or information. [2001 c 57 § 1.]

48.02.080 Enforcement. (1) The commissioner may prosecute an action in any court of competent jurisdiction to enforce any order made by him pursuant to any provision of this code.

(2) If the commissioner has cause to believe that any person has violated any penal provision of this code or of other laws relating to insurance he shall certify the facts of the vio-

lation to the public prosecutor of the jurisdiction in which the offense was committed.

(3) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the commissioner, he may:

(a) issue a cease and desist order; and/or

(b) bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof.

(4) The attorney general and the several prosecuting attorneys throughout the state shall prosecute or defend all proceedings brought pursuant to the provisions of this code when requested by the commissioner. [1967 c 150 § 1; 1947 c 79 § .02.08; Rem. Supp. 1947 § 45.02.08.]

48.02.090 Deputies—Employees. (1) The commissioner may appoint a chief deputy commissioner, who shall have power to perform any act or duty conferred upon the commissioner. The chief deputy commissioner shall take and subscribe the same oath of office as the commissioner, which oath shall be endorsed upon the certificate of his appointment and filed in the office of the secretary of state.

(2) The commissioner may appoint additional deputy commissioners for such purposes as he may designate.

(3) The commissioner shall be responsible for the official acts of his deputies, and may revoke at will the appointment of any deputy.

(4) The commissioner may employ examiners, and such actuarial, technical, and administrative assistants and clerks as he may need for proper discharge of his duties.

(5) The commissioner, or any deputy or employee of the commissioner, shall not be interested, directly or indirectly, in any insurer except as a policyholder; except, that as to such matters wherein a conflict of interests does not exist on the part of any such person, the commissioner may employ insurance actuaries or other technicians who are independently practicing their professions even though such persons are similarly employed by insurers.

(6) The commissioner may require any deputy or employee to be bonded as he shall deem proper but not to exceed in amount the sum of twenty-five thousand dollars. The cost of any such bond shall be borne by the state. [1949 c 190 § 1; 1947 c 79 § .02.09; Rem. Supp. 1949 § 45.02.09.]

48.02.100 Commissioner may delegate authority. Any power or duty vested in the commissioner by any provision of this code may be exercised or discharged by any deputy, assistant, examiner, or employee of the commissioner acting in his name and by his authority. [1947 c 79 § .02.10; Rem. Supp. 1947 § 45.02.10.]

48.02.110 Office. The commissioner shall have an office at the state capital, and may maintain such offices elsewhere in this state as he may deem necessary. [1947 c 79 § .02.11; Rem. Supp. 1947 § 45.02.11.]

48.02.120 Records. (1) The commissioner shall preserve in permanent form records of his or her proceedings, hearings, investigations, and examinations, and shall file such records in his or her office.

(2) The records of the commissioner and insurance filings in his or her office shall be open to public inspection, except as otherwise provided by this code.

(3) Actuarial formulas, statistics, and assumptions submitted in support of a rate or form filing by an insurer, health care service contractor, or health maintenance organization or submitted to the commissioner upon his or her request shall be withheld from public inspection in order to preserve trade secrets or prevent unfair competition. [1985 c 264 § 2; 1979 ex.s. c 130 § 1; 1947 c 79 § .02.12; Rem. Supp. 1947 § 45.02.12.]

48.02.122 Filings or actions affecting corporate or company name—Notice to secretary of state. Whenever any documents are filed with the insurance commissioner which affect a corporate or company name, the insurance commissioner shall immediately notify the secretary of state of the filing. If any other action is taken by the insurance commissioner which affects a corporate or company name, the insurance commissioner shall immediately notify the secretary of state of the action. The insurance commissioner shall cooperate with the secretary of state to ascertain that there is no duplication of corporate or company names. [1998 c 23 § 19.]

48.02.130 Certificates—Copies—Evidentiary effect. (1) Any certificate or license issued by the commissioner shall bear the seal of his office.

(2) Copies of records or documents in his office certified to by the commissioner shall be received as evidence in all courts in the same manner and to the same effect as if they were the originals.

(3) When required for evidence in court, the commissioner shall furnish his certificate as to the authority of an insurer or other licensee in this state on any particular date, and the court shall receive the certificate in lieu of the commissioner's testimony. [1947 c 79 § .02.13; Rem. Supp. 1947 § 45.02.13.]

48.02.140 Interstate cooperation. (1) The commissioner shall to the extent he deems useful for the proper discharge of his responsibilities under the provisions of this code:

(a) Consult and cooperate with the public officials having supervision over insurance in other states.

(b) Share jointly with other states in the employment of actuaries, statisticians, and other insurance technicians whose services or the products thereof are made available and are useful to the participating states and to the commissioner.

(c) Share jointly with other states in establishing and maintaining offices and clerical facilities for purposes useful to the participating states and to the commissioner.

(2) All arrangements made jointly with other states under items (b) and (c) of subsection (1) of this section shall be in writing executed on behalf of this state by the commissioner. Any such arrangement, as to participation of this state therein, shall be subject to termination by the commissioner at any time upon reasonable notice.

(3) For the purposes of this code "National Association of Insurance Commissioners" means that voluntary organiza-

tion of the public officials having supervision of insurance in the respective states, districts, and territories of the United States, whatever other name such organization may hereafter adopt, and in the affairs of which each of such public officials is entitled to participate subject to the constitution and bylaws of such organization. [1947 c 79 § .02.14; Rem. Supp. 1947 § 45.02.14.]

48.02.150 Supplies—"Convention blanks." The commissioner shall purchase at the expense of the state and in the manner provided by law:

(1) Printing, books, reports, furniture, equipment, and supplies as he deems necessary to the proper discharge of his duties under this code.

(2) "Convention form" insurers' annual statement blanks, which he may purchase from any printer manufacturing the forms for the various states. [1947 c 79 § .02.15; Rem. Supp. 1947 § 45.02.15.]

48.02.160 Special duties. The commissioner shall:

(1) Obtain and publish for the use of courts and appraisers throughout the state, tables showing the average expectancy of life and values of annuities and of life and term estates.

(2) Disseminate information concerning the insurance laws of this state.

(3) Provide assistance to members of the public in obtaining information about insurance products and in resolving complaints involving insurers and other licensees. [1988 c 248 § 1; 1947 c 79 § .02.16; Rem. Supp. 1947 § 45.02.16.]

48.02.170 Annual report. The commissioner shall, as soon as accurate preparation enables, prepare a report of his official transactions during the preceding fiscal year, containing information relative to insurance as the commissioner deems proper. [1987 c 505 § 53; 1977 c 75 § 69; 1947 c 79 § .02.17; Rem. Supp. 1947 § 45.02.17.]

48.02.180 Publication of insurance code and related statutes, manuals, etc.—Distribution—Sale. (1) In addition to such publications as are otherwise authorized under this code, the commissioner may from time to time prepare and publish:

(a) Booklets containing the insurance code, or supplements thereto, and such related statutes as the commissioner deems suitable and useful for inclusion in an appendix of such booklet or supplement.

(b) Manuals and other material relative to examinations for licensing as provided in chapter 48.17 RCW.

(2) The commissioner may furnish copies of the insurance code, supplements thereto, and related statutes referred to in (1)(a) of this section free of charge to public offices and officers in this state concerned therewith, to public officials of other states and jurisdictions having supervision of insurance, to the library of congress, and to officers of the armed forces of the United States of America located at military installations in this state who are concerned with insurance transactions at or involving such military installations.

(3) Except as provided in subsection (2) of this section, the commissioner shall sell copies of the insurance code, supplements thereto, examination manuals, and materials as referred to in subsection (1) of this section, at a reasonable price, fixed by the commissioner, in amount not less than the cost of publication, handling, and distribution thereof. The commissioner shall promptly deposit all funds received by him pursuant to this subsection with the state treasurer to the credit of the general fund. For appropriation purposes, such funds received and deposited by the commissioner shall be treated as a recovery of a previous expenditure. [1981 c 339 § 1; 1977 c 75 § 70; 1959 c 225 § 1.]

48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Contributions by insurance organizations, fees. (1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state and every health care service contractor or [self-funded] multiple employer welfare arrangement registered to do business in this state. "Class one" organizations shall consist of all insurers as defined in RCW 48.01.050. "Class two" organizations shall consist of all organizations registered under provisions of chapter 48.44 RCW. "Class three" organizations shall consist of self-funded multiple employer welfare arrangements as defined in RCW 48.125.010.

(b)(i) "Receipts" means (A) net direct premiums consisting of direct gross premiums, as defined in RCW 48.18.170, paid for insurance written or renewed upon risks or property resident, situated, or to be performed in this state, less return premiums and premiums on policies not taken, dividends paid or credited to policyholders on direct business, and premiums received from policies or contracts issued in connection with qualified plans as defined in RCW 48.14.021, and (B) prepayments to health care service contractors as set forth in RCW 48.44.010(3) or participant contributions to self-funded multiple employer welfare arrangements as defined in RCW 48.125.010 less experience rating credits, dividends, prepayments returned to subscribers, and payments for contracts not taken.

(ii) Participant contributions, under chapter 48.125 RCW, used to determine the receipts in this state under this section shall be determined in the same manner as premiums taxable in this state are determined under RCW 48.14.090.

(2) The annual cost of operating the office of insurance commissioner shall be determined by legislative appropriation. A pro rata share of the cost shall be charged to all organizations. Each class of organization shall contribute sufficient in fees to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) Fees charged shall be calculated separately for each class of organization. The fee charged each organization shall be that portion of the cost of operating the insurance commissioner's office, for that class of organization, for the ensuing fiscal year that is represented by the organization's portion of the receipts collected or received by all organizations within that class on business in this state during the previous calendar year: PROVIDED, That the fee shall not exceed one-eighth of one percent of receipts: PROVIDED

FURTHER, That the minimum fee shall be one thousand dollars.

(4) The commissioner shall annually, on or before June 1, calculate and bill each organization for the amount of its fee. Fees shall be due and payable no later than June 15 of each year: PROVIDED, That if the necessary financial records are not available or if the amount of the legislative appropriation is not determined in time to carry out such calculations and bill such fees within the time specified, the commissioner may use the fee factors for the prior year as the basis for the fees and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. The penalties for failure to pay fees when due shall be the same as the penalties for failure to pay taxes pursuant to RCW 48.14.060. The fees required by this section are in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) All moneys collected shall be deposited in the insurance commissioner's regulatory account in the state treasury which is hereby created.

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year shall be carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and shall be used to reduce future fees. During the 2003-2005 fiscal biennium, the legislature may transfer from the insurance commissioner's regulatory account to the state general fund such amounts as reflect excess fund balance in the account. [2004 c 260 § 22; 2003 1st sp.s. c 25 § 923; 2002 c 371 § 913; 1987 c 505 § 54; 1986 c 296 § 7.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Chapter 48.03 RCW EXAMINATIONS

Sections

48.03.010	Examination of insurers, bureaus.
48.03.020	Examination of agents, managers, promoters.
48.03.025	Examiners—Scope of examination—Examiners' handbook.
48.03.030	Access to records on examination—Correction of accounts.
48.03.040	Examination reports—Consideration by commissioner—Orders—Confidentiality.
48.03.050	Reports withheld.
48.03.060	Examination expense.
48.03.065	Appointments by commissioner—Examiners—Exceptions.
48.03.070	Witnesses—Subpoenas—Depositions—Oaths.
48.03.075	Legal protection for commissioner, authorized representatives, and examiners—Good faith—Attorneys' fees—Payment by commissioner.

48.03.010 Examination of insurers, bureaus. (1) The commissioner shall examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer as often as he or she deems advisable. The commissioner shall so examine each insurer holding a certificate of authority or certificate of registration not less frequently than every five years. Examination of an alien insurer may be lim-

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ited to its insurance transactions in the United States. In scheduling and determining the nature, scope, and frequency of an examination, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiner's handbook adopted by the National Association of Insurance Commissioners and in effect when the commissioner exercises discretion under this section.

(2) As often as the commissioner deems advisable and at least once in five years, the commissioner shall fully examine each rating organization and examining bureau licensed in this state. As often as he or she deems it advisable the commissioner may examine each advisory organization and each joint underwriting or joint reinsurance group, association, or organization.

(3) The commissioner shall in like manner examine each insurer or rating organization applying for authority to do business in this state.

(4) In lieu of making an examination under this chapter, the commissioner may accept a full report of the last recent examination of a nondomestic rating or advisory organization, or joint underwriting or joint reinsurance group, association or organization, as prepared by the insurance supervisory official of the state of domicile or of entry. In lieu of an examination under this chapter of a foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, an examination report may be accepted only if: (a) That insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' financial regulation standards and accreditation program; or (b) the examination was performed either under the supervision of an accredited insurance department or with the participation of one or more examiners employed by an accredited state insurance department who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(5) The commissioner may elect to accept and rely on an audit report made by an independent certified public accountant for the insurer in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his or her report of the examination.

(6) For the purposes of completing an examination of any company under this chapter, the commissioner may examine or investigate any managing general agent or any other person, or the business of any managing general agent or other person, insofar as that examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company. [1993 c 462 § 43; 1982 c 181 § 1; 1979 c 139 § 1; 1947 c 79 § .03.01; Rem. Supp. 1947 § 45.03.01.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Severability—1982 c 181: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected." [1982 c 181 § 28.]

48.03.020 Examination of agents, managers, promoters. For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as he deems advisable examine the accounts, records, documents, and transactions of:

- (1) Any insurance agent, solicitor, broker or adjuster.
- (2) Any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control a stock or mutual insurer.
- (3) Any person holding the shares of capital stock or policyholder proxies of a domestic insurer for the purpose of control of its management either as voting trustee or otherwise.
- (4) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or an insurance holding corporation, or a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney in fact for a domestic reciprocal insurer. [1947 c 79 § .03.02; Rem. Supp. 1947 § 45.03.02.]

48.03.025 Examiners—Scope of examination—Examiners' handbook. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate. [1993 c 462 § 44.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.03.030 Access to records on examination—Correction of accounts. (1) Every person being examined, its officers, employees, and representatives shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in his possession or control relating to the subject of the examination, and shall otherwise facilitate the examination.

(2) If the commissioner finds the accounts to be inadequate, or improperly kept or posted, he may employ experts to rewrite, post or balance them at the expense of the person being examined. [1947 c 79 § .03.03; Rem. Supp. 1947 § 45.03.03.]

48.03.040 Examination reports—Consideration by commissioner—Orders—Confidentiality. (1) No later than sixty days after completion of each examination, the commissioner shall make a full written report of each examination made by him or her containing only facts ascertained from the accounts, records, and documents examined and from the sworn testimony of individuals, and such conclusions and recommendations as may reasonably be warranted from such facts.

(2) The report shall be certified by the commissioner or by his or her examiner in charge of the examination, and shall be filed in the commissioner's office subject to subsection (3) of this section.

(3) The commissioner shall furnish a copy of the examination report to the person examined not less than ten days and, unless the time is extended by the commissioner, not more than thirty days prior to the filing of the report for public inspection in the commissioner's office. If such person so requests in writing within such period, the commissioner shall hold a hearing to consider objections of such person to the report as proposed, and shall not so file the report until after such hearing and until after any modifications in the report deemed necessary by the commissioner have been made.

(4) Within thirty days of the end of the period described in subsection (3) of this section, unless extended by order of the commissioner, the commissioner shall consider the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule, or order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure that violation;

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling under this section; or

(c) Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

(5) All orders entered under subsection (4) of this section must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. Such an order is considered a final administrative decision and may be appealed under the Administrative Procedure Act, chapter 34.05 RCW, and must be served upon the company by certified mail, together with a copy of the adopted examination report. A copy of the adopted examination report must be sent by certified mail to each director at the director's residence address.

(6)(a) Upon the adoption of the examination report under subsection (4) of this section, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of five days except that the order may be disclosed to the person examined. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(b) Nothing in this title prohibits the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating

thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

(c) If the commissioner determines that regulatory action is appropriate as a result of any examination, he or she may initiate any proceedings or actions as provided by law.

(d) Nothing contained in this section requires the commissioner to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency. [1993 c 462 § 45; 1965 ex.s. c 70 § 1; 1947 c 79 § .03.04; Rem. Supp. 1947 § 45.03.04.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.03.050 Reports withheld. The commissioner may withhold from public inspection any examination or investigation report for so long as he or she deems it advisable, subject to RCW 48.32.080. [1993 c 462 § 46; 1947 c 79 § .03.05; Rem. Supp. 1947 § 45.03.05.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.03.060 Examination expense. (1) Examinations within this state of any insurer or self-funded multiple employer welfare arrangement as defined in RCW 48.125.010 domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or the commissioner's examiners and employees shall, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

(2) Every other examination, whatsoever, or any part of the examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, shall be made by the commissioner or by examiners designated by the commissioner and shall be at the expense of the person examined; but a domestic insurer shall not be liable for the compensation of examiners employed by the commissioner for such services outside this state.

(3) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the person who is the subject of the examination, except as provided in subsection (1) of this section.

(4) The person examined and liable therefor shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees examining insurers domiciled outside the state of Washington shall be established by the commissioner on the basis of the National Association of Insurance Commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the Washington personnel resources board and the expense schedule established by the office of financial management, whichever is higher. A domestic title insurer shall pay the examination expense and

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costs to the commissioner as itemized and billed by the commissioner.

The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this chapter limits the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action. [2004 c 260 § 23; 1995 c 152 § 2. Prior: 1993 c 462 § 47; 1993 c 281 § 55; 1981 c 339 § 2; 1979 ex.s. c 35 § 1; 1947 c 79 § .03.06; Rem. Supp. 1947 § 45.03.06.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Intent—1995 c 152: "The only intent of the legislature in chapter 152, Laws of 1995 is to correct double amendments. It is not the intent of the legislature to change the substance or effect of any statute previously enacted." [1995 c 152 § 1.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date—1993 c 281: See note following RCW 41.06.022.

48.03.065 Appointments by commissioner—Examiners—Exceptions. (1) No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in a person subject to examination under this chapter. This section does not automatically preclude an examiner from being:

(a) A policyholder or claimant under an insurance policy;

(b) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(c) An investment owner in shares of regulated diversified investment companies; or

(d) A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

(2) Notwithstanding the requirements of subsection (1) of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though those persons may from time to time be similarly employed or retained by persons subject to examination under this chapter. [1993 c 462 § 48.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.03.070 Witnesses—Subpoenas—Depositions—Oaths. (1) The commissioner may take depositions, may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation: PROVIDED, That the provisions of RCW 34.05.446 shall apply in lieu of the provisions of this section as to subpoenas relative to hearings in rule-making and adjudicative proceedings.

(2) The subpoena shall be effective if served within the state of Washington and shall be served in the same manner as if issued from a court of record.

(3) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(4) Enforcement of subpoenas shall be in accord with RCW 34.05.588. [1989 c 175 § 112; 1967 c 237 § 15; 1963 c 195 § 1; 1949 c 190 § 2; 1947 c 79 § .03.07; Rem. Supp. 1949 § 45.03.07.]

Effective date—1989 c 175: See note following RCW 34.05.010.

48.03.075 Legal protection for commissioner, authorized representatives, and examiners—Good faith—Attorneys' fees—Payment by commissioner. (1) No cause of action may arise nor may any liability be imposed against the commissioner, the commissioner's authorized representatives, or an examiner appointed by the commissioner for statements made or conduct performed in good faith while carrying out this chapter.

(2) No cause of action may arise nor may any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if that act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) This section does not modify a privilege or immunity previously enjoyed by a person identified in subsection (1) of this section.

(4) A person identified in subsection (1) of this section is entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other tort arising out of activities in carrying out this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(5) If a claim is made or threatened of the sort described in subsection (1) of this section, the commissioner shall provide or pay for the defense of himself or herself, the examiner or representative, and shall pay a judgment or settlement, until it is determined that the person did not act in good faith or did act with fraudulent intent or the intent to deceive.

(6) The immunity, indemnification, and other protections under this section are in addition to those now or hereafter existing under other law. [1993 c 462 § 49.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.04 RCW HEARINGS AND APPEALS

Sections

48.04.010 Hearings—Waiver—Administrative law judge.
48.04.020 Stay of action.

48.04.030 Place of hearing.
48.04.050 Show cause notice.
48.04.060 Adjourned hearings.
48.04.070 Nonattendance, effect of.
48.04.140 Stay of action on appeal.

48.04.010 Hearings—Waiver—Administrative law judge. (1) The commissioner may hold a hearing for any purpose within the scope of this code as he or she may deem necessary. The commissioner shall hold a hearing:

(a) If required by any provision of this code; or

(b) Except under RCW 48.13.475, upon written demand for a hearing made by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if such failure is deemed an act under any provision of this code, or by any report, promulgation, or order of the commissioner other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing.

(2) Any such demand for a hearing shall specify in what respects such person is so aggrieved and the grounds to be relied upon as basis for the relief to be demanded at the hearing.

(3) Unless a person aggrieved by a written order of the commissioner demands a hearing thereon within ninety days after receiving notice of such order, or in the case of a licensee under Title 48 RCW within ninety days after the commissioner has mailed the order to the licensee at the most recent address shown in the commissioner's licensing records for the licensee, the right to such hearing shall conclusively be deemed to have been waived.

(4) If a hearing is demanded by a licensee whose license has been temporarily suspended pursuant to RCW 48.17.540, the commissioner shall hold such hearing demanded within thirty days after receipt of the demand or within thirty days of the effective date of a temporary license suspension issued after such demand, unless postponed by mutual consent.

(5) A licensee under this title may request that a hearing authorized under this section be presided over by an administrative law judge assigned under chapter 34.12 RCW. Any such request shall not be denied.

(6) Any hearing held relating to RCW 48.20.025, 48.44.017, or 48.46.062 shall be presided over by an administrative law judge assigned under chapter 34.12 RCW. [2000 c 221 § 8; 2000 c 79 § 1; 1990 1st ex.s. c 3 § 1; 1988 c 248 § 2; 1967 c 237 § 16; 1963 c 195 § 2; 1947 c 79 § .04.01; Rem. Supp. 1947 § 45.04.01.]

Reviser's note: This section was amended by 2000 c 79 § 1 and by 2000 c 221 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2000 c 79: "Except for sections 26, 38, and 39 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2000]." [2000 c 79 § 51.]

Severability—2000 c 79: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 79 § 48.]

48.04.020 Stay of action. (1) Such demand for a hearing received by the commissioner prior to the effective date of action taken or proposed to be taken by him or her shall

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stay such action pending the hearing, except as to action taken or proposed

- (a) under an order on hearing, or
- (b) under an order pursuant to an order on hearing, or
- (c) under an order to make good an impairment of the assets of an insurer, or
- (d) under an order of temporary suspension of license issued pursuant to RCW 48.17.540 as now or hereafter amended.

(2) In any case where an automatic stay is not provided for, and if the commissioner after written request therefor fails to grant a stay, the person aggrieved thereby may apply to the superior court for Thurston county for a stay of the commissioner's action.

(3) A stay of action is not available for actions taken by the commissioner under RCW 48.13.475. [2000 c 221 § 9; 1982 c 181 § 2; 1949 c 190 § 3; 1947 c 79 § .04.02; Rem. Supp. 1949 § 45.04.02.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.04.030 Place of hearing. The hearing shall be held at the place designated by the commissioner, and at his discretion it may be open to the public. [1947 c 79 § .04.03; Rem. Supp. 1947 § 45.04.03.]

48.04.050 Show cause notice. If any person is entitled to a hearing by any provision of this code before any proposed action is taken, the notice of the proposed action may be in the form of a notice to show cause stating that the proposed action may be taken unless such person shows cause at a hearing to be held as specified in the notice, why the proposed action should not be taken, and stating the basis of the proposed action. [1947 c 79 § .04.05; Rem. Supp. 1947 § 45.04.05.]

48.04.060 Adjourned hearings. The commissioner may adjourn any hearing from time to time and from place to place without other notice of the adjourned hearing than announcement thereof at the hearing. [1947 c 79 § .04.06; Rem. Supp. 1947 § 45.04.06.]

48.04.070 Nonattendance, effect of. The validity of any hearing held in accordance with the notice thereof shall not be affected by failure of any person to attend or to remain in attendance. [1947 c 79 § .04.07; Rem. Supp. 1947 § 45.04.07.]

48.04.140 Stay of action on appeal. (1) The taking of an appeal shall not stay any action taken or proposed to be taken by the commissioner under the order appealed from unless a stay is granted by the court at a hearing held as part of the proceedings on appeal.

(2) A stay shall not be granted by the court in any case where the granting of a stay would tend to injure the public interest. In granting a stay, the court may require of the person taking the appeal such security or other conditions as it deems proper. [1988 c 248 § 3; 1947 c 79 § .04.14; Rem. Supp. 1947 § 45.04.14.]

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- 48.05.525 Report of a material acquisition or disposition of assets—Information required.
- 48.05.530 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements.
- 48.05.535 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required.
- 48.05.900 Severability—1995 c 83.

Agents, brokers, solicitors, and adjusters: Chapter 48.17 RCW.

Deposit of insurers: Chapter 48.16 RCW.

Federal home loan bank as depositary: RCW 30.32.040.

Fees and taxes: Chapter 48.14 RCW.

Health care services: Chapter 48.44 RCW.

Insuring powers and capital funds required: Chapter 48.11 RCW.

Interlocking ownership, management: RCW 48.30.250.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

Rates and rating organizations: Chapter 48.19 RCW.

Stamping bureau: RCW 48.19.410.

Unauthorized insurers: Chapter 48.15 RCW.

Unfair practices: Chapter 48.30 RCW.

48.05.010 "Domestic," "foreign," "alien" insurers defined. (1) A "domestic" insurer is one formed under the laws of this state.

(2) A "foreign" insurer is one formed under the laws of the United States, of a state or territory of the United States other than this state, or of the District of Columbia.

(3) An "alien" insurer is one formed under the laws of a nation other than the United States.

(4) For the purposes of this code, "United States," when used to signify place, means only the states of the United States, the government of Puerto Rico and the District of Columbia. [1961 c 194 § 1; 1947 c 79 § .05.01; Rem. Supp. 1947 § 45.05.01.]

"Insurer" defined: RCW 48.01.050.

48.05.030 Certificate of authority required. (1) No person shall act as an insurer and no insurer shall transact insurance in this state other than as authorized by a certificate of authority issued to it by the commissioner and then in force; except, as to such transactions as are expressly otherwise provided for in this code.

(2) Every certificate of authority shall specify the name of the insurer, the location of its principal office, the name and location of the principal office of its attorney in fact if a reciprocal insurer, and the kind or kinds of insurance it is authorized to transact in this state.

(3) The investigation and adjustment of any claim in this state arising under an insurance contract issued by an unauthorized insurer, shall not be deemed to constitute the transacting of insurance in this state. [1947 c 79 § .05.03; Rem. Supp. 1947 § 45.05.03.]

48.05.040 Certificate of authority—Qualifications. To qualify for and hold a certificate of authority an insurer must:

(1) Be a stock, mutual, or reciprocal insurer of the same general type as may be formed as a domestic insurer under the provisions of chapter 48.06 RCW of this code, but this requirement shall not apply as to domestic mutual property insurers which, as of January 1, 1957, were lawfully transacting insurance on the assessment plan; and

(2) Have capital funds as required by this code, based upon the type and domicile of the insurer and the kinds of insurance proposed to be transacted; and

(3) Transact or propose to transact in this state insurances authorized by its charter, and only such insurance as meets the standards and requirements of this code; and

(4) Fully comply with, and qualify according to, the other provisions of this code. [1957 c 193 § 1; 1947 c 79 § .05.04; Rem. Supp. 1947 § 45.05.04.]

48.05.045 Certificate of authority not to be issued to governmentally owned insurer. No certificate of authority shall be issued to or exist with respect to any insurer which is owned and controlled, in whole or in substantial part, by any government or governmental agency. [1957 c 193 § 2.]

48.05.050 "Charter" defined. "Charter" means articles of incorporation, articles of agreement, articles of association of a corporation, or other basic constituent document of a corporation, or subscribers' agreement and attorney in fact agreement of a reciprocal insurer. [1947 c 79 § .05.05; Rem. Supp. 1947 § 45.05.05.]

48.05.060 "Capital funds" defined. "Capital funds" means the excess of the assets of an insurer over its liabilities. Capital stock, if any, shall not be deemed to be a liability for the purposes of this section. [1947 c 79 § .05.06; Rem. Supp. 1947 § 45.05.06.]

48.05.070 Application for certificate of authority. To apply for an original certificate of authority an insurer shall:

(1) File with the commissioner its request therefor showing:

(a) Its name, home office location, type of insurer, organization date, and state or country of its domicile.

(b) The kinds of insurance it proposes to transact.

(c) Additional information as the commissioner may reasonably require.

(2) File with the commissioner:

(a) A copy of its charter as amended, certified, if a foreign or alien insurer, by the proper public officer of the state or country of domicile.

(b) A copy of its bylaws, certified by its proper officer.

(c) A statement of its financial condition, management, and affairs on a form satisfactory to or furnished by the commissioner.

(d) If a foreign or alien insurer, or a domestic reciprocal insurer, an appointment of the commissioner as its attorney to receive service of legal process.

(e) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its proper officer.

(f) If a foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly organized and is authorized to transact the kinds of insurance proposed to be transacted.

(g) If a domestic reciprocal insurer, the declaration required by RCW 48.10.090 of this code.

(h) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with the provisions of this code.

(3) Deposit with the commissioner the fees required by this code to be paid for filing the accompanying documents, and for the certificate of authority, if granted. [1947 c 79 § .05.07; Rem. Supp. 1947 § 45.05.07.]

48.05.073 Filing of financial statements. Every insurer holding a certificate of authority from the commissioner shall file its financial statements as required by this code and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law. [1999 c 33 § 1.]

48.05.080 Foreign insurers—Deposit. (1) Prior to the issuance of a certificate of authority to a foreign insurer, it shall make a deposit of assets with the commissioner for the protection of all its policyholders, or of all of its policyholders and obligees or its policyholders and obligees within the United States, in amount and kind, subject to RCW 48.14.040, the same as is required of a like domestic insurer transacting like kinds of insurance.

(2) In lieu of such deposit or part thereof the commissioner may accept the certificate of the public official having supervision over insurers in any other state to the effect that a like deposit by such insurer or like part thereof in equal or greater amount is held in public custody in such state. [1955 c 86 § 1; 1947 c 79 § .05.08; Rem. Supp. 1947 § 45.05.08.]

Effective date—1955 c 86: "This act shall become effective on January 1, 1956." [1955 c 86 § 18.]

Supervision of transfers—1955 c 86: "All transfers authorized under this act shall be made under the supervision of the state auditor." [1955 c 86 § 19.]

48.05.090 Alien insurers—Assets required—Trust deposit. (1) An alien insurer shall not be authorized to transact insurance in this state unless it maintains within the United States assets in amount not less than its outstanding liabilities arising out of its insurance transactions in the United States, nor unless it maintains a trust deposit in an amount not less than the required reserves under its policies resulting from such transactions (after deducting, in the case of a life insurer, the amount of outstanding policy loans on such policies) plus assets equal to the larger of the following sums:

(a) The largest amount of deposit required under this title to be made in this state by any type of domestic insurer transacting like kinds of insurance; or

(b) Two hundred thousand dollars.

(2) The trust deposit shall be for the security of all policyholders or policyholders and obligees of the insurer in the United States. It shall not be subject to diminution below the amount currently determined in accordance with subsection (1) of this section so long as the insurer has outstanding any liabilities arising out of its business transacted in the United States.

(3) The trust deposit shall be maintained with public depositaries or trust institutions within the United States (2004 Ed.)

approved by the commissioner. [1949 c 190 § 4; 1947 c 79 § .05.09; Rem. Supp. 1949 § 45.05.09.]

48.05.100 Alien insurers—Deposit resolution. An alien insurer shall file with the commissioner a certified copy of the resolution of its governing board by which the trust deposit was established, together with a certified copy of any trust agreement under which the deposit is held. [1947 c 79 § .05.10; Rem. Supp. 1947 § 45.05.10.]

48.05.105 Foreign or alien insurers—Three years active transacting required—Exception. No certificate of authority shall be granted to a foreign or alien applicant that has not actively transacted for three years the classes of insurance for which it seeks to be admitted; except, the foregoing shall not apply to any subsidiary of a seasoned, reputable insurer that has held a certificate of authority in this state for at least three years. [1967 c 150 § 2.]

48.05.110 Issuance of certificate of authority. If the commissioner finds that an insurer has met the requirements for and is fully entitled thereto under this code, he shall issue to it a proper certificate of authority. If the commissioner does not so find, the authority shall be refused within a reasonable length of time following completion by the insurer of the application therefor. [1947 c 79 § .05.11; Rem. Supp. 1947 § 45.05.11.]

48.05.120 Certificate of authority—Duration, renewal, amendment. (1) All certificates of authority shall continue in force until suspended, revoked, or not renewed. A certificate shall be subject to renewal annually on the first day of July upon application of the insurer and payment of the fee therefor. If not so renewed, the certificate shall expire as of the thirtieth day of June next preceding.

(2) The commissioner may amend a certificate of authority at any time in accordance with changes in the insurer's charter or insuring powers. [1957 c 193 § 3; 1955 c 31 § 1; 1947 c 79 § .05.12; Rem. Supp. 1947 § 45.05.12.]

48.05.130 Certificate of authority—Mandatory refusal, revocation, suspension. The commissioner shall refuse to renew or shall revoke or suspend an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer:

(1) Is a foreign or alien insurer and no longer qualifies or meets the requirements for the authority; or, is a domestic mutual or domestic reciprocal insurer, and fails to make good a deficiency of assets as required by the commissioner.

(2) Is a domestic stock insurer and has assets less in amount than its liabilities, including its capital stock as a liability, and has failed to make good such deficiency as required by the commissioner.

(3) Knowingly exceeds its charter powers or its certificate of authority. [1947 c 79 § .05.13; Rem. Supp. 1947 § 45.05.13.]

48.05.140 Certificate of authority—Discretionary refusal, revocation, suspension. The commissioner may refuse, suspend, or revoke an insurer's certificate of authority,

in addition to other grounds therefor in this code, if the insurer:

(1) Fails to comply with any provision of this code other than those for violation of which refusal, suspension, or revocation is mandatory, or fails to comply with any proper order or regulation of the commissioner.

(2) Is found by the commissioner to be in such condition that its further transaction of insurance in this state would be hazardous to policyholders and the people in this state.

(3) Refuses to remove or discharge a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude.

(4) Usually compels claimants under policies either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due.

(5) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another insurer which transacts insurance in this state without having a certificate of authority therefor, except as is permitted by this code.

(6) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(7) Fails to pay any final judgment rendered against it in this state upon any policy, bond, recognizance, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(8) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in insurance company managerial experience as to make a proposed operation hazardous to the insurance-buying public; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, reinsurance or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance.

(9) Does business through agents or brokers in this state or in any other state who are not properly licensed under applicable laws and duly enacted regulations adopted pursuant thereto. [1973 1st ex.s. c 152 § 1; 1969 ex.s. c 241 § 3; 1967 c 150 § 4; 1947 c 79 § .05.14; Rem. Supp. 1947 § 45.04.14.]

Severability—1973 1st ex.s. c 152: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 152 § 7.]

48.05.150 Notice of intention to refuse, revoke, or suspend. The commissioner shall give an insurer notice of his intention to suspend, revoke, or refuse to renew its certificate of authority not less than ten days before the order of suspension, revocation or refusal is to become effective;

except that no advance notice of intention is required where the order results from a domestic insurer's failure to make good a deficiency of assets as required by the commissioner. [1947 c 79 § .05.15; Rem. Supp. 1947 § 45.05.15.]

48.05.160 Period of suspension. The commissioner shall not suspend an insurer's certificate of authority for a period in excess of one year, and he shall state in his order of suspension the period during which it shall be effective. [1947 c 79 § .05.16; Rem. Supp. 1947 § 45.05.16.]

48.05.170 Reauthorization, limitation upon. No insurer whose certificate of authority has been suspended, revoked, or refused shall subsequently be authorized unless the grounds for such suspension, revocation, or refusal no longer exist and the insurer is otherwise fully qualified. [1947 c 79 § .05.17; Rem. Supp. 1947 § 45.05.17.]

48.05.180 Notice of refusal, revocation, suspension—Effect upon agents' authority. Upon the suspension, revocation or refusal of an insurer's certificate of authority, the commissioner shall give notice thereof to the insurer and shall likewise suspend, revoke or refuse the authority of its agents to represent it in this state and give notice thereof to the agents. [1947 c 79 § .05.18; Rem. Supp. 1947 § 45.05.18.]

48.05.185 Fine in addition or in lieu of suspension, revocation, or refusal. After hearing or with the consent of the insurer and in addition to or in lieu of the suspension, revocation, or refusal to renew any certificate of authority the commissioner may levy a fine upon the insurer in an amount not less than two hundred fifty dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the certificate of authority of the insurer if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1980 c 102 § 1; 1975 1st ex.s. c 266 § 3; 1965 ex.s. c 70 § 3.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.05.190 Name of insurer. (1) Every insurer shall conduct its business in its own legal name.

(2) No insurer shall assume or use a name deceptively similar to that of any other authorized insurer. [1947 c 79 § .05.19; Rem. Supp. 1947 § 45.05.19.]

48.05.200 Commissioner as attorney for service of process—Exception. (1) Each authorized foreign or alien insurer shall appoint the commissioner as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute service upon the insurer. Service of

legal process against such insurer can be had only by service upon the commissioner, except actions upon contractor bonds pursuant to RCW 18.27.040, where service may be upon the department of labor and industries.

(2) With the appointment the insurer shall designate by name and address the person to whom the commissioner shall forward legal process so served upon him or her. The insurer may change such person by filing a new designation.

(3) The appointment of the commissioner as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in this state any contract made by the insurer or liabilities or duties arising therefrom. [1985 c 264 § 3; 1947 c 79 § .05.20; Rem. Supp. 1947 § 45.05.20.]

48.05.210 Service of process—Procedure. (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney shall be served upon him either by a person competent to serve a summons, or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(2) The commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the insurer in its most recent such designation filed with the commissioner.

(3) The commissioner shall keep a record of the day and hour of service upon him of all legal process. No proceedings shall be had against the insurer, and the insurer shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [1981 c 339 § 3; 1947 c 79 § .05.21; Rem. Supp. 1947 § 45.05.21.]

48.05.215 Unauthorized foreign or alien insurers—Jurisdiction of state courts—Service of process—Procedure. (1) Any foreign or alien insurer not thereunto authorized by the commissioner, whether it be a surplus lines insurer operating under chapter 48.15 RCW or not, who, by mail or otherwise, solicits insurance business in this state or transacts insurance business in this state as defined by RCW 48.01.060, thereby submits itself to the jurisdiction of the courts of this state in any action, suit or proceeding instituted by or on behalf of an insured, beneficiary or the commissioner arising out of such unauthorized solicitation of insurance business, including, but not limited to, an action for injunctive relief by the commissioner.

(2) In any such action, suit or proceeding instituted by or on behalf of an insured or beneficiary, service of legal process against such unauthorized foreign or alien insurer may be made by service of duplicate copies of legal process on the commissioner by a person competent to serve a summons or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action. The commissioner shall forthwith mail one of the copies of the process, by registered mail with return receipt requested, to the defendant at its last known principal place of business. The defendant insurer shall have forty days from

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the date of the service on the commissioner within which to plead, answer or otherwise defend the action.

(3) In any such action, suit or proceeding by the commissioner, service of legal process against such unauthorized foreign or alien insurer may be made by personal service of legal process upon any officer of such insurer at its last known principal place of business outside the state of Washington. The summons upon such unauthorized foreign or alien insurer shall contain the same requisites and be served in like manner as personal summons within the state of Washington; except, the insurer shall have forty days from the date of such personal service within which to plead, answer or otherwise defend the action. [1981 c 339 § 4; 1967 c 150 § 3.]

48.05.220 Venue of actions against insurer. Suit upon causes of action arising within this state against an insurer upon an insurance contract shall be brought in the county where the cause of action arose. [1947 c 79 § .05.22; Rem. Supp. 1947 § 45.05.22.]

48.05.250 Annual statement. (1) Each authorized insurer shall annually, before the first day of March, file with the commissioner a true statement of its financial condition, transactions, and affairs as of the thirty-first day of December preceding. The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by this code and by the commissioner. The statement shall be verified by the oaths of at least two of the insurer's officers.

(2) The annual statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.

(3) The commissioner shall suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or during any extension of time thereof which the commissioner, for good cause, may grant. [1983 c 85 § 1; 1947 c 79 § .05.25; Rem. Supp. 1947 § 45.05.25.]

Advertising of financial condition: RCW 48.30.070.

Assets and liabilities: Chapter 48.12 RCW.

False financial statements: RCW 48.30.030.

48.05.270 Alien insurer—Capital funds, determination. (1) The capital funds of an alien insurer shall be deemed to be the amount by which its assets, deposited and otherwise held as provided in RCW 48.05.090 exceed its liabilities with respect to its business transacted in the United States.

(2) Assets of such insurer held in any state for the special protection of policyholders and obligees in such state shall not constitute assets of the insurer for the purposes of this code. Liabilities of the insurer so secured by such assets, but not exceeding the amount of such assets, may be deducted in computing the insurer's liabilities for the purpose of this section. [1947 c 79 § .05.27; Rem. Supp. 1947 § 45.05.27.]

48.05.280 Records and accounts of insurers. Every insurer shall keep full and adequate accounts and records of its assets, obligations, transactions, and affairs. [1947 c 79 § .05.28; Rem. Supp. 1947 § 45.05.28.]

48.05.290 Withdrawal of insurer—Reinsurance. (1) No insurer shall withdraw from this state until its direct liability to its policyholders and obligees under all its insurance contracts then in force in this state has been assumed by another authorized insurer under an agreement approved by the commissioner. In the case of a life insurer, its liability pursuant to contracts issued in this state in settlement of proceeds under its policies shall likewise be so assumed.

(2) The commissioner may waive this requirement if he finds upon examination that a withdrawing insurer is then fully solvent and that the protection to be given its policyholders in this state will not be impaired by the waiver.

(3) The assuming insurer shall within a reasonable time replace the assumed insurance contracts with its own, or by endorsement thereon acknowledge its liability thereunder. [1947 c 79 § .05.29; Rem. Supp. 1947 § 45.05.29.]

48.05.310 General agents, managers—Appointment—Powers—Licensing. (1) An insurer appointing any person as its general agent or manager to represent it as such in this state shall file notice of the appointment with the commissioner on forms prescribed and furnished by the commissioner.

(2) Any such general agent or manager shall have such authority, consistent with this code, as may be conferred by the insurer. A general agent resident in this state and licensed, as in this section provided, may exercise the powers conferred by this code upon agents licensed for the kinds of insurance which the general agent is authorized to transact for the insurer so appointing him.

(3) Any such general agent may accept applications for insurance from licensed agents who are not appointed by the insurer of such general agent where the risk involved is placed in a nonstandard or specialty market of an authorized insurer as defined by regulation of the commissioner. Such nonstandard or specialty business shall not be bound by any agent not appointed by the insurer. A general agent may supply such licensed, nonappointed agent with material to write nonstandard or specialty insurance business including, but not limited to, applications for insurance, underwriting criteria, and rates. A general agent shall not provide any licensed, nonappointed agent with indicia of authority to bind an insurance risk and the general agent and nonappointed agent shall provide written disclaimers of binding authority to an applicant or prospective insured in such form as prescribed by the commissioner.

(4) The appointment of a resident general agent shall not be effective unless the person so appointed is licensed as the general agent of such insurer by the commissioner upon application and payment of the fee therefor as provided in RCW 48.14.010.

(5) A general agent's license and its renewal shall be in accordance with chapter 48.17 RCW as applicable to agents and brokers.

(6) The commissioner may deny, suspend, or revoke any such license for any cause specified in RCW 48.17.530 and in

the manner provided in RCW 48.17.540. [1995 c 338 § 1; 1982 c 181 § 17; 1947 c 79 § .05.31; Rem. Supp. 1947 § 45.05.31.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.05.320 Reports of fire losses. (1) Each authorized insurer shall promptly report to the chief of the Washington state patrol, through the director of fire protection, upon forms as prescribed and furnished by him or her, each fire loss of property in this state reported to it and whether the loss is due to criminal activity or to undetermined causes.

(2) Each such insurer shall likewise report to the chief of the Washington state patrol, through the director of fire protection, upon claims paid by it for loss or damage by fire in this state. Copies of all reports required by this section shall be promptly transmitted to the state insurance commissioner. [1995 c 369 § 24; 1986 c 266 § 66; 1985 c 470 § 16; 1947 c 79 § .05.32; Rem. Supp. 1947 § 45.05.32.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.05.330 Insurers—Combination of kinds of insurance authorized—Exceptions. An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combinations of kinds of insurance as defined in chapter 48.11 RCW, except:

(1) A life insurer may grant annuities and may be authorized to transact in addition only disability insurance; except, that the commissioner may, if the insurer otherwise qualifies therefor, continue so to authorize any life insurer which immediately prior to June 13, 1963 was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability insurances and annuity business.

(2) A reciprocal insurer shall not transact life insurance.

(3) A title insurer shall be a stock insurer and shall not transact any other kind of insurance. This provision shall not prohibit the ceding of reinsurance by a title insurer to insurers other than mutual or reciprocal insurers. [1963 c 195 § 6.]

48.05.340 Capital and surplus requirements. (1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as shown below, a foreign or alien insurer, whether stock or mutual, or a domestic insurer hereafter formed shall possess unimpaired paid-in capital stock, if a stock insurer, or unimpaired surplus if a mutual insurer, and additional funds in surplus, as follows, and shall thereafter maintain unimpaired a combined total of: (a) The paid-in capital stock if a stock insurer or surplus if a mutual insurer, plus (b) such additional funds in surplus equal to the total of the following initial requirements:

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Life	\$2,000,000	\$2,000,000
Disability	2,000,000	2,000,000
Life and disability . .	2,400,000	2,400,000

Property	2,000,000	2,000,000
Marine & transportation	2,000,000	2,000,000
General casualty	2,400,000	2,400,000
Vehicle	2,000,000	2,000,000
Surety	2,000,000	2,000,000
Any two of the following kinds of insurance: Property, marine & transportation, general casualty, vehicle, surety, disability	3,000,000	3,000,000
Multiple lines (all insurances except life and title insurance)	3,000,000	3,000,000
Title (in accordance with the provisions of chapter 48.29 RCW)		

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it may operate or propose to operate, whether or not only a portion of such kinds are to be transacted in this state.

(3) Until December 31, 1996, a foreign or alien insurer holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such authority. A domestic insurer holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such an authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special or additional surplus as required of it under laws in force immediately prior to June 9, 1994. [1995 c 83 § 14; 1994 c 171 § 1; 1993 c 462 § 50; 1991 sp.s. c 5 § 1; 1982 c 181 § 3; 1980 c 135 § 1; 1967 c 150 § 5; 1963 c 195 § 7.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date—1991 sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 5 § 3.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.05.350 General casualty insurer combining disability, fidelity, insurance. An insurer authorized to transact general casualty insurance shall be authorized to transact disability insurance and fidelity insurance without requiring additional financial qualifications. [1963 c 195 § 8.]

48.05.360 Special surplus requirements for certain combinations. An insurer shall not be authorized to transact any one of the following insurances,—vehicle, or general casualty, or marine and transportation, or surety,—with any additional kind of insurance unless it maintains at all times special surplus of not less than one hundred thousand dollars in addition to the paid-in capital stock if a stock insurer or

basic surplus if a mutual or reciprocal insurer otherwise required. This section does not apply to combinations transacted by a general casualty insurer pursuant to RCW 48.05.350. [1963 c 195 § 9.]

48.05.370 Fiduciary relationship to insurer of officers, directors or corporation holding controlling interest. Officers and directors of an insurer or a corporation holding a controlling interest in an insurer shall be deemed to stand in a fiduciary relation to the insurer, and shall discharge the duties of their respective positions in good faith, and with that diligence, care and skill which ordinary prudent men would exercise under similar circumstances in like positions. [1969 ex.s. c 241 § 1.]

48.05.380 Reports by property and casualty insurers—Rules. The insurance commissioner shall adopt rules requiring insurers who are authorized to write property and casualty insurance in the state of Washington to record and report their Washington state loss and expense experiences and other data, as required by RCW 48.05.390. These rules may not require a report to be submitted by any insurer that has no data or experience to report. [2002 c 22 § 1; 1986 c 148 § 1; 1985 c 238 § 1.]

Effective date—1985 c 238: "The requirements of RCW 48.05.380 and 48.05.390 shall commence with the year-end report for the reporting period ending December 31, 1986. In addition, the data required under RCW 48.05.390 shall be provided for the years 1975 through 1985 and shall be filed with the commissioner on or before March 1, 1986." [1985 c 238 § 3.]

Severability—1985 c 238: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 238 § 4.]

48.05.390 Reports by various insurers—Contents. (1) The report required by RCW 48.05.380 shall include the types of insurance written by the insurer for policies pertaining to:

- (a) Medical malpractice for physicians and surgeons, hospitals, other health care professions, and other health care facilities individually;
- (b) Products liability. However, if comparable information is included in the annual statement required by RCW 48.05.250, products liability data must not be reported under RCW 48.05.380;
- (c) Attorneys' malpractice;
- (d) Architects' and engineers' malpractice;
- (e) Municipal liability; and
- (f) Day care center liability.

(2) The report shall include the following data by the type of insurance for the previous year ending on the thirty-first day of December:

- (a) Direct premiums written;
- (b) Direct premiums earned;
- (c) Net investment income, including net realized capital gain and losses, using appropriate estimates where necessary;
- (d) Incurred claims, development as the sum of the following:
 - (i) Dollar amount of claims closed with payments; plus
 - (ii) Reserves for reported claims at the end of the current year; minus

- (iii) Reserves for reported claims at the end of the previous year; plus
- (iv) Reserves for incurred but not reported claims at the end of the current year; minus
- (v) Reserves for incurred but not reported claims at the end of the previous year; plus
- (vi) Reserves for loss adjustment expense at the end of the current year; minus
- (vii) Reserves for loss adjustment expense at the end of the previous year.
- (e) Actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, advertising, general office expenses, taxes, licenses and fees, and all other expenses;
- (f) Net underwriting gain or loss;
- (g) Net operation gain or loss, including net investment income; and
- (h) Other information requested by the insurance commissioner.

(3) The report shall be filed annually with the commissioner, no later than the first day of May. [1994 c 131 § 7; 1988 c 248 § 6; 1986 c 148 § 2; 1985 c 238 § 2.]

Effective date—Severability—1985 c 238: See notes following RCW 48.05.380.

48.05.400 Annual filing and fee to National Association of Insurance Commissioners—Penalty. (1) Each domestic, foreign, and alien insurer that is authorized to transact insurance in this state shall annually, on or before March 1 of each year, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with such additional filings as prescribed by the commissioner for the preceding year. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.

(2) Coincident with the filing of its annual statement convention blank and other filings, each such insurer shall pay a reasonable fee directly to the National Association of Insurance Commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement convention blank.

(3) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (1) of this section shall be considered to be in compliance with this section.

(4) In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, National Association of Insurance Commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or

dissimilation of the data and information collected for the filings required under this section.

(5) The commissioner may suspend, revoke, or refuse to renew the certificate of authority of any insurer failing to file its annual statement or pay the fees when due or within any extension of time which the commissioner, for good cause, may have granted. [1987 c 132 § 1.]

48.05.410 Health care practitioner risk management training. Effective July 1, 1994, each health care provider, facility, or health maintenance organization that self-insures for liability risks related to medical malpractice and employs physicians or other independent health care practitioners in Washington state shall condition each physician's and practitioner's liability coverage by that entity upon that physician's or practitioner's participation in risk management training offered by the provider, facility, or health maintenance organization to its employees. The risk management training shall provide information related to avoiding adverse health outcomes resulting from substandard practice and minimizing damages associated with those adverse health outcomes that do occur. For purposes of this section, "independent health care practitioner" means those health care practitioner licensing classifications designated by the department of health in rule pursuant to *RCW 18.130.330. [1993 c 492 § 414.]

***Reviser's note:** RCW 18.130.330 was repealed by 1995 c 265 § 27, effective July 1, 1995.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.05.430 Definitions. As used in RCW 48.05.430 through 48.05.490, these terms have the following meanings:

- (1) "RBC" means risk-based capital.
- (2) "NAIC" means the national association of insurance commissioners.
- (3) "Domestic insurer" means any insurance company domiciled in this state.
- (4) "Foreign or alien insurer" means any insurance company that is licensed to do business in this state under this chapter but is not domiciled in this state.
- (5) "Life and disability insurer" means any insurance company authorized to write only life insurance, disability insurance, or both, as defined in chapter 48.11 RCW.
- (6) "Property and casualty insurer" means any insurance company authorized to write only property insurance, marine and transportation insurance, general casualty insurance, vehicle insurance, or any combination thereof, including disability insurance, as defined in chapter 48.11 RCW.
- (7) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.
- (8) "Negative trend" means, with respect to a life insurer, a disability insurer, or a life and disability insurer, the negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

(9) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with RCW 48.05.435(5).

(10) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC.

(11) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(b) "Regulatory action level RBC" means the product [of] 1.5 and its authorized control level RBC;

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(d) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(12) "RBC plan" means a comprehensive financial plan containing the elements specified in RCW 48.05.440(2). If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(13) "RBC report" means the report required in RCW 48.05.435.

(14) "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed under RCW 48.05.250; and

(b) Other items, if any, as the RBC instructions may provide. [1995 c 83 § 1.]

48.05.435 Report of RBC levels—Formula for determining levels—Inaccurate reports adjusted by commissioner. (1) Every domestic insurer shall, on or prior to the filing date, which is hereby established as March 1, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing that information required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) Fifteen days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A life and disability insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the RBC requirements and the formulas, schedules, and instructions under RCW 48.05.430 through 48.05.490 is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the RBC requirements.

(5) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. [1995 c 83 § 2.]

48.05.440 Company action level event—Definition—RBC plan—Commissioner's review. (1) "Company action level event" means any of the following events:

(a) The filing of an RBC report by an insurer indicating that:

(i) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC, but less than its company action level RBC; or

(ii) If a life and disability insurer, the insurer has total adjusted capital that is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and 2.5 and has a negative trend;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460; or

(c) If, under RCW 48.05.460, an insurer challenges an adjusted RBC report that indicates an event in (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that:

(a) Identifies the conditions that contribute to the company action level event;

(b) Contains proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event;

(c) Provides projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and

surplus. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identifies the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identifies the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report under RCW 48.05.460, within forty-five days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within sixty days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC plan satisfactory. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, that may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under RCW 48.05.460, within forty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the insurer's rights to a hearing under RCW 48.05.460, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) The state has an RBC provision substantially similar to RCW 48.05.465(1); and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section. [1995 c 83 § 3.]

48.05.445 Regulatory action level event—Definition—Commissioner's duties—Corrective actions. (1) "Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner to an insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460;

(c) If, under RCW 48.05.460, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for such failure that is satisfactory to the commissioner and has cured the failure within ten days after the filing date;

(e) The failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in RCW 48.05.440(3);

(f) Notification by the commissioner to the insurer that:

(i) The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under RCW 48.05.460;

(g) If, under RCW 48.05.460, the insurer challenges a determination by the commissioner under (f) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge;

(h) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under RCW 48.05.460; or

(i) If, under RCW 48.05.460, the insurer challenges a determination by the commissioner under (h) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform the examination or analysis the commissioner deems necessary of the assets, liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying those corrective actions the commissioner determines are required.

(3) In determining corrective actions, the commissioner may take into account those factors deemed relevant with respect to the insurer based upon the commissioner's exami-

nation or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken under the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five days after the occurrence of the regulatory action level event;

(b) If the insurer challenges an adjusted RBC report under RCW 48.05.460, and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan under RCW 48.05.460, and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or other party as directed by the commissioner. [1995 c 83 § 4.]

48.05.450 Authorized control level event—Definition—Commissioner's duties. (1) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460;

(c) If, under RCW 48.05.460, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the insurer has not challenged the corrective order under RCW 48.05.460; or

(e) If the insurer has challenged a corrective order under RCW 48.05.460 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(a) Take those actions required under RCW 48.05.445 regarding an insurer with respect to which a regulatory action level event has occurred; or

(b) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take those actions necessary to cause the insurer to be placed under regulatory control under chapter 48.31

RCW. In the event the commissioner takes these actions, the authorized control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. In the event the commissioner takes actions under this subsection pursuant to an adjusted RBC report, the insurer is entitled to those protections afforded to insurers under RCW 48.31.121 pertaining to summary proceedings. [1995 c 83 § 5.]

48.05.455 Mandatory control level event—Definition—Commissioner's duties. (1) "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report indicating that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460; or

(c) If, under RCW 48.05.460, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a mandatory control level event:

(a) With respect to a life and disability insurer, the commissioner shall take those actions necessary to place the insurer under regulatory control under chapter 48.31 RCW. In that event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of RCW 48.31.121 pertaining to summary proceedings. However, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

(b) With respect to a property and casualty insurer, the commissioner shall take those actions necessary to place the insurer under regulatory control under chapter 48.31 RCW, or, in the case of an insurer that is writing no business and that is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of RCW 48.31.121 pertaining to summary proceedings. However, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period. [1995 c 83 § 6.]

48.05.460 Insurer's right to a hearing—Request—Commissioner sets date. (1) Upon notification to an insurer by the commissioner of any of the following, the insurer shall have the right to a hearing, in accordance with chapters 48.04 and 34.05 RCW, at which the insurer may challenge any determination or action by the commissioner:

- (a) Of an adjusted RBC report; or
- (b)(i) That the insurer's RBC plan or revised RBC plan is unsatisfactory; and
- (ii) The notification constitutes a regulatory action level event with respect to such insurer; or
- (c) That the insurer has failed to adhere to its RBC plan or revised RBC plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or
- (d) Of a corrective order with respect to the insurer.

(2) The insurer shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under this section. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing. The date shall be no less than ten nor more than thirty days after the date of the insurer's request. [1995 c 83 § 7.]

48.05.465 Confidentiality of RBC reports and plans—Use of information for comparative purposes—Use of information to monitor solvency. (1) All RBC reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of an insurer and any corrective order issued by the commissioner, with respect to any domestic insurer or foreign insurer that are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not a means to rank insurers generally. Therefore, except as otherwise required under the provisions of RCW 48.05.430 through 48.05.490, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels, or any of them, or an inappropriate comparison of any other amount to the insurer's

RBC levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for rate-making nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write. [1995 c 83 § 8.]

48.05.470 Regulation of capital and surplus requirements is supplemental—Commissioner may grant exemptions. (1) The provisions of RCW 48.05.430 through 48.05.490 are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under those laws, including, but not limited to, chapter 48.31 RCW.

(2) The commissioner may exempt any domestic property and casualty insurer from RCW 48.05.430 through 48.05.490, if the insurer:

- (a) Writes direct business only in this state;
- (b) Writes direct annual premiums of two million dollars or less; and
- (c) Assumes no reinsurance in excess of five percent of direct premiums written. [1995 c 83 § 9.]

48.05.475 RBC report from foreign or alien insurers—Request of commissioner—Commissioner's options. (1) Any foreign or alien insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended by the later of:

- (a) The date an RBC report would be required to be filed by a domestic insurer under RCW 48.05.435; or
- (b) Fifteen days after the request is received by the foreign or alien insurer. Any foreign or alien insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to any foreign or alien insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if no RBC statute is in force in that state, under the provisions of RCW 48.05.430 through 48.05.490, if the insurance commissioner of the state of domicile of the foreign or alien insurer fails to require the foreign or alien insurer to file an RBC plan in the manner specified under that state's RBC statute, the commissioner may require the foreign or alien insurer to file an RBC plan. In this event, the failure of the foreign or alien insurer to file an RBC plan is grounds to order the insurer to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to any foreign or alien insurer, if no domiciliary receiver has been appointed with respect to the foreign or alien insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign or alien insurer, the commissioner may apply for an order under RCW 48.31.080 or 48.31.090 to conserve the assets within this state of foreign or alien insurers, and the occurrence of the mandatory control level event is considered adequate grounds for the application. [1995 c 83 § 10.]

48.05.480 No liability for regulation of capital and surplus requirements. There is no liability on the part of, and no cause of action may arise against, the commissioner or insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under RCW 48.05.430 through 48.05.490. [1995 c 83 § 11.]

48.05.485 Notices by commissioner—When effective. All notices by the commissioner to an insurer that may result in regulatory action are effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission are effective upon the insurer's receipt of the notice. [1995 c 83 § 12.]

48.05.490 RBC reports for 1995—Requirements. For RBC reports required by property and casualty insurers for 1995, the following requirements apply in lieu of RCW 48.05.440 through 48.05.455:

(1) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action.

(2) In the event of a regulatory action level event under RCW 48.05.445(1) (a), (b), or (c) the commissioner shall take the actions required under RCW 48.05.440.

(3) In the event of a regulatory action level event under RCW 48.05.445(1) (d), (e), (f), (g), (h), or (i) or an authorized control level event, the commissioner shall take the actions required under RCW 48.05.445.

(4) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under RCW 48.05.450. [1995 c 83 § 13.]

48.05.510 Disclosure of certain material transactions—Insurer's report—Information is confidential. (1) Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

(a) Commissioner; and

(b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.05.515 through 48.05.535 are exempt from public inspection and copying and are not subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 1.]

48.05.515 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported under RCW 48.05.510 if the acquisitions or dispositions are not material. For purposes of RCW 48.05.510 through 48.05.535, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 2.]

48.05.520 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.05.510 through 48.05.535 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such a purpose.

(2) Asset dispositions subject to RCW 48.05.510 through 48.05.535 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether the assignment is for the benefit of creditors or otherwise. [1995 c 86 § 3.]

48.05.525 Report of a material acquisition or disposition of assets—Information required. (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

(a) Date of the transaction;

(b) Manner of acquisition or disposition;

(c) Description of the assets involved;

(d) Nature and amount of the consideration given or received;

(e) Purpose of or reason for the transaction;

(f) Manner by which the amount of consideration was determined;

(g) Gain or loss recognized or realized as a result of the transaction; and

(h) Names of the persons from whom the assets were acquired or to whom they were disposed.

(2) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such an insurer ceded substantially all of its direct and assumed business to the pool. An insurer has ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus. [1995 c 86 § 4.]

48.05.530 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.05.510 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.05.510 through 48.05.535, a material nonrenewal, cancellation, or revision is one that affects:

(a) More than fifty percent of a property and casualty insurer's total ceded written premium;

(b) More than fifty percent of the property and casualty insurer's total ceded indemnity and loss adjustment reserves;

(c) More than fifty percent of a nonproperty and casualty insurer's total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement;

(d) More than ten percent of an insurer's total cession when it is replaced by one or more unauthorized reinsurers; or

(e) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if:

(a) A property and casualty insurer's total ceded written premium represents, on an annualized basis, less than ten percent of its total written premium for direct and assumed business; or

(b) A nonproperty and casualty insurer's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 5.]

48.05.535 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. (1) The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(a) The effective date of the nonrenewal, cancellation, or revision;

(b) The description of the transaction with an identification of the initiator;

(c) The purpose of or reason for the transaction; and
(d) If applicable, the identity of the replacement reinsurers.

(2) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer has ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus. [1995 c 86 § 6.]

48.05.900 Severability—1995 c 83. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 83 § 15.]

Chapter 48.06 RCW

ORGANIZATION OF DOMESTIC INSURERS

Sections

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48.06.200	Incorporation, articles of—Contents.

48.06.010 Types of domestic insurers permitted. An insurer formed in this state shall be either

- (1) An incorporated stock insurer, or
- (2) An incorporated mutual insurer, or
- (3) An incorporated specific risks mutual property insurer, or
- (4) An incorporated mutual assessment property insurer only, or
- (5) An incorporated farm mutual assessment property insurer only, or
- (6) A reciprocal insurer, with respective powers, duties, and restrictions as provided in this code. [1947 c 79 § .06.01; Rem. Supp. 1947 § 45.06.01.]

48.06.020 Assessment mutuals prohibited—Exceptions. No insurer shall be formed or be authorized in this

state to issue contracts of insurance the performance of which is contingent upon the payment of assessments, assessment premiums, or calls made upon its members. Mutual assessment property insurers and farm mutual assessment property insurers shall be the only exception to this provision. [1947 c 79 § .06.02; Rem. Supp. 1947 § 45.06.02.]

48.06.030 Solicitation permit. (1) No person forming or proposing to form in this state an insurer, or insurance holding corporation, or stock corporation to finance an insurer or insurance production therefor, or corporation to manage an insurer, or corporation to be attorney in fact for a reciprocal insurer, or a syndicate for any of such purposes, shall advertise, or solicit or receive any funds, agreement, stock subscription, or membership on account thereof unless he or she has applied for and has received from the commissioner a solicitation permit.

(2) Any person violating this section is guilty of a class B felony and shall be subject to a fine of not more than ten thousand dollars or imprisonment for not more than ten years, or by both fine and imprisonment. [2003 c 53 § 267; 1947 c 79 § .06.03; Rem. Supp. 1947 § 45.06.03.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

48.06.040 Application for solicitation permit. To apply for a solicitation permit the person shall:

- (1) File with the commissioner a request showing:
 - (a) Name, type, and purpose of insurer, corporation, or syndicate proposed to be formed;
 - (b) Names, addresses, fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, and business records of each person associated or to be associated in the formation of the proposed insurer, corporation, or syndicate;
 - (c) Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the proposed insurer, corporation, or syndicate, or the formation thereof;
 - (d) The plan according to which solicitations are to be made; and
 - (e) Additional information as the commissioner may reasonably require.
- (2) File with the commissioner:
 - (a) Original and copies in triplicate of proposed articles of incorporation, or syndicate agreement; or, if the proposed insurer is a reciprocal, original and duplicate of the proposed subscribers' agreement and attorney in fact agreement;
 - (b) Original and duplicate copy of any proposed bylaws;
 - (c) Copy of any security proposed to be issued and copy of application or subscription agreement for that security;
 - (d) Copy of any insurance contract proposed to be offered and copy of application for that contract;
 - (e) Copy of any prospectus, advertising, or literature proposed to be used; and
 - (f) Copy of proposed form of any escrow agreement required.
- (3) Deposit with the commissioner the fees required by law to be paid for the application including fees associated

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with the state and national criminal history background check, for filing of the articles of incorporation of an insurer, for filing the subscribers' agreement and attorney in fact agreement if the proposed insurer is a reciprocal, for the solicitation permit, if granted, and for filing articles of incorporation with the secretary of state. [2002 c 227 § 1; 1967 c 150 § 6; 1947 c 79 § .06.04; Rem. Supp. 1947 § 45.06.04.]

Effective date—2002 c 227: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 227 § 6.]

48.06.050 Procedure upon application. The commissioner shall expeditiously examine the application for a solicitation permit and make any investigation relative thereto deemed necessary. If the commissioner finds that

- (1) the application is complete; and
- (2) the documents therewith filed are equitable in terms and proper in form; and
- (3) the management of the company, whether by its directors, officers, or by any other means is competent and trustworthy and not so lacking in managerial experience as to make a proposed operation hazardous to the insurance-buying public; and that there is no reason to believe the company is affiliated, directly or indirectly, through ownership, control, reinsurance, or other insurance or business relations, with any other person or persons whose business operations are or have been marked, to the detriment of the policyholders or stockholders or investors or creditors or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance; and
- (4) the agreements made or proposed are equitable to present and future shareholders, subscribers, members or policyholders, he shall give notice to the applicant that he will issue a solicitation permit, stating the terms to be contained therein, upon the filing of the bond required by RCW 48.06.110 of this code.

If the commissioner does not so find, he shall give notice to the applicant that the permit will not be granted, stating the grounds therefor, and shall refund to the applicant all sums so deposited except the application fee. [1967 c 150 § 7; 1947 c 79 § .06.05; Rem. Supp. 1947 § 45.06.05.]

48.06.060 Issuance of permit—Bond. Upon the filing of the bond required by RCW 48.06.110 after notice by the commissioner, the commissioner shall:

- (1) File the articles of incorporation of the proposed incorporated insurer or other corporation; and
- (2) Issue to the applicant a solicitation permit. [1998 c 23 § 1; 1947 c 79 § .06.06; Rem. Supp. 1947 § 45.06.06.]

48.06.070 Duration of permit—Contents. Every solicitation permit issued by the commissioner shall:

- (1) Be for a period of not over two years, subject to the right of the commissioner to grant a reasonable extension for good cause.
- (2) State the securities for which subscriptions are to be solicited, the number, classes, par value, and selling price thereof, or identify the insurance contract for which applications and advance premiums or deposits are to be solicited.

(3) Limit the portion of funds received on account of stock or syndicate subscriptions, if any are proposed to be taken, which may be used for promotion and organization expenses to such amount as he deems adequate, but in no event to exceed fifteen percent of such funds as and when actually received.

(4) If to be a mutual or reciprocal insurer, limit the portion of funds received on account of applications for insurance which may be used for promotion or organization expenses to a reasonable commission upon such funds, giving consideration to the kind of insurance and policy involved and to the costs incurred by insurers generally in the production of similar business, and provide that no such commission shall be deemed to be earned nor be paid until the insurer has received its certificate of authority and the policies applied for and upon which such commission is to be based, have been actually issued and delivered.

(5) Contain such other information required by this chapter or reasonable conditions relative to accounting and reports or otherwise as the commissioner deems necessary. [1953 c 197 § 1; 1947 c 79 § .06.07; Rem. Supp. 1947 § 45.06.07.]

48.06.080 Permit as inducement. The granting of a solicitation permit is permissive only and shall not constitute an endorsement by the commissioner of any person or thing related to the proposed insurer, corporation, or syndicate and the existence of the permit shall not be advertised or used as an inducement in any solicitation. The substance of this section in bold faced type not less than ten point shall be printed at the top of each solicitation permit. [1947 c 79 § .06.08; Rem. Supp. 1947 § 45.06.08.]

48.06.090 Solicitors' licenses. Solicitation for sale of securities to members of the public under a solicitation permit shall be made only by individuals licensed therefor pursuant to the provisions of the securities act. [1949 c 190 § 5; 1947 c 79 § .06.09; Rem. Supp. 1949 § 45.06.09.]

48.06.100 Modification, revocation of permit. (1) The commissioner may, for cause, modify a solicitation permit, or may, after a hearing, revoke any solicitation permit for violation of any provision of this code, or of the terms of the permit, or of any proper order of the commissioner, or for misrepresentation.

(2) The commissioner shall revoke a solicitation permit if requested in writing by a majority of the syndicate members, or by a majority of the incorporators and two-thirds of the subscribers to stock or applicants for insurance in the proposed incorporated insurer or corporation, or if he is so requested by a majority of the subscribers of a proposed reciprocal insurer. [1947 c 79 § .06.10; Rem. Supp. 1947 § 45.06.10.]

48.06.110 Bond—Cash deposit. (1) The commissioner shall not issue a solicitation permit until the person applying therefor files with him a corporate surety bond in the penalty of fifty thousand dollars, in favor of the state and for the use and benefit of the state and of subscribers and creditors of the proposed organization.

The bond shall be conditioned upon the payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the proposed organization before completion of organization or in event a certificate of authority is not granted; and upon a full accounting for funds received until the proposed insurer has been granted its certificate of authority, or until the proposed corporation or syndicate has completed its organization as defined in the solicitation permit.

(2) In lieu of filing such bond, the person may deposit with the commissioner fifty thousand dollars in cash or in United States government bonds at par value, to be held in trust upon the same conditions as required for the bond.

(3) The commissioner may waive the requirement for a bond or deposit in lieu thereof if the permit provides that:

(a) The proposed securities are to be distributed solely and finally to those few persons who are the active promoters intimate to the formation of the insurer, or other corporation or syndicate, or

(b) The securities are to be issued in connection with subsequent financing as provided in RCW 48.06.180.

(4) Any bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement or termination of all liabilities against it. [1969 ex.s. c 241 § 2; 1955 c 86 § 2; 1953 c 197 § 2; 1947 c 79 § .06.11; Rem. Supp. 1947 § 45.06.11.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.06.120 Escrow of funds. (1) All funds received pursuant to a solicitation permit shall be deposited and held in escrow in a bank or trust company under an agreement approved by the commissioner. No part of any such deposit shall be withdrawn, except:

(a) For the payment of promotion and organization expenses as authorized by the solicitation permit; or

(b) for the purpose of making any deposit with the commissioner required for the issuance of a certificate of authority to an insurer; or

(c) if the proposed organization is not to be an insurer, upon completion of payments on stock or syndicate subscriptions made under the solicitation permit and deposit or appropriation of such funds to the purposes specified in the solicitation permit; or

(d) for making of refunds as provided in RCW 48.06.170.

(2) When the commissioner has issued a certificate of authority to an insurer any such funds remaining in escrow for its account shall be released to the insurer. [1947 c 79 § .06.12; Rem. Supp. 1947 § 45.06.12.]

48.06.130 Liability of organizers—Organization expense. (1) The incorporators of any insurer or other corporation, or the persons proposing to form a reciprocal insurer, or a syndicate, shall be jointly and severally liable for its debts or liabilities until it has secured a certificate of authority, if an insurer, or has completed its organization if a corporation other than an insurer or a syndicate.

(2) Any portion of funds received on account of stock or syndicate subscriptions which is allowed therefor under the solicitation permit, may be applied concurrently toward the

payment of promotion and organization expense theretofore incurred. [1947 c 79 § .06.13; Rem. Supp. 1947 § 45.06.13.]

48.06.150 Payment for subscriptions—Forfeiture.

(1) No such proposed stock insurer, corporation, or syndicate shall issue any share of stock or participation agreement except for payment in cash or in securities eligible for investment of funds of insurers. No such shares or agreement shall be issued until all subscriptions received under the solicitation permit have been so fully paid, nor, if an insurer, until a certificate of authority has been issued to it.

(2) Every subscription contract to shares of a stock insurer or other corporation calling for payment in installments, together with all amounts paid thereon may be forfeited at the option of the corporation, upon failure to make good a delinquency in any installment upon not less than forty-five days' notice in writing, and every such contract shall so provide. [1947 c 79 § .06.15; Rem. Supp. 1947 § 45.06.15.]

48.06.160 Insurance applications—Mutual and reciprocal insurers. All applications for insurance obtained in forming a mutual or reciprocal insurer shall provide that:

(1) Issuance of the policy is contingent upon completion of organization of the insurer and issuance to it of a certificate of authority; and

(2) the prepaid premium or deposit will be refunded in full to the applicant if the organization is not completed and certificate of authority issued prior to the solicitation permit's date of expiration; and

(3) the agreement for insurance is not effective until a policy has been issued under it. [1947 c 79 § .06.16; Rem. Supp. 1947 § 45.06.16.]

48.06.170 Procedure on failure to complete organization or to qualify. The commissioner shall withdraw all funds held in escrow and refund to subscribers or applicants all sums paid in on stock or syndicate subscriptions, less that part of such sums paid in on subscriptions as has been allowed and used for promotion and organization expenses, and all sums paid in on insurance applications, and shall dissolve the proposed insurer, corporation or syndicate if

(1) the proposed insurer, corporation or syndicate fails to complete its organization and obtain full payment for subscriptions and applications, and, if an insurer, it fails to secure its certificate of authority, all before expiration of the solicitation permit; or

(2) the commissioner revokes the solicitation permit. [1947 c 79 § .06.17; Rem. Supp. 1947 § 45.06.17.]

48.06.180 Subsequent financing. (1) No domestic insurer, or insurance holding corporation, or stock corporation for financing operations of a mutual insurer, or attorney in fact corporation of a reciprocal insurer, after

(a) it has received a certificate of authority, if an insurer, or

(b) it has completed its initial organization and financing if a corporation other than an insurer, shall solicit or receive funds in exchange for any new issue of its corporate securities, other than through a stock dividend, until it has applied

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to the commissioner for, and has been granted, a solicitation permit.

(2) The commissioner shall issue such a permit unless he finds that:

(a) The funds proposed to be secured are excessive in amount for the purpose intended, or

(b) the proposed securities or the manner of their distribution are inequitable, or

(c) the issuance of the securities would jeopardize the interests of policyholders or the holders of other securities of the insurer or corporation.

(3) Any such solicitation permit granted by the commissioner shall be for such duration, and shall contain such terms and be issued upon such conditions as the commissioner may reasonably specify or require. [1949 c 190 § 6; 1947 c 79 § .06.18; Rem. Supp. 1949 § 45.06.18.]

48.06.190 Penalty for exhibiting false accounts, etc.

Every person who, with intent to deceive, knowingly exhibits any false account, or document, or advertisement, relative to the affairs of any insurer, or of any corporation or syndicate of the kind enumerated in RCW 48.06.030, formed or proposed to be formed, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 268; 1947 c 79 § .06.19; Rem. Supp. 1947 § 45.06.19.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

48.06.200 Incorporation, articles of—Contents. (1)

This section applies to insurers incorporated in this state, but no insurer heretofore lawfully incorporated in this state is required to reincorporate or change its articles of incorporation by reason of any provisions of this section.

(2) The incorporators shall be individuals who are United States citizens, of whom two-thirds shall be residents of this state. The number of incorporators shall be not less than five if a stock insurer, nor less than ten if a mutual insurer.

(3) The incorporators shall execute articles of incorporation in duplicate, acknowledge their signatures thereunto before an officer authorized to take acknowledgments of deeds, and file both copies with the commissioner.

(4) After approval of the articles by the commissioner, one copy shall be filed in the office of the commissioner and the other copy shall be returned to the insurer.

(5) The articles of incorporation shall state:

First: The names and addresses of the incorporators.

Second: The name of the insurer. If a mutual insurer the name shall include the word "mutual."

Third: (a) The objects for which the insurer is formed;

(b) whether it is a stock or mutual insurer, and if a mutual property insurer only, whether it will insure on the cash premium or assessment plan;

(c) the kinds of insurance it will issue, according to the designations made in this code.

Fourth: If a stock insurer, the amount of its capital, the aggregate number of shares, and the par value of each share, which par value shall be not less than ten dollars, except that after the corporation has transacted business as an authorized insurer in the state for five years or more, its articles of incorporation may be amended, at the option of its stockholders, to

provide for a par value of not less than one dollar per share. If a mutual insurer, the maximum contingent liability of its policyholders for the payment of its expenses and losses occurring under its policies.

Fifth: The duration of its existence, which may be perpetual.

Sixth: The names and addresses of the directors, not less than five in number, who shall constitute the board of directors of the insurer for the initial term, not less than two nor more than six months, as designated in the articles of incorporation.

Seventh: The name of the city or town of this state in which the insurer's principal place of business is to be located.

Eighth: Other provisions not inconsistent with law as may be deemed proper by the incorporators. [1998 c 23 § 2; 1981 c 302 § 37; 1963 c 60 § 1; 1949 c 190 § 7; 1947 c 79 § .06.20; Rem. Supp. 1949 § 45.06.20.]

Severability—1981 c 302: See note following RCW 19.76.100.

Chapter 48.07 RCW

DOMESTIC INSURERS—POWERS

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Dissolution and winding up business corporation: Chapter 23B.14 RCW.

Interlocking ownership, management: RCW 48.30.250.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

48.07.010 Application of code to existing insurers.

Existing authorized domestic insurers shall continue to insure only in accordance with the provisions of this code. [1947 c 79 § .07.01; Rem. Supp. 1947 § 45.07.01.]

48.07.020 Principal office. Every domestic insurer shall establish and maintain in this state its principal office and place of business. [1947 c 79 § .07.02; Rem. Supp. 1947 § 45.07.02.]

48.07.030 Application of general corporation laws. The laws of this state relating to private corporations, except

where inconsistent with the express provisions of this code, shall govern the corporate powers, duties, and relationships of incorporated domestic insurers and insurance holding corporations formed under the laws of the state of Washington. [1985 c 364 § 1; 1947 c 79 § .07.03; Rem. Supp. 1947 § 45.07.03.]

Severability—1985 c 364: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 364 § 5.]

Provisions as to general business corporations: Title 23B RCW.

48.07.040 Annual, special meetings. Each incorporated domestic insurer shall hold an annual meeting of its shareholders or members at such time and place as may be stated in or fixed in accordance with its bylaws for the purpose of receiving reports of its affairs and to elect directors. Each domestic insurance holding corporation shall hold an annual meeting of its shareholders at such time and place as may be stated in or fixed in accordance with its bylaws. Special meetings of the shareholders of an incorporated domestic insurer or domestic insurance holding corporation shall be called and held by such persons and in such a manner as stated in the articles of incorporation or bylaws. [2002 c 300 § 5; 1985 c 364 § 2; 1965 ex.s. c 70 § 4; 1947 c 79 § .07.04; Rem. Supp. 1947 § 45.07.04.]

Severability—1985 c 364: See note following RCW 48.07.030.

48.07.050 Directors—Qualifications—Removal. Not less than three-fourths of the directors of an incorporated domestic insurer shall be United States or Canadian citizens, and a majority of the board of directors of a mutual life insurer shall be residents of this state. The directors of a domestic insurer or domestic insurance holding corporation may be removed with cause by a vote of a majority of its voting capital stock or members (if a mutual insurer) at a valid meeting and said directors may be removed without cause by a vote of sixty-seven percent of its voting capital stock or members (if a mutual insurer) at a valid meeting. [1989 c 24 § 1; 1985 c 364 § 3; 1957 c 193 § 21; 1947 c 79 § .07.05; Rem. Supp. 1947 § 45.07.05.]

Severability—1985 c 364: See note following RCW 48.07.030.

48.07.060 Corrupt practices—Penalty. No person shall buy or sell or barter a vote or proxy, relative to any meeting of shareholders or members of an incorporated domestic insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any such meeting. Violation of this section shall constitute a gross misdemeanor. [1947 c 79 § .07.06; Rem. Supp. 1947 § 45.07.06.]

48.07.070 Amendment of articles of incorporation. (1) Unless a vote of a greater proportion of directors or shares is required by its articles of incorporation, amendments to the articles of incorporation of a domestic insurer or a domestic insurance holding corporation shall be made by a majority vote of its board of directors and the vote or written assent of a majority of its voting capital stock, or two-thirds of the members (if a mutual insurer) voting at a valid meeting of members.

(2) The president and secretary of the insurer shall, under the corporate seal, certify the amendment in duplicate, and file both copies in the office of the commissioner as required under this code for original articles of incorporation. Thereupon, subject to the requirements of RCW 48.08.010 relative to increase of capital stock of a stock insurer, the amendment shall become effective. [1998 c 23 § 3; 1985 c 364 § 4; 1981 c 302 § 38; 1947 c 79 § .07.07; Rem. Supp. 1947 § 45.07.07.]

Severability—1985 c 364: See note following RCW 48.07.030.

Severability—1981 c 302: See note following RCW 19.76.100.

48.07.080 Guarantee of officers' obligations prohibited. No domestic insurer or its affiliates or subsidiaries shall guarantee the financial obligation of any director or officer of such insurer or affiliate or subsidiary in his personal capacity, and any such guaranty attempted shall be void.

This prohibition shall not apply to obligations of the insurer under surety bonds or insurance contracts issued in the regular course of business. [1947 c 79 § .07.08; Rem. Supp. 1947 § 45.07.08.]

48.07.100 Vouchers for expenditures. (1) No domestic insurer shall make any disbursement of twenty-five dollars or more, unless evidenced by a voucher correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

(2) If the disbursement is for services and reimbursement, the voucher shall describe the services and itemize the expenditures.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher shall also correctly describe the nature of the matter and of the insurer's interest therein. [1947 c 79 § .07.10; Rem. Supp. 1947 § 45.07.10.]

48.07.110 Depositaries. The funds of a domestic insurer shall not be deposited in any bank or banking institution which has not first been approved as a depositary by the insurer's board of directors or by a committee thereof designated for the purpose. [1947 c 79 § .07.11; Rem. Supp. 1947 § 45.07.11.]

48.07.130 Pecuniary interest of officer or director, restrictions upon. (1) No person having any authority in the investment or disposition of the funds of a domestic insurer and no officer or director of an insurer shall accept, except for the insurer, or be the beneficiary of any fee, brokerage, gift, commission, or other emolument because of any sale of insurance or of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the insurer, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the insurer direct upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the insurer's funds under this code.

(2) This section does not prohibit a life insurer from making a policy loan to such person on a life insurance contract issued by it and in accordance with the terms thereof.

(3) The commissioner may permit additional exceptions to the prohibition contained in subsection (1) of this section to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which the director is interested, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm.

In addition, the commissioner may permit exceptions to the prohibitions contained in subsection (1) of this section where the payment of a fee, brokerage, gift, commission, or other emolument is fully disclosed to the insurer's officers and directors and is reasonable in relation to the service performed. [1989 c 228 § 1; 1981 c 339 § 5; 1947 c 79 § .07.13; Rem. Supp. 1947 § 45.07.13.]

48.07.140 Compliance with foreign laws. Any domestic insurer doing business in another state, territory or sovereignty may design and issue insurance contracts and transact insurance in such state, territory or sovereignty as required or permitted by the laws thereof, any provision of the insurer's articles of incorporation or bylaws notwithstanding. [1947 c 79 § .07.14; Rem. Supp. 1947 § 45.07.14.]

48.07.150 Solicitations in other states. (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section shall not prohibit advertising through publications and radio broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated, and if such advertising is not specifically directed to residents of such reciprocating state.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. Nor shall it prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state. Nor shall it prohibit renewal or continuance in force, with or without modification, of contracts otherwise lawful and which were not originally executed in violation of this section.

(4) A "reciprocating" state, as used herein, is one under the laws of which a similar prohibition is imposed upon and is enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by him, after a hearing, to have violated this section. [1988 c 248 § 4; 1947 c 79 § .07.15; Rem. Supp. 1947 § 45.07.15.]

48.07.160 Continuing operation in event of national emergency—Declaration of purpose—"Insurer" defined. It is desirable for the general welfare and in particular for the welfare of insurance beneficiaries, policyholders, claimants and others that the business of domestic insurers be continued notwithstanding the event of a national emergency. The purpose of this section and RCW 48.07.170 through 48.07.200 is to facilitate the continued operation of domestic insurers in

the event that a national emergency is caused by an attack on the United States which is so disruptive of normal business and commerce in this state as to make it impossible or impracticable for a domestic insurer to conduct its business in accord with applicable provisions of law, its bylaws, or its charter. When used in this section and RCW 48.07.170 through 48.07.200 the word "insurer" includes a fraternal benefit society. [1963 c 195 § 25.]

48.07.170 Continuing operation in event of national emergency—Emergency bylaws. The board of directors of any domestic insurer may at any time adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws for such insurer, which shall be operative during such a national emergency and which may, notwithstanding any different provisions of the regular bylaws, or of the applicable statutes, or of such insurer's charter, make any provision that may be reasonably necessary for the operation of such insurer during the period of such emergency. [1963 c 195 § 26.]

48.07.180 Continuing operation in event of national emergency—Directors. In the event that the board of directors of a domestic insurer has not adopted emergency bylaws, the following provisions shall become effective upon the occurrence of such a national emergency as above described:

(1) Three directors shall constitute a quorum for the transaction of business at all meetings of the board.

(2) Any vacancy in the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.

(3) If there are no surviving directors, but at least three vice presidents of such insurer survive, the three vice presidents with the longest term of service shall be the directors and shall possess all of the powers of the previous board of directors and such powers as are granted herein or by subsequently enacted legislation. By majority vote, such emergency board of directors may elect other directors. If there are not at least three surviving vice presidents, the commissioner or duly designated person exercising the powers of the commissioner shall appoint three persons as directors who shall include any surviving vice presidents and who shall possess all of the powers of the previous board of directors and such powers as are granted herein or by subsequently enacted legislation, and these persons by majority vote may elect other directors. [1963 c 195 § 27.]

48.07.190 Continuing operation in event of national emergency—Officers. At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national emergency and in the event of the death or incapacity of the president, the secretary, or the treasurer of such insurer, such officers, or any of them, shall be succeeded in the office by the person named or described in a succession list adopted by the board of directors. Such list may be on the basis of named persons or position titles, shall establish the order of priority and may prescribe the conditions under which the powers of the office shall be exercised. [1963 c 195 § 28.]

48.07.200 Continuing operation in event of national emergency—Principal office and place of business. At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national emergency the principal office and place of business of such insurer shall be at such location as is named or described in the resolution. Such resolution may provide for alternate locations and establish an order of preference. [1963 c 195 § 29.]

48.07.210 Conversion to domestic insurer. (1)(a) Any insurer duly organized under the laws of any other state and admitted to transact insurance business in this state may become a domestic insurer upon complying with all requirements of law for the organization of a domestic insurer in this state and by designating its principal place of business at a location in this state. Such domestic insurer is entitled to a certificate of authority to transact insurance in this state, subject to the conditions set forth in (b) of this subsection, and is subject to the authority and the jurisdiction of this state.

(b) Before being eligible to become a domestic insurer under this section, an admitted insurer shall advise the commissioner, in writing, thirty days in advance of the proposed date of its plan to become a domestic insurer. The commissioner must approve the plan in advance of the proposed date. The commissioner shall not approve any such plan unless, after a hearing, pursuant to such notice as the commissioner may require, the commissioner finds that the plan is consistent with law, and that no reasonable objection to the plan exists. If the commissioner fails to approve the plan, the commissioner shall state his or her reasons for failure to approve the plan in an order issued at the hearing.

(2) After providing thirty days' advance written notice of its plan to the commissioner and upon the written approval of the commissioner in advance of the proposed transfer date, any domestic insurer of this state may transfer its domicile to any other state in which it is admitted to transact the business of insurance. Upon transfer of domicile, the insurer ceases to be a domestic insurer of this state. If otherwise qualified under the laws of this state, the commissioner shall admit the insurer to do business in this state as a foreign insurer. The commissioner shall approve any proposed transfer of domicile unless the commissioner determines after a hearing, pursuant to such notice as the commissioner may require, that the transfer is not in the best interests of the public or the insurer's policyholders in this state. If the commissioner fails to approve a proposed transfer of domicile, the commissioner shall state his or her reasons for failure to approve the transfer in an order issued at the hearing.

(3) When a foreign insurer, admitted to transact business in this state, transfers its corporate domicile to this state or to any other state, the certificate of authority, appointment of statutory agent, and all approved licenses, policy forms, rates, filings, and other authorizations and approvals in existence at the time the foreign insurer transfers its corporate domicile shall continue in effect.

(4) Any insurer transferring its corporate domicile under this section shall file any amendments to articles of incorporation, bylaws, or other corporate documents that are required to be filed in this state before the insurer may receive

approval of its proposed plan by the commissioner. [1988 c 248 § 5.]

Chapter 48.08 RCW DOMESTIC STOCK INSURERS

Sections

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48.08.170	Equity security—Rules and regulations.
48.08.190	Failure to file required information, documents, or reports—Forfeiture.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

Superadded liability of shareholders of domestic stock insurance companies: State Constitution Art. 12 § 11.

48.08.010 Increase of capital stock. (1) Increase of the capital stock of a domestic stock insurer shall be by amendment to its articles of incorporation.

(2) If the increased capital stock is to be distributed as a stock dividend, such increased capital stock may be fully paid in out of any available surplus funds as is provided in RCW 48.08.030, and such payment shall be effected by a transfer on the insurer's books from its surplus account to its capital account.

(3) When the increased capital has been fully paid in, a certificate to such effect shall be made in quadruplicate under oath and the corporate seal by the insurer's president and secretary and filed in the public offices named in RCW 48.07.070. [1953 c 197 § 4; 1947 c 79 § .08.01; Rem. Supp. 1947 § 45.08.01.]

48.08.020 Reduction of capital stock. (1) Reduction of the capital stock of a domestic stock insurer shall be by amendment of its articles of incorporation. No such reduction shall be made which results in capital stock less in amount than the minimum required by this code for the kinds of insurance thereafter to be transacted by the insurer.

(2) No surplus funds of the insurer resulting from a reduction of its capital stock shall be distributed to stockholders, except as a stock dividend on a subsequent increase of capital stock, or upon dissolution of the insurer, or upon approval of the commissioner of a distribution upon proof satisfactory to him that the distribution will not impair the interests of policyholders or the insurer's solvency.

(3) Upon such reduction of capital stock, the insurer's directors shall call in any outstanding stock certificates required to be changed pursuant thereto, and issue proper certificates in their stead. [1947 c 79 § .08.02; Rem. Supp. 1947 § 45.08.02.]

48.08.030 Dividends to stockholders. (1) No domestic stock insurer shall pay any cash dividend to stockholders except out of earned surplus. For the purpose of this section, "earned surplus" means that part of its available surplus funds which is derived from any realized net profits on its business, and does not include unrealized capital gains or reevaluation of assets.

(2) Such an insurer may pay a stock dividend out of any available surplus funds.

(3) Payment of any dividend to stockholders of a domestic stock insurer shall also be subject to all the limitations and requirements governing the payment of dividends by other private corporations.

(4) No dividend shall be declared or paid which would reduce the insurer's surplus to an amount less than the minimum required for the kinds of insurance thereafter to be transacted.

(5) For the purposes of this chapter "surplus funds" means the excess of the insurer's assets over its liabilities, including its capital stock as a liability.

(6) Available surplus means the excess over the minimum amount of surplus required for the kinds of insurance the insurer is authorized to transact. [1993 c 462 § 52; 1947 c 79 § .08.03; Rem. Supp. 1947 § 45.08.03.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.08.040 Illegal dividends, reductions—Penalty against directors. Any director of a domestic stock insurer who votes for or concurs in the declaration or payment of any dividend to stockholders or a reduction of capital stock not authorized by law shall, in addition to any other liability imposed by law, be guilty of a gross misdemeanor. [1947 c 79 § .08.04; Rem. Supp. 1947 § 45.08.04.]

48.08.050 Impairment of capital. (1) If the capital stock of a domestic stock insurer becomes impaired, the commissioner shall at once determine the amount of the deficiency and serve notice upon the insurer to require its stockholders to make good the deficiency within ninety days after service of such notice.

(2) The deficiency shall be made good in cash, or in assets eligible under this code for the investment of the insurer's funds, or by reduction of the insurer's capital stock to an amount not below the minimum required for the kinds of insurance to be thereafter transacted.

(3) If the deficiency is not made good and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(4) If the deficiency is not made good the insurer shall not issue or deliver any policy after the expiration of such ninety-day period. Any officer or director who violates or knowingly permits the violation of this provision shall be

subject to a fine of from fifty dollars to one thousand dollars for each violation. [1947 c 79 § .08.05; Rem. Supp. 1947 § 45.08.05.]

48.08.060 Repayment of contributions to surplus.

Contributions to the surplus of a domestic stock insurer other than resulting from sale of its capital stock, shall not be subject to repayment except out of surplus in excess of the minimum surplus initially required of such an insurer transacting like kinds of insurance. [1947 c 79 § .08.06; Rem. Supp. 1947 § 45.08.06.]

48.08.070 Participating policies.

(1) Any domestic stock insurer may, if its charter so provides, issue policies entitled to participate from time to time in the earnings of the insurer through dividends.

(2) Any classification of its participating policies and of risks assumed thereunder which the insurer may make shall be reasonable. No dividend shall be paid which is inequitable or which unfairly discriminates as between such classifications or as between policies within the same classification.

(3) No such insurer shall issue in this state both participating and nonparticipating policies for the same class of risks; except, that both participating and nonparticipating life insurance policies may be issued if the right or absence of the right to participate is reasonably related to the premium charged.

(4) Dividends to participating life insurance policies issued by such insurer shall be paid only out of its surplus funds as defined in subsection (5) of RCW 48.08.030. Dividends to participating policies for other kinds of insurance shall be paid only out of that part of such surplus funds which is derived from any realized net profits from the insurer's business.

(5) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy. [1947 c 79 § .08.07; Rem. Supp. 1947 § 45.08.07.]

48.08.080 Mutualization of stock insurers. (1) Any domestic stock insurer may become a domestic mutual insurer pursuant to such plan and procedure as are approved by the commissioner in advance of such mutualization.

(2) The commissioner shall not approve any such plan, procedure, or mutualization unless:

(a) It is equitable to both shareholders and policyholders.

(b) It is approved by vote of the holders of not less than three-fourths of the insurer's capital stock having voting rights, and by vote of not less than two-thirds of the insurer's policyholders who vote on such plan, pursuant to such notice and procedure as may be approved by the commissioner. Such vote may be registered in person, by proxy, or by mail.

(c) If a life insurer, the right to vote thereon is limited to those policyholders whose policies have face amounts of not less than one thousand dollars and have been in force one year or more.

(d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair value thereof as determined by competent disinterested appraisers.

(e) The plan provides for appraisal and purchase of the shares of any nonconsenting stockholder in accordance with the laws of this state relating to the sale or exchange of all the assets of a private corporation.

(f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective.

(g) The mutualization leaves the insurer with surplus funds reasonably adequate to preserve the security of its policyholders and its ability to continue successfully in business in the states in which it is then authorized, and in the kinds of insurance it is then authorized to transact. [1947 c 79 § .08.08; Rem. Supp. 1947 § 45.08.08.]

48.08.090 Stockholder meetings—Duty to inform stockholders of matters to be presented—Proxies.

(1) This section shall apply to all domestic stock insurers except:

(a) A domestic stock insurer having less than one hundred stockholders; except, that if ninety-five percent or more of the insurer's stock is owned or controlled by a parent or affiliated insurer, this section shall not apply to such insurer unless its remaining shares are held by five hundred or more stockholders.

(b) Domestic stock insurers which file with the Securities and Exchange Commission forms of proxies, consents and authorizations pursuant to the Securities and Exchange Act of 1934, as amended.

(2) Every such insurer shall seasonably furnish its stockholders in advance of stockholder meetings, information in writing reasonably adequate to inform them relative to all matters to be presented by the insurer's management for consideration of stockholders at such meeting.

(3) No person shall solicit a proxy, consent, or authorization in respect of any stock of such an insurer unless he furnishes the person so solicited with written information reasonably adequate as to

(a) the material matters in regard to which the powers so solicited are proposed to be used, and

(b) the person or persons on whose behalf the solicitation is made, and the interest of such person or persons in relation to such matters.

(4) No person shall so furnish to another, information which the informer knows or has reason to believe, is false or misleading as to any material fact, or which fails to state any material fact reasonably necessary to prevent any other statement made from being misleading.

(5) The form of all such proxies shall:

(a) Conspicuously state on whose behalf the proxy is solicited;

(b) Provide for dating the proxy;

(c) Impartially identify each matter or group of related matters intended to be acted upon;

(d) Provide means for the principal to instruct the vote of his shares as to approval or disapproval of each matter or group, other than election to office; and

(e) Be legibly printed, with context suitably organized.

Except, that a proxy may confer discretionary authority as to matters as to which choice is not specified pursuant to item (d), above, if the form conspicuously states how it is intended to vote the proxy or authorization in each such case; and may confer discretionary authority as to other matters

which may come before the meeting but unknown for a reasonable time prior to the solicitation by the persons on whose behalf the solicitation is made.

(6) No proxy shall confer authority (a) to vote for election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (b) to vote at any annual meeting (or adjournment thereof) other than the annual meeting next following the date on which the proxy statement and form were furnished stockholders.

(7) The commissioner shall have authority to make and promulgate reasonable rules and regulations for the effectuation of this section, and in so doing shall give due consideration to rules and regulations promulgated for similar purposes by the insurance supervisory officials of other states. [1965 ex.s. c 70 § 5.]

Exemption from federal registration: 15 U.S.C. §78 l(g)(2)(G).

48.08.100 Equity security—Defined. The term "equity security" when used in RCW 48.08.100 through 48.08.160 means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security. [1965 ex.s. c 70 § 11.]

48.08.110 Equity security—Duty to file statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurer, or who is a director or an officer of such insurer, shall file with the commissioner on or before the 30th day of September, 1965, or within ten days after he becomes such beneficial owner, director or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such insurer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month. [1965 ex.s. c 70 § 6.]

48.08.120 Equity security—Profits from short term transactions—Remedies—Limitation of actions. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such insurer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such insurer within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the insurer, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the

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security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer, or by the owner of any security of the insurer in the name and in behalf of the insurer if the insurer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter: PROVIDED, That no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section. [1965 ex.s. c 70 § 7.]

Exemption from federal registration: 15 U.S.C. §78 l(g)(2)(G).

48.08.130 Equity security—Sales, unlawful practices. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such insurer if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation: PROVIDED, That no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense. [1965 ex.s. c 70 § 8.]

48.08.140 Equity security—Exemptions—Sales by dealer. The provisions of RCW 48.08.120 shall not apply to any purchase and sale, or sale and purchase, and the provisions of RCW 48.08.130 shall not apply to any sale of an equity security of a domestic stock insurer not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market. [1965 ex.s. c 70 § 9.]

48.08.150 Equity security—Exemptions—Foreign or domestic arbitrage transactions. The provisions of RCW 48.08.110, 48.08.120 and 48.08.130 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of RCW 48.08.100 through 48.08.160. [1965 ex.s. c 70 § 10.]

48.08.160 Equity security—Exemptions—Securities registered or required to be, or no class held by one hundred or more persons. The provisions of RCW 48.08.110,

48.08.120, and 48.08.130 shall not apply to equity securities of a domestic stock insurer if (1) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (2) such domestic stock insurer shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the insurer would be subject to the provisions of RCW 48.08.110, 48.08.120, and 48.08.130 except for the provisions of this subsection (2). [1965 ex.s. c 70 § 12.]

48.08.170 Equity security—Rules and regulations.

The commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by RCW 48.08.100 through 48.08.160, and may for such purpose classify domestic stock insurers, securities, and other persons or matters within his jurisdiction. No provision of RCW 48.08.110, 48.08.120, and 48.08.130 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [1965 ex.s. c 70 § 13.]

48.08.190 Failure to file required information, documents, or reports—Forfeiture. Any person who fails to file information, documents, or reports required to be filed under chapter 241, Laws of 1969 ex. sess. or any rule or regulation thereunder shall forfeit to the state of Washington the sum of one hundred dollars for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under this title, shall be payable to the treasurer of the state of Washington and shall be recoverable in a civil suit in the name of the state of Washington. [1969 ex.s. c 241 § 18.]

Chapter 48.09 RCW MUTUAL INSURERS

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Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

Policy dividends are payable to real party in interest: RCW 48.18.340.

48.09.010 Initial qualifications. (1) The commissioner shall not issue a certificate of authority to a domestic mutual insurer unless it has fully qualified therefor under this code, and unless it has met the minimum requirements for the kind of insurance it proposes to transact as provided in this chapter.

(2) All applications for insurance submitted by such an insurer as fulfilling qualification requirements shall be bona fide applications from persons resident in this state covering lives, property, or risks resident or located in this state.

(3) All qualifying premiums collected and initial surplus funds of such an insurer shall be in cash. Any deposit made by such an insurer in lieu of applications, premiums, and initial surplus funds, shall be in cash or in securities eligible for the investment of the capital of a domestic stock insurer transacting the same kind of insurance. [1947 c 79 § .09.01; Rem. Supp. 1947 § 45.09.01.]

48.09.090 Additional kinds of insurance. A domestic mutual insurer may be authorized to transact kinds of insurance in addition to that for which it was originally authorized, if it has otherwise complied with the provisions of this code therefor, and while it possesses and maintains surplus funds in aggregate amount not less than the minimum amount of capital and surplus required under this code of a domestic stock insurer authorized to transact like kinds of insurance pursuant to RCW 48.05.340. [1980 c 135 § 2; 1957 c 193 § 5; 1947 c 79 § .09.09; Rem. Supp. 1947 § 45.09.09.]

48.09.100 Minimum surplus. A domestic mutual insurer on the cash premium plan shall at all times have and maintain surplus funds, representing the excess of its assets over its liabilities, in amount not less than the aggregate of

(1) the amount of any surplus funds deposited by it with the commissioner to qualify for its original certificate of authority, and

(2) the amount of any additional surplus required of it pursuant to RCW 48.09.090 for authority to transact additional kinds of insurance. [1963 c 195 § 3; 1947 c 79 § .09.10; Rem. Supp. 1947 § 45.09.10.]

48.09.110 Membership. (1) Each holder of one or more insurance contracts issued by a domestic mutual insurer, other than a contract of reinsurance, is a member of the insurer, with the rights and obligations of such membership, and each insurance contract so issued shall effectively so stipulate.

(2) Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee or fiduciary, may be

a member of a mutual insurer. [1947 c 79 § .09.11; Rem. Supp. 1947 § 45.09.11.]

48.09.120 Rights of members. (1) A domestic mutual insurer is owned by and shall be operated in the interest of its members.

(2) Each member is entitled to one vote in the election of directors and on matters coming before corporate meetings of members, subject to such reasonable minimum requirements as to duration of membership and amount of insurance held as may be made in the insurer's bylaws. The person named as the policyholder in any group insurance policy issued by such insurer shall be deemed the member, and shall have but one such vote regardless of the number of individuals insured by such policy.

(3) With respect to the management, records, and affairs of the insurer, a member shall have the same character of rights and relationship as a stockholder has toward a domestic stock insurer. [1947 c 79 § .09.12; Rem. Supp. 1947 § 45.09.12.]

48.09.130 Bylaws. A domestic mutual insurer shall adopt bylaws for the conduct of its affairs. Such bylaws, or any modification thereof, shall forthwith be filed with the commissioner. The commissioner shall disapprove any such bylaws, or as so modified, if he finds after a hearing thereon, that it is not in compliance with the laws of this state, and he shall forthwith communicate such disapproval to the insurer. No such bylaw, or modification, so disapproved shall be effective during the existence of such disapproval. [1947 c 79 § .09.13; Rem. Supp. 1947 § 45.09.13.]

48.09.140 Notice of annual meeting. (1) Notice of the time and place of the annual meeting of members of a domestic mutual insurer shall be given by imprinting such notice plainly on the policies issued by the insurer.

(2) Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change may be given:

(a) By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting; or

(b) Unless the commissioner otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the twenty-four months immediately following such meeting. [1947 c 79 § .09.14; Rem. Supp. 1947 § 45.09.14.]

48.09.150 Voting—Proxies. (1) A member of a domestic mutual insurer may vote in person or by proxy given another member on any matter coming before a corporate meeting of members.

(2) An officer of the insurer shall not hold or vote the proxy of any member.

(3) No such proxy shall be valid beyond the earlier of the following dates:

(a) The date of expiration set forth in the proxy; or

(b) The date of termination of membership; or

(c) five years from the date of execution of the proxy.

(4) No member's vote upon any proposal to divest the insurer of its business and assets, or the major part thereof, shall be registered or taken except in person or by a proxy newly executed and specific as to the matter to be voted upon. [1947 c 79 § .09.15; Rem. Supp. 1947 § 45.09.15.]

48.09.160 Directors—Disqualification. No individual shall be a director of a domestic mutual insurer by reason of his holding public office. Adjudication as a bankrupt or taking the benefit of any insolvency law or making a general assignment for the benefit of creditors disqualifies an individual from being or acting as a director. [1947 c 79 § .09.16; Rem. Supp. 1947 § 45.09.16.]

48.09.180 Limitation of expenses as to property and casualty insurance. (1) For any calendar year after its first two full calendar years of operation, no domestic mutual insurer on the cash premium plan, other than one issuing non-assessable policies, shall incur any costs or expense in the writing or administration of property, disability, and casualty insurances (other than boiler and machinery or elevator) transacted by it which, exclusive of losses paid, loss adjustment expenses, investment expenses, dividends, and taxes exceeds the sum of

(a) forty percent of the net premium income during that year after deducting therefrom net earned reinsurance premiums for such year, plus

(b) all of the reinsurance commissions received on reinsurance ceded by it.

(2) The bylaws of every domestic mutual property insurer on the assessment premium plan shall impose a reasonable limitation upon its expenses. [1949 c 190 § 8; 1947 c 79 § .09.18; Rem. Supp. 1949 § 45.09.18.]

48.09.190 Procedure upon violation of limitation. The officers and directors of an insurer violating RCW 48.09.180 shall be jointly and severally liable to the insurer for any excess of expenses incurred. If the insurer fails to exercise reasonable diligence or refuses to enforce such liability, the commissioner may prosecute action thereon for the benefit of the insurer. Such failure or refusal constitutes grounds for revocation of the insurer's certificate of authority. [1947 c 79 § .09.19; Rem. Supp. 1947 § 45.09.19.]

48.09.210 Limitation of action on officer's salary. No action to recover, or on account of, any salary or other compensation due or claimed to be due any officer or director of a domestic mutual insurer, or on any note or agreement relative thereto, shall be brought against such insurer after twelve months after the date on which such salary or compensation, or any installment thereof, first accrued. [1947 c 79 § .09.21; Rem. Supp. 1947 § 45.09.21.]

48.09.220 Contingent liability of members. (1) Each member of a domestic mutual insurer, except as otherwise provided in this chapter, shall have a contingent liability, pro rata and not one for another, for the discharge of its obligations. The contingent liability shall be in such maximum amount as is stated in the insurer's articles of incorporation,

but shall be not less than one, nor more than five, additional premiums for the member's policy at the annual premium rate and for a term of one year.

(2) Every policy issued by the insurer shall contain a statement of the contingent liability.

(3) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion of the obligations of the insurer which accrued while the policy was in force. [1949 c 190 § 9; 1947 c 79 § .09.22; Rem. Supp. 1949 § 45.09.22.]

48.09.230 Assessment of members. (1) If at any time the assets of a domestic mutual insurer doing business on the cash premium plan are less than its liabilities and the minimum surplus, if any, required of it by this code as prerequisite for continuance of its certificate of authority, and the deficiency is not cured from other sources, its directors may, if approved by the commissioner, make an assessment only on its members who at any time within the twelve months immediately preceding the date such assessment was authorized by its directors held policies providing for contingent liability.

(2) Such an assessment shall be for such an amount of money as is required, in the opinion of the commissioner, to render the insurer fully solvent, but not to result in surplus in excess of five percent of the insurer's liabilities as of the date of the assessment.

(3) A member's proportionate part of any such assessment shall be computed by applying to the premium earned, during the period since the deficiency first appeared, on his contingently liable policy or policies the ratio of the total assessment to the total premium earned during such period on all contingently liable policies which are subject to the assessment.

(4) No member shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or losses payable. [1949 c 190 § 10; 1947 c 79 § .09.23; Rem. Supp. 1949 § 45.09.23.]

48.09.234 Issuing a capital call—Notice—Insurer's duties—Rules. (Expires January 1, 2006.) (1) In addition to authority granted by RCW 48.09.220 and 48.09.230, a domestic mutual insurer meeting all the requirements of this section may increase its surplus by issuing a capital call. A capital call requires policyholders or applicants for insurance to pay a sum, in addition to premium, to be eligible to renew a policy or be issued a new policy. A policyholder that does not pay the amount of a call cannot be cancelled or denied the benefits of an existing policy.

(2) Prior to issuing a capital call, the insurer must have:

(a) Adopted articles of incorporation or other organizational documents authorizing capital calls; and

(b) Provided information concerning the insurer's authority to issue a capital call to every policyholder. This information must be provided at least ninety days prior to a capital call.

(3) The insurer must notify the commissioner of its intent to issue a capital call at least ninety days prior to the capital call. The notice to the commissioner must include:

(a) A statement of each of the following:

(i) The specific purpose or purposes of the capital call;

(ii) The total amount intended to be raised by issuance of the capital call;

(iii) The amount intended to be raised for each stated purpose;

(iv) The grounds relied upon by the insurer in deciding that the capital call is the best option available to the insurer for raising capital; and

(v) Each of the alternative methods of raising capital the insurer considered and the reasons the insurer rejected each alternative in favor of the capital call;

(b) For the ten years immediately preceding the filing of the notice, a year by year accounting of:

(i) All rate filings and actions;

(ii) The total of all underwriting losses; and

(iii) The total amount of dividends paid to policyholders; and

(c) A complete application for a solicitation permit as required in RCW 48.06.030.

(4) Before an insurer may issue a capital call, the insurer must:

(a) Notify the commissioner and provide information as required in subsection (3) of this section;

(b) Provide any and all additional information that the commissioner may determine is useful or necessary in evaluating the merits of the proposed capital call;

(c) Receive approval of the policy or insuring instrument from the commissioner; and

(d) Receive approval of the commissioner for the capital call and the solicitation permit.

The commissioner may disapprove a capital call if he or she does not believe it is in the best interest of the insurer, the policyholders, or the citizens of the state of Washington. In making this determination, the commissioner may consider the financial health of the insurer, the impact on the marketplace, the possible use of other means to raise capital, the frequency of previous capital calls by the insurer, the effect of raising premiums instead of a capital call, the impact on state revenue, or any other factor the commissioner deems proper.

(5) The funds raised by an approved capital call are not premiums for the purposes of RCW 48.14.020.

(6) The commissioner may adopt rules to implement this section. [2004 c 89 § 1.]

Expiration date—2004 c 89 § 1: "Section 1 of this act expires January 1, 2006." [2004 c 89 § 3.]

Effective date—2004 c 89: See note following RCW 48.09.235.

48.09.235 Issuing a capital call—Notice—Insurer's duties—Rules. (Effective January 1, 2006.) (1) In addition to authority granted by RCW 48.09.220 and 48.09.230, a domestic mutual insurer meeting all the requirements of this section may increase its surplus by issuing a capital call. A capital call requires policyholders or applicants for insurance to pay a sum, in addition to premium, to be eligible to renew a policy or be issued a new policy. A policyholder that does not pay the amount of a call cannot be cancelled or denied the benefits of an existing policy.

(2) Prior to issuing a capital call, the insurer must have:

(a) Adopted articles of incorporation or other organizational documents authorizing capital calls; and

(b) For any capital call issued on or after January 1, 2006, included information concerning the insurer's authority

to issue a capital call in the policy of every policyholder. This information must be provided at least one full policy renewal cycle prior to a capital call.

(3) The insurer must notify the commissioner of its intent to issue a capital call at least ninety days prior to the capital call. The notice to the commissioner must include:

(a) A statement of each of the following:

(i) The specific purpose or purposes of the capital call;

(ii) The total amount intended to be raised by issuance of the capital call;

(iii) The amount intended to be raised for each stated purpose;

(iv) The grounds relied upon by the insurer in deciding that the capital call is the best option available to the insurer for raising capital; and

(v) Each of the alternative methods of raising capital the insurer considered and the reasons the insurer rejected each alternative in favor of the capital call;

(b) For the ten years immediately preceding the filing of the notice, a year by year accounting of:

(i) All rate filings and actions;

(ii) The total of all underwriting losses; and

(iii) The total amount of dividends paid to policyholders; and

(c) A complete application for a solicitation permit as required in RCW 48.06.030.

(4) Before an insurer may issue a capital call, the insurer must:

(a) Notify the commissioner and provide information as required in subsection (3) of this section;

(b) Provide any and all additional information that the commissioner may determine is useful or necessary in evaluating the merits of the proposed capital call;

(c) Receive approval of the policy or insuring instrument from the commissioner; and

(d) Receive approval of the commissioner for the capital call and the solicitation permit.

The commissioner may disapprove a capital call if he or she does not believe it is in the best interest of the insurer, the policyholders, or the citizens of the state of Washington. In making this determination, the commissioner may consider the financial health of the insurer, the impact on the marketplace, the possible use of other means to raise capital, the frequency of previous capital calls by the insurer, the effect of raising premiums instead of a capital call, the impact on state revenue, or any other factor the commissioner deems proper.

(5) The funds raised by an approved capital call are not premiums for the purposes of RCW 48.14.020.

(6) The commissioner may adopt rules to implement this section. [2004 c 89 § 2.]

Effective date—2004 c 89 § 2: "Section 2 of this act takes effect January 1, 2006." [2004 c 89 § 4.]

Effective date—2004 c 89: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2004]." [2004 c 89 § 5.]

48.09.240 Contingent liability of members of assessment insurer. The contingent liability of members of a domestic mutual insurer doing business on the assessment premium plan shall be called upon and enforced by its direc-

tors as provided in its bylaws. [1947 c 79 § .09.24; Rem. Supp. 1947 § 45.09.24.]

48.09.250 Contingent liability as asset. Any contingent liability of members of a domestic mutual insurer to assessment does not constitute an asset of the insurer in any determination of its financial condition. [1949 c 190 § 11; 1947 c 79 § .09.25; Rem. Supp. 1949 § 45.09.25.]

48.09.260 Liability as lien on policy reserves. As to life insurance, any portion of an assessment of contingent liability upon a policyholder which remains unpaid following notice of such assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the commissioner, be secured by placing a lien on the reserves held by the insurer to the credit of such policyholder. [1949 c 190 § 12; 1947 c 79 § .09.26; Rem. Supp. 1949 § 45.09.26.]

48.09.270 Nonassessable policies. (1) A domestic mutual insurer on the cash premium plan, after it has established a surplus not less in amount than the minimum capital funds required of a domestic stock insurer to transact like kinds of insurance, and for so long as it maintains such surplus, may extinguish the contingent liability of its members to assessment and omit provisions imposing contingent liability in all policies currently issued.

(2) Any deposit made with the commissioner as a prerequisite to the insurer's certificate of authority may be included as part of the surplus required in this section.

(3) When the surplus has been so established and the commissioner has so ascertained, he shall issue to the insurer, at its request, his certificate authorizing the extinguishment of the contingent liability of its members and the issuance of policies free therefrom.

(4) While it maintains surplus funds in amount not less than the minimum capital required of a domestic stock insurer authorized to transact like kinds of insurance, and subject to the requirements of RCW 48.05.360 as to special surplus, a foreign or alien mutual insurer on the cash premium plan may, if consistent with its charter and the laws of its domicile, issue nonassessable policies covering subjects located, resident, or to be performed in this state. [1963 c 195 § 4; 1947 c 79 § .09.27; Rem. Supp. 1947 § 45.09.27.]

48.09.280 Qualification on issuance of nonassessable policies. The commissioner shall not authorize a domestic mutual insurer so to extinguish the contingent liability of any of its members or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its members and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which such an insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its members as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state. [1947 c 79 § .09.28; Rem. Supp. 1947 § 45.09.28.]

48.09.290 Revocation of right to issue nonassessable policies. (1) The commissioner shall revoke the authority of a domestic mutual insurer so to extinguish the contingent liability of its members if

(a) at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or

(b) the insurer, by resolution of its directors approved by its members, requests that the authority be revoked.

(2) Upon revocation of such authority for any cause, the insurer shall not thereafter issue any policies without contingent liability, nor renew any policies then in force without written endorsement thereon providing for contingent liability. [1947 c 79 § .09.29; Rem. Supp. 1947 § 45.09.29.]

48.09.300 Dividends. (1) The directors of a domestic mutual insurer on the cash premium plan may from time to time apportion and pay to its members as entitled thereto, dividends only out of that part of its surplus funds which are in excess of its required minimum surplus and which represent net realized savings and net realized earnings from its business.

(2) Any classification of its participating policies and of risks assumed thereunder which the insurer may make shall be reasonable. No dividend shall be paid which is inequitable, or which unfairly discriminates as between such classifications or as between policies within the same classification.

(3) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy. [1947 c 79 § .09.30; Rem. Supp. 1947 § 45.09.30.]

48.09.310 Nonparticipating policies. (1) If its articles of incorporation so provide, a domestic mutual insurer on the cash premium plan may, while it is authorized to issue policies without contingent liability to assessment, issue policies not entitled to participate in the insurer's savings and earnings.

(2) Such insurer shall not issue in this state both participating and nonparticipating policies for the same class of risks; except, that both participating and nonparticipating life insurance policies may be issued if the right or absence of the right to participate is reasonably related to the premium charged. [1947 c 79 § .09.31; Rem. Supp. 1947 § 45.09.31.]

48.09.320 Borrowed capital. (1) A domestic mutual insurer may, with the commissioner's advance approval and without the pledge of any of its assets, borrow money to defray the expenses of its organization or for any purpose required by its business, upon an agreement that such money and such fair and reasonable interest thereon as may be agreed upon, shall be repaid only out of the insurer's earned surplus in excess of its required minimum surplus.

(2) An insurer borrowing funds under this section must comply with the national association of insurance commissioner's - accounting practices and procedures manual which sets forth requirements for borrowed money to be treated as surplus notes for financial accounting purposes.

(3) The commissioner's approval of such borrowed funds, if granted, shall specify the amount to be borrowed, the purpose for which the money is to be used, the terms and form of the loan agreement, the date by which the loan must be completed, fair and reasonable commissions or promo-

tional expenses to be incurred or to be paid, and such other related matters as the commissioner shall deem proper. If the money is to be borrowed upon multiple agreements, the agreements shall be serially numbered. No loan agreement or series thereof shall have or be given any preferential rights over any other such loan agreement or series. [2003 c 249 § 1; 1947 c 79 § .09.32; Rem. Supp. 1947 § 45.09.32.]

48.09.330 Repayment of borrowed capital. (1) The insurer may repay any loan received pursuant to RCW 48.09.320, or any part thereof as approved by the commissioner, only out of its funds which represent such loan or realized net earned surplus. No repayment shall be made which reduces the insurer's surplus below the minimum surplus required for the kinds of insurance transacted.

(2) The insurer shall repay any such loan or the largest possible part thereof when the purposes for which such funds were borrowed have been fulfilled and when the insurer's surplus is adequate to so repay without unreasonable impairment of the insurer's operations.

(3) No repayment of such loan shall be made unless approved by the commissioner. The insurer shall notify the commissioner in writing not less than sixty days in advance of its intention to repay such loan or any part thereof, and the commissioner shall forthwith ascertain whether the insurer's financial condition is such that the repayment can properly be made.

(4) Upon dissolution and liquidation of the insurer, after the retirement of all its other outstanding obligations the holders of any such loan agreements then remaining unpaid shall be entitled to payment before any distribution of surplus is made to the insurer's members. [1949 c 190 § 13; 1947 c 79 § .09.33; Rem. Supp. 1949 § 45.09.33.]

48.09.340 Impairment of surplus. (1) If the assets of a domestic mutual insurer on the cash premium plan fall below the amount of its liabilities, plus the amount of any surplus required by this code for the kinds of insurance authorized to be transacted, the commissioner shall at once ascertain the amount of the deficiency and serve notice upon the insurer to cure the deficiency within ninety days after such service of notice.

(2) If the deficiency is not made good in cash or in assets eligible under this code for the investment of the insurer's funds, and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If the deficiency is not made good the insurer shall not issue or deliver any policy after the expiration of such ninety-day period. Any officer or director who violates or knowingly permits the violating of this provision shall be subject to a fine of from fifty dollars to one thousand dollars for each violation. [1949 c 190 § 14; 1947 c 79 § 09.34; Rem. Supp. 1949 § 45.09.34.]

48.09.350 Reorganization of mutual as stock insurer—Reinsurance—Approval. (1) Upon satisfaction of the requirements applicable to the formation of a domestic stock insurer, a domestic mutual insurer may be reorganized

as a stock corporation, pursuant to a plan of reorganization as approved by the commissioner.

(2) A domestic mutual insurer may be wholly reinsured in and its assets transferred to and its liabilities assumed by another mutual or stock insurer under such terms and conditions as are approved by the commissioner in advance of such reinsurance.

(3) The commissioner shall not approve any such reorganization plan or reinsurance agreement which does not determine the amount of and make adequate provision for paying to members of such mutual insurer, reasonable compensation for their equities as owners of such insurer, such compensation to be apportioned to members as identified and in the manner prescribed in RCW 48.09.360. The procedure for approval by the commissioner of any such reorganization plan or reinsurance agreement shall be the same as the procedure for approval by the commissioner of a plan of merger or consolidation under RCW 48.31.010.

Approval at a corporate meeting of members by two-thirds of the then members of a domestic mutual insurer who vote on the plan or agreement pursuant to such notice and procedure as was approved by the commissioner shall constitute approval of any such reorganization plan or reinsurance agreement by the insurer's members. [1984 c 23 § 1; 1983 1st ex.s. c 32 § 1; 1947 c 79 § .09.35; Rem. Supp. 1947 § 45.09.35.]

48.09.360 Distribution of assets and ownership equities upon liquidation. (1) Upon the liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness and policy obligations shall be distributed to its members who were such within the thirty-six months prior to the last termination of its certificate of authority.

(2) Upon the reorganization of a domestic mutual insurer as a domestic stock insurer under RCW 48.09.350(1) or upon reinsurance of the whole of the liabilities and transfer of all the assets of a domestic mutual insurer under RCW 48.09.350(2), the ownership equities of members of the domestic mutual insurer shall be distributed to its members who were such on an eligibility date stated in the reorganization plan or reinsurance agreement, or who were such within the thirty-six months prior to such eligibility date. Such eligibility date shall be either the date on which the reorganization plan or reinsurance agreement is adopted by resolution of the board of directors of the domestic mutual insurer, or the date on which the reorganization plan or reinsurance agreement is approved by a vote of the members, or the date which ends a calendar quarter during which either of such actions is taken.

(3) Upon the liquidation of a domestic mutual insurer, the distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the thirty-six months before the last termination of the insurer's certificate of authority, bear to the aggregate of all premiums so earned on the policies of all such members during the same thirty-six months.

(4) Upon the reorganization of a domestic mutual insurer as a domestic stock insurer under RCW 48.09.350(1) or upon reinsurance of the whole of the liabilities and transfer of all the assets of a domestic mutual insurer under RCW 48.09.350(2), the distributive share of each member entitled

thereto shall be in the proportion that the aggregate premiums earned by the insurer on the policies in force of that member during the thirty-six months before the eligibility date established under RCW 48.09.360(2) bear to the aggregate of all premiums so earned during the same thirty-six months on all the policies in force of all such members who are entitled to a distributive share.

(5) If a life insurer, the insurer shall make a reasonable classification of its life insurance policies so held by such members entitled to a distributive share and a formula based upon such classification for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the commissioner's approval. [1984 c 23 § 2; 1947 c 79 § .09.36; Rem. Supp. 1947 § 45.09.36.]

**Chapter 48.10 RCW
RECIPROCAL INSURERS**

Sections

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Dividends not to be guaranteed: RCW 48.30.100.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

Policy dividends are payable to real party in interest: RCW 48.18.340.

48.10.010 "Reciprocal insurance" defined. "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons. [1947 c 79 § .10.01; Rem. Supp. 1947 § 45.10.01.]

48.10.020 "Reciprocal insurer" defined. A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves. [1947 c 79 § .10.02; Rem. Supp. 1947 § 45.10.02.]

48.10.030 Scope of chapter. All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocal insurers. [1947 c 79 § .10.03; Rem. Supp. 1947 § 45.10.03.]

48.10.050 Insuring powers of reciprocals. (1) A reciprocal insurer may, upon qualifying therefor as provided by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) A reciprocal insurer may purchase reinsurance upon the risk of any subscriber, and may grant reinsurance as to any kind of insurance which it is authorized to transact direct. [1947 c 79 § .10.05; Rem. Supp. 1947 § 45.10.05.]

48.10.055 Real property—Attorney's duty. A reciprocal insurer may purchase, sell, mortgage, encumber, lease, or otherwise affect the title to real property for the purposes and objects of the reciprocal insurer. All deeds, notes, mortgages, or other documents relating to the real property may be executed in the name of the reciprocal insurer by its attorney. [1991 c 266 § 1.]

48.10.060 Name—Suits. A reciprocal insurer shall:

(1) Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting."

(2) Sue and be sued in its own name. [1947 c 79 § .10.06; Rem. Supp. 1947 § 45.10.06.]

48.10.070 Surplus funds required. (1) A domestic reciprocal insurer hereafter formed, if it has otherwise complied with the provisions of this code, may be authorized to transact insurance if it initially possesses surplus in an amount equal to or exceeding the capital and surplus requirements required under RCW 48.05.340(1) plus special surplus, if any, required under RCW 48.05.360 and thereafter possesses, and maintains surplus funds equal to the paid-in capital stock required under RCW 48.05.340 of a stock insurer transacting like kinds of insurance, and the special surplus, if any, required under RCW 48.05.360.

(2) A domestic reciprocal insurer which under prior laws held authority to transact insurance in this state may continue to be so authorized so long as it otherwise qualifies therefor and maintains surplus funds in amount not less than as required under laws of this state in force at the time such authority to transact insurance in this state was granted.

(3) A domestic reciprocal insurer heretofore formed shall maintain on deposit with the commissioner surplus funds of not less than the sum of one hundred thousand dollars, and to transact kinds of insurance transacted by it in addition to that authorized by its original certificate of authority, shall have and maintain surplus (including the amount of such deposit) in amount not less than the paid-in capital stock required under RCW 48.05.340(1) plus special surplus, if any, required under RCW 48.05.360, of a domestic stock insurer formed after 1967 and transacting the same kinds of insurance. Such additional surplus funds need not be deposited with the commissioner. [1985 c 264 § 4; 1975 1st

ex.s. c 266 § 5; 1963 c 195 § 5; 1947 c 79 § .10.07; Rem. Supp. 1947 § 45.10.07.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.10.080 Attorney. (1) "Attorney" as used in this chapter refers to the attorney in fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign persons, firms, or corporations.

(3) The subscribers and the attorney in fact comprise a reciprocal insurer and a single entity for the purposes of chapter 48.14 RCW as to all operations under the insurer's certificate of authority. [1965 ex.s. c 70 § 35; 1947 c 79 § .10.08; Rem. Supp. 1947 § 45.10.08.]

48.10.090 Organization of reciprocal. (1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and in compliance with this code make application to the commissioner for a certificate of authority to transact insurance.

(2) When applying for a certificate of authority, the original subscribers and the proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner a declaration setting forth:

(a) the name of the insurer;

(b) the location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;

(c) the kinds of insurance proposed to be transacted;

(d) the names and addresses of the original subscribers;

(e) the designation and appointment of the proposed attorney and a copy of the power of attorney;

(f) the names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if a firm;

(g) the powers of the subscribers' advisory committee and the names and terms of office of the members thereof;

(h) that all moneys paid to the reciprocal, after deducting therefrom any sum payable to the attorney, shall be held in the name of the insurer and for the purposes specified in the subscriber's agreement;

(i) a copy of the subscriber's agreement;

(j) a statement that each of the original subscribers has in good faith applied for insurance of the kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at the rate theretofore filed with and approved by the commissioner;

(k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by RCW 48.10.070 is on hand;

(l) a copy of each policy, endorsement, and application form it then proposes to issue or use.

Such declaration shall be acknowledged by each such subscriber and by the attorney in the manner required for the

acknowledgment of deeds to real estate. [1947 c 79 § .10.09; Rem. Supp. 1947 § 45.10.09.]

48.10.100 Policies of original subscribers, effective when. Any policy applied for by an original subscriber shall become effective coincidentally with the issuance of a certificate of authority to the reciprocal insurer. [1947 c 79 § .10.10; Rem. Supp. 1947 § 45.10.10.]

48.10.110 Certificate of authority. (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner may refuse, suspend, or revoke the certificate of authority, in addition to other grounds therefor, for failure of its attorney to comply with any provision of this code. [1947 c 79 § .10.11; Rem. Supp. 1947 § 45.10.11.]

48.10.120 Power of attorney. (1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

(a) The powers of the attorney;

(b) that the attorney is empowered to accept service of process on behalf of the insurer and to authorize the commissioner to receive service of process in actions against the insurer upon contracts exchanged;

(c) the services to be performed by the attorney in general;

(d) the maximum amount to be deducted from advance premiums or deposits to be paid to the attorney;

(e) except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one nor more than ten times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) provide for the exercise of any right reserved to the subscribers directly or through their advisory committee;

(d) contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement or any amendment thereof, shall be used or be effective in this state until approved by the commissioner. [1949 c 190 § 15; 1947 c 79 § .10.12; Rem. Supp. 1949 § 45.10.12.]

48.10.130 Modification of subscriber's agreement or power of attorney. Modification of the terms of the subscriber's agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto. [1947 c 79 § .10.13; Rem. Supp. 1947 § 45.10.13.]

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48.10.140 Attorney's bond. (1) Concurrently with the filing of the declaration provided for in RCW 48.10.090, (or, if an existing domestic reciprocal insurer, within ninety days after the effective date of this code) the attorney of a domestic reciprocal shall file with the commissioner a bond running to the state of Washington. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the commissioner's approval.

(2) The bond shall be in the penal sum of twenty-five thousand dollars, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands, and that he will not withdraw or appropriate for his own use from the funds of the insurer any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless thirty days advance notice in writing of intent to cancel is given to both the attorney and the commissioner. [1947 c 79 § .10.14; Rem. Supp. 1947 § 45.10.14.]

48.10.150 Deposit in lieu of bond. In lieu of such bond, the attorney may maintain on deposit with the commissioner a like amount in cash or in value of securities qualified under this code as insurers' investments, and subject to the same conditions as the bond. [1947 c 79 § .10.15; Rem. Supp. 1947 § 45.10.15.]

48.10.160 Actions on bond. Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any one time by one or more subscribers suffering loss through a violation of the conditions thereof or by a receiver or liquidator of the insurer. Amounts so recovered shall be deposited in and become part of the insurer's funds. [1947 c 79 § .10.16; Rem. Supp. 1947 § 45.10.16.]

48.10.170 Service of legal process. (1) A certificate of authority shall not be issued to a domestic reciprocal insurer unless prior thereto the attorney has executed and filed with the commissioner the insurer's irrevocable authorization of the commissioner to receive legal process issued in this state against the insurer upon any cause of action arising within this state.

(2) The provisions of RCW 48.05.210 shall apply to service of such process upon the commissioner.

(3) In lieu of service on the commissioner, legal process may be served upon a domestic reciprocal insurer by serving the insurer's attorney at his principal offices.

(4) Any judgment against the insurer based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear and in an amount not exceeding their respective contingent liabilities. [1947 c 79 § .10.17; Rem. Supp. 1947 § 45.10.17.]

48.10.180 Annual statement. The annual statement of a reciprocal insurer shall be made and filed by the attorney. [1947 c 79 § .10.18; Rem. Supp. 1947 § 45.10.18.]

48.10.190 Attorney's contribution—Repayment. No contribution to a domestic reciprocal insurer's surplus by the

attorney shall be retrievable by the attorney except under such terms and in such circumstances as the commissioner approves. [1947 c 79 § .10.19; Rem. Supp. 1947 § 45.10.19.]

48.10.200 Determination of financial condition. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposit delinquent for ninety days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than ninety days shall be allowed as assets.

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for the compensation of the attorney. [1947 c 79 § .10.20; Rem. Supp. 1947 § 45.10.20.]

48.10.220 Who may become subscriber. Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee, or fiduciary may be a subscriber of a reciprocal insurer. [1947 c 79 § .10.22; Rem. Supp. 1947 § 45.10.22.]

48.10.230 Subscribers' advisory committee. (1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than three-fourths of such committee shall be composed of subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

(a) Supervise the finances of the insurer;

(b) supervise the insurer's operations to such extent as to assure their conformity with the subscribers' agreement and power of attorney;

(c) procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer;

(d) have such additional powers and functions as may be conferred by the subscribers' agreement. [1947 c 79 § .10.23; Rem. Supp. 1947 § 45.10.23.]

48.10.250 Assessment liability of subscriber. (1) The liability of each subscriber subject to assessment for the obligations of the reciprocal insurer shall not be joint, but shall be individual and several.

(2) Each subscriber who is subject to assessment shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agree-

ment, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one nor more than ten times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in RCW 48.10.290.

(3) Each assessable policy issued by the insurer shall plainly set forth a statement of the contingent liability. [1947 c 79 § .10.25; Rem. Supp. 1947 § 45.10.25.]

48.10.260 Action against subscriber requires judgment against insurer. (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for thirty days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in an amount not exceeding his contingent liability, if any. [1947 c 79 § .10.26; Rem. Supp. 1947 § 45.10.26.]

48.10.270 Assessments. (1) Assessments may be levied from time to time upon the subscribers of a domestic reciprocal insurer, other than as to nonassessable policies, by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner; or by the commissioner in liquidation of the insurer.

(2) Each such subscriber's share of a deficiency for which an assessment is made, not exceeding in any event his aggregate contingent liability as computed in accordance with RCW 48.10.290, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or losses payable. [1947 c 79 § .10.27; Rem. Supp. 1947 § 45.10.27.]

48.10.280 Time limit for assessment. Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) While his policy is in force or within one year after its termination, he is notified by either the attorney or the commissioner of his intention to levy such assessment; or

(2) If an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued pursuant to RCW 48.31.190 while his policy is in force or within one year after its termination. [1947 c 79 § .10.28; Rem. Supp. 1947 § 45.10.28.]

48.10.290 Aggregate liability. No one policy or subscriber as to such policy, shall be assessed or be charged with an aggregate of contingent liability as to obligations incurred

by a domestic reciprocal insurer in any one calendar year, in excess of the number of times the premium as stated in the policy as computed solely upon premium earned on such policy during that year. [1947 c 79 § .10.29; Rem. Supp. 1947 § 45.10.29.]

48.10.300 Nonassessable policies. (1) Subject to the special surplus requirements of RCW 48.05.360, if a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. No policy shall thereafter be issued or renewed without providing for the contingent assessment liability of subscribers.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state. [1983 c 3 § 148; 1947 c 79 § .10.30; Rem. Supp. 1947 § 45.10.30.]

48.10.310 Return of savings to subscribers. A reciprocal insurer may from time to time return to its subscribers any savings or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks, or policies, or between subscribers. [1947 c 79 § .10.31; Rem. Supp. 1947 § 45.10.31.]

48.10.320 Distribution of assets upon liquidation. Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contribution of the attorney to its surplus made as provided in RCW 48.10.190, and the return of any unused deposits, savings, or credits, shall be distributed to its subscribers who were such within the twelve months prior to the last termination of its certificate of authority according to such formula as may have been approved by the commissioner. [1947 c 79 § .10.32; Rem. Supp. 1947 § 45.10.32.]

48.10.330 Merger—Conversion to stock or mutual insurer. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of the subscribers who vote upon such merger pursuant to such notice as may be approved by the commissioner and with the approval of the

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commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with RCW 48.10.320 and a reasonable length of time within which to exercise such right. [1947 c 79 § .10.33; Rem. Supp. 1947 § 45.10.33.]

48.10.340 Impairment of assets—Procedure. (1) If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities other than any liability on account of funds contributed by the attorney, and to maintain the surplus required for the kinds of insurance it is authorized to transact, its attorney shall forthwith levy an assessment upon subscribers made subject to assessment by the terms of their policies for the amount needed to make up the deficiency.

(2) If the attorney fails to make the assessment within thirty days after the commissioner orders him to do so, or if the deficiency is not fully made up within sixty days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney, but including the reasonable cost of the liquidation. [1947 c 79 § .10.34; Rem. Supp. 1947 § 45.10.34.]

**Chapter 48.11 RCW
INSURING POWERS**

Sections

- 48.11.020 "Life insurance" defined.
- 48.11.030 "Disability insurance" defined—"Stop loss insurance" defined.
- 48.11.040 "Property insurance" defined.
- 48.11.050 "Marine and transportation insurance" defined.
- 48.11.060 "Vehicle insurance" defined.
- 48.11.070 "General casualty insurance" defined.
- 48.11.080 "Surety insurance" defined.
- 48.11.100 "Title insurance" defined.
- 48.11.130 Reinsurance powers.
- 48.11.140 Limitation of single risk.

Workers' compensation: Title 51 RCW.

48.11.020 "Life insurance" defined. "Life insurance" is insurance on human lives and insurances appertaining thereto or connected therewith. For the purposes of this code the transacting of life insurance includes the granting of annuities and endowment benefits; additional benefits in event of death by accident; additional benefits in event of the total and permanent disability of the insured; and optional

modes of settlement of proceeds. [1947 c 79 § .11.02; Rem. Supp. 1947 § 45.11.02.]

48.11.030 "Disability insurance" defined—"Stop loss insurance" defined. "Disability insurance" is insurance against bodily injury, disablement or death by accident, against disablement resulting from sickness, and every insurance appertaining thereto including stop loss insurance. "Stop loss insurance" is insurance against the risk of economic loss assumed under a self-funded employee disability benefit plan. [1992 c 226 § 1; 1947 c 79 § .11.03; Rem. Supp. 1947 § 45.11.03.]

Application—1992 c 226: "This act applies to policies issued or renewed on or after July 1, 1992." [1992 c 226 § 4.]

48.11.040 "Property insurance" defined. "Property insurance" is insurance against loss of or damage to real or personal property of every kind and any interest therein, from any or all hazard or cause, and against loss consequential upon such loss or damage. [1947 c 79 § .11.04; Rem. Supp. 1947 § 45.11.04.]

48.11.050 "Marine and transportation insurance" defined. "Marine and transportation insurance" is:

(1) Insurance against loss of or damage to:

(a) Vessels, craft, aircraft, vehicles, goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, securities, choses in action, evidences of debt, valuable papers, bottomry, and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting shipment, or during any delays, storage, transshipment, or reshipment incident thereto, including war risks, marine builder's risks, and all personal property floater risks.

(b) Person or property in connection with or appertaining to a marine, transit or transportation insurance, including liability for loss of or damage to either incident to the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to any person arising out of the ownership, maintenance, or use of automobiles).

(c) Precious stones, jewels, jewelry, precious metals, whether in course of transportation or otherwise.

(d) Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage); piers, wharves, docks and slips, and other aids to navigation and transportation, including dry docks and marine railways, dams and appurtenant facilities for the control of waterways.

(2) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage, or expense incident to ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal

injury, illness or death or for loss of or damage to the property of another person. [1947 c 79 § .11.05; Rem. Supp. 1947 § 45.11.05.]

48.11.060 "Vehicle insurance" defined. (1) "Vehicle insurance" is insurance against loss or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, and against any loss or liability resulting from or incident to ownership, maintenance, or use of any such vehicle or aircraft or animal.

(2) Insurance against accidental death or accidental injury to individuals while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance. [1947 c 79 § .11.06; Rem. Supp. 1947 § 45.11.06.]

48.11.070 "General casualty insurance" defined. "General casualty insurance" includes vehicle insurance as defined in RCW 48.11.060, and in addition is insurance:

(1) Against legal liability for the death, injury, or disability of any human being, or for damage to property.

(2) Of medical, hospital, surgical and funeral benefits to persons injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury or disability of human beings.

(3) Of the obligations accepted by, imposed upon, or assumed by employers under law for workers' compensation.

(4) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt of any of the foregoing; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail.

(5) Upon personal effects against loss or damage from any cause.

(6) Against loss or damage to glass, including its lettering, ornamentation and fittings.

(7) Against any liability and loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and to make inspection of and issue certificates of inspection upon elevators, boilers, machinery, and apparatus of any kind.

(8) Against loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes and containers, or by water entering through leaks or openings in buildings.

(9) Against loss or damage resulting from failure of debtors to pay their obligations to the insured (credit insurance).

(10) Against any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy. [1987 c 185 § 18; 1953 c 197 § 5; 1947 c 79 § .11.07; Rem. Supp. 1947 § 45.11.07.]

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

48.11.080 "Surety insurance" defined. "Surety insurance" includes:

(1) Credit insurance as defined in subdivision (9) of RCW 48.11.070.

(2) Bail bond insurance.

(3) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(4) Guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

(5) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidence of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also against loss or damage to such an insured's premises, or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat. [1967 c 150 § 8; 1947 c 79 § .11.08; Rem. Supp. 1947 § 45.11.08.]

48.11.100 "Title insurance" defined. "Title insurance" is insurance of owners of property or others having an interest therein, against loss by encumbrance, or defective titles, or adverse claim to title, and services connected therewith. [1947 c 79 § .11.10; Rem. Supp. 1947 § 45.11.10.]

48.11.130 Reinsurance powers. A domestic mutual assessment insurer shall not have authority to accept reinsurance. Any other domestic insurer may accept reinsurance only of such kinds of insurance as it is authorized to transact direct. [1947 c 79 § .11.13; Rem. Supp. 1947 § 45.11.13.]

48.11.140 Limitation of single risk. (1) No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent of its surplus to policyholders.

(2) For the purposes of this section, a "subject of insurance" as to insurance against fire includes all properties insured by the same insurer which are reasonably subject to loss or damage from the same fire.

(3) Reinsurance in an alien reinsurer not qualified under *RCW 48.05.300 may not be deducted in determining risk retained for the purposes of this section.

(4) In the case of surety insurance, the net retention shall be computed after deduction of reinsurances, the amount assumed by any co-surety, the value of any security deposited, pledged, or held subject to the consent of the surety and for the protection of the surety.

(5) This section does not apply to life insurance, disability insurance, title insurance, or insurance of marine risks or marine protection and indemnity risks. [1993 c 462 § 53; 1983 c 3 § 149; 1959 c 225 § 2; 1947 c 79 § .11.14; Rem. Supp. 1947 § 45.11.14.]

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*Reviser's note: RCW 48.05.300 was repealed by 1997 c 379 § 10.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.12 RCW ASSETS AND LIABILITIES

Sections

48.12.010	"Assets" defined.
48.12.020	Nonallowable assets.
48.12.030	Liabilities.
48.12.040	Unearned premium reserve, property, casualty, and surety insurance.
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48.12.170	Valuation of bonds.
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48.12.010 "Assets" defined. In any determination of the financial condition of any insurer there shall be allowed as assets only such assets as belong wholly and exclusively to the insurer, which are registered, recorded, or held under the insurer's name, and which consist of:

(1) Cash in the possession of the insurer or in transit under its control, and the true balance of any deposit of the insurer in a solvent bank or trust company;

(2) Investments, securities, properties, and loans acquired or held in accordance with this code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stocks and shares unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets if such interest is in the judgment of the commissioner a collectible asset.

(e) Interest due or accrued on a mortgage loan, in amount not exceeding in any event the amount, if any, of the difference between the unpaid principal and the value of the property less delinquent taxes thereon; but if any interest on the loan is in default more than eighteen months, or if any interest

on the loan is in default and any taxes or any installment thereof on the property are and have been due and unpaid for more than eighteen months, no allowance shall be made for any interest on the loan.

(f) Rent due or accrued on real property if such rent is not in arrears for more than three months.

(3) Premium notes, policy loans, and other policy assets and liens on policies of life insurance, in amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) The net amount of uncollected and deferred premiums in the case of a life insurer which carries the full annual mean tabular reserve liability;

(5) Premiums in the course of collection, other than for life insurance, not more than ninety days past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or any of its instrumentalities;

(6) Installment premiums other than life insurance premiums, in accordance with regulations prescribed by the commissioner consistent with practice formulated or adopted by the National Association of Insurance Commissioners;

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon and unless otherwise required by regulation prescribed by the commissioner;

(8) Reinsurance recoverable subject to RCW 48.12.160;

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him;

(11) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars, which cost shall be amortized in full over a period not to exceed ten calendar years; and

(12) Other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the payment of losses and claims, at values to be determined by him. [1977 ex.s. c 180 § 2; 1963 c 195 § 11; 1947 c 79 § .12.01; Rem. Supp. 1947 § 45.12.01.]

48.12.020 Nonallowable assets. In addition to assets impliedly excluded under RCW 48.12.010, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) Goodwill, except in accordance with regulations prescribed by the commissioner, trade names, agency plants and other like intangible assets.

(2) Prepaid or deferred charges for expenses and commissions paid by the insurer.

(3) Advances to officers (other than policy loans or loans made pursuant to RCW 48.07.130), whether secured or not, and advances to employees, agents and other persons on personal security only.

(4) Stock of such insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in such stock through the ownership by such insurer of an interest in another firm, corporation or business unit.

(5) Furniture, furnishings, fixtures, safes, equipment, vehicles, library, stationery, literature, and supplies; except, electronic and mechanical machines authorized by subsection (11) of RCW 48.12.010, or such personal property as the insurer is permitted to hold pursuant to paragraph (e) of subsection (2) of RCW 48.13.160, or which is acquired through foreclosure of chattel mortgages acquired pursuant to RCW 48.13.150, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes.

(6) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code. [1982 c 218 § 1; 1963 c 195 § 12; 1947 c 79 § .12.02; Rem. Supp. 1947 § 45.12.02.]

Severability—1982 c 218: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 218 § 7.]

48.12.030 Liabilities. In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall include:

(1) The amount of its capital stock outstanding, if any; and

(2) The amount, estimated consistent with the provisions of this chapter, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expense of adjustment or settlement thereof; and

(3) With reference to life and disability insurance, and annuity contracts,

(a) the amount of reserves on life insurance policies and annuity contracts in force (including disability benefits for both active and disabled lives, and accidental death benefits, in or supplementary thereto) and disability insurance, valued according to the tables of mortality, tables of morbidity, rates of interest, and methods adopted pursuant to this chapter which are applicable thereto; and

(b) any additional reserves which may be required by the commissioner, consistent with practice formulated or approved by the National Association of Insurance Commissioners, on account of such insurances; and

(4) With reference to insurances other than those specified in subdivision (3) of this section, and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this chapter; and

(5) Taxes, expenses, and other obligations accrued at the date of the statement; and

(6) Any additional reserve set up by the insurer for a specific liability purpose or required by the commissioner consistent with practices adopted or approved by the National Association of Insurance Commissioners. [1973 1st ex.s. c 162 § 1; 1947 c 79 § .12.03; Rem. Supp. 1947 § 45.12.03.]

48.12.040 Unearned premium reserve, property, casualty, and surety insurance. (1) With reference to insurances against loss or damage to property, except as provided in RCW 48.12.050, and with reference to all general casualty insurances, and surety insurances, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserve shall be equal to the unearned portions of the gross premiums in force after deducting authorized reinsurance, as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premiums in force, less authorized reinsurance, to be held as a premium reserve, shall be computed according to the following table:

Term for which policy was written	Reserve for unearned premium	
One year, or less		1/2
Two years	First year	3/4
	Second year	1/4
Three years	First year	5/6
	Second year	1/2
	Third year	1/6
Four years	First year	7/8
	Second year	5/8
	Third year	3/8
	Fourth year	1/8
Five years	First year	9/10
	Second year	7/10
	Third year	1/2
	Fourth year	3/10
	Fifth year	1/10
Over five years	Pro rata	

(3) In lieu of computation according to such table, all of such reserves may be computed, at the insurer's option, on a monthly pro rata basis.

(4) After adopting any one of the methods for computing such reserve an insurer shall not change methods without the commissioner's approval.

(5) If, for certain policies, the insurer's exposure to loss is uneven over the policy term, the commissioner may grant permission to the insurer to use a different method of calculating the unearned premium reserve on those certain policies. [1995 c 35 § 1; 1973 1st ex.s. c 162 § 2; 1947 c 79 § .12.04; Rem. Supp. 1947 § 45.12.04.]

48.12.050 Unearned premium reserve, marine and transportation insurance. With reference to marine and transportation insurances, premiums on trip risks not terminated shall be deemed unearned and the commissioner may require the insurer to carry a reserve thereon equal to one hundred percent on trip risks written during the month ended as of the date of statement; and computed upon a pro rata basis or, with the commissioner's consent, in accordance with the alternative methods provided in RCW 48.12.040 for all other risks. [1947 c 79 § .12.05; Rem. Supp. 1947 § 45.12.05.]

48.12.060 Reserve—Disability insurance. For all disability insurance policies the insurer shall maintain an active

life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies. [1973 1st ex.s. c 162 § 3; 1947 c 79 § .12.06; Rem. Supp. 1947 § 45.12.06.]

48.12.070 Loss records. An insurer shall maintain a complete and itemized record showing all losses and claims as to which it has received notice, including with regard to property, casualty, surety, and marine and transportation insurances, all notices received of the occurrence of any event which may result in a loss. [1947 c 79 § .12.07; Rem. Supp. 1947 § 45.12.07.]

48.12.080 Increased reserves. (1) If the commissioner determines that an insurer's unearned premium reserves, however computed, are inadequate, he may require the insurer to compute such reserves or any part thereof according to such other method or methods as are prescribed in this chapter.

(2) If the loss experience of an insurer shows that its loss reserves, however estimated, are inadequate, the commissioner shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate. [1947 c 79 § .12.08; Rem. Supp. 1947 § 45.12.08.]

48.12.090 Loss reserves—Liability insurance. The reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employer's liability insurance shall be computed as follows:

(1) The reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employer's liability insurance shall be computed in accordance with accepted loss-reserving standards and principles and shall make a reasonable provision for all unpaid loss and loss expense obligations of the insurer under the terms of such policies.

(2) Reserves under liability policies written during the three years immediately preceding the date of determination shall include any additional reserves required by the annual statement instructions of the national association of insurance commissioners. [1995 c 35 § 2; 1947 c 79 § .12.09; Rem. Supp. 1947 § 45.12.09.]

48.12.100 Unallocated liability loss expense. Subject to any restrictions contained in the annual statement instructions or accounting practices and procedures manuals of the national association of insurance commissioners, all unallocated liability loss expense payments shall be distributed as follows:

(1) All payments associated with particular claims shall be distributed to the year in which the claim was covered; and

(2) All other payments shall be distributed by year in a reasonable manner. [1995 c 35 § 3; 1947 c 79 § .12.10; Rem. Supp. 1947 § 45.12.10.]

48.12.110 Schedule of experience. Any insurer transacting any liability or workers' compensation insurances shall include in its annual statement filed with the commissioner, a schedule of its experience thereunder in such form as the commissioner may prescribe. [1987 c 185 § 19; 1947 c 79 § .12.11; Rem. Supp. 1947 § 45.12.11.]

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

48.12.120 Loss reserve—Workers' compensation insurance. The loss reserve for workers' compensation insurance shall be as follows:

(1) For all compensation claims under policies of compensation insurance written more than three years prior to the date of determination, the loss reserve shall be not less than the present values at four percent interest of the determined and the estimated future payments.

(2) For all compensation claims under policies of compensation insurance written in the three years immediately preceding the date of determination, the loss reserve shall be not less than the present value at three and one-half percent interest of the determined and the estimated future payments, and shall include any additional reserves required by the annual statement instructions of the national association of insurance commissioners. [1995 c 35 § 4; 1987 c 185 § 20; 1947 c 79 § .12.12; Rem. Supp. 1947 § 45.12.12.]

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

48.12.130 Unallocated workers' compensation loss expense. Subject to any restrictions contained in the annual statement instructions or accounting practices and procedures manuals of the national association of insurance commissioners, all unallocated workers' compensation loss expense payments shall be distributed as follows:

(1) All payments associated with particular claims shall be distributed to the year in which the claim was covered; and

(2) All other payments shall be distributed by year in a reasonable manner. [1995 c 35 § 5; 1987 c 185 § 21; 1947 c 79 § .12.13; Rem. Supp. 1947 § 45.12.13.]

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

48.12.140 "Loss payments," "loss expense" defined. "Loss payments" and "loss expense payments" as used with reference to liability and workers' compensation insurances shall include all payments to claimants, payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, adjusters and claims field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses and all other payments made on account of claims, whether such payments are allocated to specific claims or are unallocated. [1987 c 185 § 22; 1947 c 79 § .12.14; Rem. Supp. 1947 § 45.12.14.]

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

48.12.154 Rules. The commissioner may adopt rules to implement and administer chapter 379, Laws of 1997. [1997 c 379 § 9.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.156 Qualified United States financial institution—Definition. For purposes of chapter 379, Laws of 1997, a "qualified United States financial institution" means an institution that complies with all of the following:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies;

(3) Has been determined by the commissioner, or, in the discretion of the commissioner, the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner; and

(4) Is not affiliated with the assuming company. [1997 c 379 § 2.]

Purpose—Intent—1997 c 379: "(1) The purpose of this act is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally.

(2) It is the intent of the legislature to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations.

(3) It is also the intent of the legislature to declare that the matters contained in this act are fundamental to the business of insurance and to exercise its powers and privileges under 15 U.S.C. Secs. 1011 and 1012." [1997 c 379 § 1.]

48.12.158 Insolvency of non-United States insurer or reinsurer—Maintenance of assets—Claims. Upon insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations in accordance with chapter 379, Laws of 1997, the assets representing the security must be maintained in the United States and claims must be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. [1997 c 379 § 3.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.160 Credit for reinsurance—Trust fund—Regulatory oversight. (1) Any insurance company organized under the laws of this state may take credit as an asset or as a deduction from loss or claim, unearned premium, or life policy or contract reserves on risks ceded to a reinsurer to the extent reinsured by an insurer or insurers holding a certificate of authority to transact that kind of business in this state, unless the assuming insurer is the subject of a regulatory order or regulatory oversight by a state in which it is licensed based upon a commissioner's determination that the assuming insurer is in a hazardous financial condition. The credit on ceded risks reinsured by any insurer which is not authorized to transact business in this state may be taken:

(a) Where the reinsurer is a group including incorporated and unincorporated underwriters, and the group maintains a

trust fund in a qualified United States financial institution which trust fund must be in an amount equal to:

(i) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled insurers to any member of the group; or

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of chapter 379, Laws of 1997, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States.

In addition, the group shall maintain a trustee surplus of which one hundred million dollars shall be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group.

The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants;

(b) Where the reinsurer does not meet the definition of (a) of this subsection, the single assuming alien reinsurer that, as of the date of the ceding insurer's statutory financial statement, maintains a trust fund in a qualified United States financial institution, which trust fund must be in an amount not less than the assuming alien reinsurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars, and the assuming alien reinsurer maintaining the trust fund must have received a registration from the commissioner under RCW 48.12.166. The assuming alien reinsurer shall report on or before February 28th to the commissioner substantially the same information as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund;

(c) In an amount not exceeding:

(i) The amount of deposits by and funds withheld from the assuming insurer pursuant to express provision therefor in the reinsurance contract, as security for the payment of the obligations thereunder, if the deposits or funds are assets of the types and amounts that are authorized under chapter 48.13 RCW and are held subject to withdrawal by and under the control of the ceding insurer or if the deposits or funds are placed in trust for these purposes in a bank which is a member of the federal reserve system and withdrawals from the trust cannot be made without the consent of the ceding company; or

(ii) The amount of a clean, irrevocable, and unconditional letter of credit issued by a United States bank that is determined by the national association of insurance commissioners to meet credit standards for issuing letters of credit in connection with reinsurance, and issued for a term of at least

one year with provisions that it must be renewed unless the bank gives notice of nonrenewal at least thirty days before the expiration issued under arrangements satisfactory to the commissioner of insurance as constituting security to the ceding insurer substantially equal to that of a deposit under (c)(i) of this subsection.

(2) Credit for reinsurance may not be granted under subsection (1)(a), (b), and (c)(i) of this section unless:

(a) The form of the trust and amendments to the trust have been approved by the insurance commissioner of the state where the trust is located, or the insurance commissioner of another state who, pursuant to the terms of the trust agreement, has accepted principal regulatory oversight of the trust;

(b) The trust and trust amendments are filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled;

(c) The trust instrument provides that contested claims are valid, enforceable, and payable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of a court of competent jurisdiction in the United States;

(d) The trust vests legal title to its assets in the trustees of the trust for the benefit of the grantor's United States ceding insurers, their assigns, and successors in interest;

(e) The trust and the assuming insurer are subject to examination as determined by the commissioner;

(f) The trust shall remain in effect for as long as the assuming insurer, member, or former member of a group of insurers has outstanding obligations due under the reinsurance agreements subject to the trust; and

(g) No later than [than] February 28th of each year, the trustees of the trust report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end. In addition, the trustees of the trust shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire within the next twelve months.

(3) Any reinsurance ceded by a company organized under the laws of this state or ceded by any company not organized under the laws of this state and transacting business in this state must be payable by the assuming insurer on the basis of liability of the ceding company under the contract or contracts reinsured without diminution because of the insolvency of the ceding company, and any such reinsurance agreement which may be canceled on less than ninety days notice must provide for a run-off of the reinsurance in force at the date of cancellation.

(4) The domiciliary conservator, liquidator, receiver, or statutory successor of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that during the pendency of such claim any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator or receiver or statutory successor.

The expense thus incurred by the assuming insurer shall be chargeable subject to court approval against the insolvent

ceding insurer as a part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

(5) Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

(6) The credit permitted by subsection (1)(b) of this section is prohibited unless the assuming alien insurer agrees in the trust agreement, notwithstanding other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subsection (1)(b) of this section or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile:

(a) To comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund;

(b) That assets be distributed by, and insurance claims of United States trust beneficiaries be filed with and valued by, the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) That if the commissioner with regulatory oversight determines that the assets of the trust fund or a part thereof are not necessary to satisfy the claims of the United States ceding insurers, which are United States trust beneficiaries, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) That the grantor waives any right otherwise available to it under United States law that is inconsistent with this provision. [1997 c 379 § 6; 1996 c 297 § 1; 1994 c 86 § 1; 1993 c 91 § 2; 1977 ex.s. c 180 § 3; 1947 c 79 § .12.16; Rem. Supp. 1947 § 45.12.16.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

Rules to implement—1996 c 297: "The insurance commissioner shall adopt rules to implement and administer the amendatory changes made by section 1, chapter 297, Laws of 1996." [1996 c 297 § 2.]

Effective dates—1996 c 297: "(1) Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996].

(2) Section 1 of this act shall take effect January 1, 1997." [1996 c 297 § 4.]

Effective date—1994 c 86: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 86 § 3.]

48.12.162 Credit for reinsurance—Contract provisions—After December 31, 1996—Payment—Rights of original insured or policyholder. (1) Credit for reinsurance in a reinsurance contract entered into after December 31, 1996, is allowed a domestic ceding insurer as either an asset or a deduction from liability in accordance with RCW

48.12.160 only if the reinsurance contract contains provisions that provide, in substance, as follows:

(a) The reinsurer shall indemnify the ceding insurer against all or a portion of the risk it assumed according to the terms and conditions contained in the reinsurance contract.

(b) In the event of insolvency and the appointment of a conservator, liquidator, or statutory successor of the ceding company, the portion of risk or obligation assumed by the reinsurer is payable to the conservator, liquidator, or statutory successor on the basis of claims allowed against the insolvent company by a court of competent jurisdiction or by a conservator, liquidator, or statutory successor of the company having authority to allow such claims, without diminution because of that insolvency, or because the conservator, liquidator, or statutory successor failed to pay all or a portion of any claims. Payments by the reinsurer as provided in this subsection are made directly to the ceding insurer or to its conservator, liquidator, or statutory successor, except where the contract of insurance, reinsurance, or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer.

(2) Payment under a reinsurance contract must be made within a reasonable time with reasonable provision for verification in accordance with the terms of the reinsurance agreement. However, in no event shall the payments be beyond the period required by the national association of insurance commissioners accounting practices and procedures manual.

(3) The original insured or policyholder may not have any rights against the reinsurer that are not specifically set forth in the contract of reinsurance, or in a specific agreement between the reinsurer and the original insured or policyholder. [1997 c 379 § 4.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.164 Credit for reinsurance—Accounting or financial statement—After December 31, 1996. Credit for reinsurance, as either an asset or a deduction, is prohibited in an accounting or financial statement of the ceding insurer in respect to the reinsurance contract unless, in such contract, the reinsurer undertakes to indemnify the ceding insurer against all or a part of the loss or liability arising out of the original insurance. This section only applies to those reinsurance contracts entered into after December 31, 1996. [1997 c 379 § 5.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.166 Assuming alien reinsurer—Registration—Requirements—Duties of commissioner—Costs. (1) The assuming alien reinsurer must register with the commissioner and must:

(a) File with the commissioner evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records under chapter 48.03 RCW;

(b) Designate the commissioner as its lawful attorney upon whom service of all papers may be made for an action, suit, or proceeding instituted by or on behalf of the ceding insurer;

(c) File with the commissioner a certified copy of a letter or a certificate of authority or a certificate of compliance issued by the assuming alien insurer's domiciliary jurisdiction

tion and the domiciliary jurisdiction of its United States reinsurance trust;

(d) Submit a statement, signed and verified by an officer of the assuming alien insurer to be true and correct, that discloses whether the assuming alien insurer or an affiliated person who owns or has a controlling interest in the assuming alien insurer is currently known to be the subject of one or more of the following:

(i) An order or proceeding regarding conservation, liquidation, or receivership;

(ii) An order or proceeding regarding the revocation or suspension of a license or accreditation to transact insurance or reinsurance in any jurisdiction; or

(iii) An order or proceeding brought by an insurance regulator in any jurisdiction seeking to restrict or stop the assuming alien insurer from transacting insurance or reinsurance based upon a hazardous financial condition.

The assuming alien insurer shall provide the commissioner with copies of all orders or other documents initiating proceedings subject to disclosure under this subsection. The statement must affirm that no actions, proceedings, or orders subject to this subsection are outstanding against the assuming alien insurer or an affiliated person who owns or has a controlling interest in the assuming alien insurer, except as disclosed in the statement;

(e) File other information, financial or otherwise, which the commissioner reasonably requests.

(2) A registration continues in force until suspended, revoked, or not renewed. A registration is subject to renewal annually on the first day of July upon application of the assuming alien insurer and payment of the fee in the same amount as an insurer pays for renewal of a certificate of authority.

(3) The commissioner shall give an assuming alien insurer notice of his or her intention to revoke or refuse to renew its registration at least ten days before the order of revocation or refusal is to become effective.

(4) The commissioner shall, consistent with chapters 48.04 and 34.05 RCW, deny or revoke an assuming alien insurer's registration if the assuming alien insurer no longer qualifies or meets the requirements for registration.

(5) The commissioner may, consistent with chapters 48.04 and 34.05 RCW, deny or revoke an assuming alien insurer's registration if the assuming alien insurer:

(a) Fails to comply with a provision of this chapter or fails to comply with an order or regulation of the commissioner;

(b) Is found by the commissioner to be in such a condition that its further transaction of reinsurance would be hazardous to ceding insurers, policyholders, or the people in this state;

(c) Refuses to remove or discharge a trustee, director, or officer who has been convicted of a crime involving fraud, dishonesty, or moral turpitude;

(d) Usually compels policy-holding claimants either to accept less than the amount due them or to bring suit against the assuming alien insurer to secure full payment of the amount due;

(e) Refuses to be examined, or its trustees, directors, officers, employees, or representatives refuse to submit to examination or to produce its accounts, records, and files for

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examination by the commissioner when required, or refuse to perform a legal obligation relative to the examination;

(f) Refuses to submit to the jurisdiction of the United States courts;

(g) Fails to pay a final judgment rendered against it:

(i) Within thirty days after the judgment became final;

(ii) Within thirty days after time for taking an appeal has expired; or

(iii) Within thirty days after dismissal of an appeal before final determination;

whichever date is later;

(h) Is found by the commissioner, after investigation or upon receipt of reliable information:

(i) To be managed by persons, whether by its trustees, directors, officers, or by other means, who are incompetent or untrustworthy or so lacking in insurance company management experience as to make proposed operation hazardous to the insurance-buying public; or

(ii) That there is good reason to believe it is affiliated directly or indirectly through ownership, control, or business relations, with a person or persons whose business operations are, or have been found to be, in violation of any law or rule, to the detriment of policyholders, stockholders, investors, creditors, or of the public, by bad faith or by manipulation of the assets, accounts, or reinsurance;

(i) Does business through reinsurance intermediaries or other representatives in this state or in any other state, who are not properly licensed under applicable laws and rules; or

(j) Fails to pay, by the date due, any amounts required by this code.

(6) A domestic ceding insurer is not allowed credit with respect to reinsurance ceded, if the assuming alien insurer's registration has been revoked by the commissioner.

(7) The actual costs and expenses incurred by the commissioner for an examination of a registered alien insurer must be charged to and collected from the alien reinsurer.

(8) A registered alien reinsurer is included as a "class one" organization for the purposes of RCW 48.02.190. [1997 c 379 § 7.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.168 Credit for reinsurance—Foreign ceding insurer. (1) Unless credit for reinsurance or deduction from liability is prohibited under RCW 48.12.164, a foreign ceding insurer is allowed credit for reinsurance or deduction from liability to the extent credit has been allowed by the ceding insurer's state of domicile if:

(a) The state of domicile is accredited by the national association of insurance commissioners; or

(b) Credit or deduction from liability would be allowed under chapter 379, Laws of 1997 if the foreign ceding insurer were domiciled in this state.

(2) Notwithstanding subsection (1) of this section, credit for reinsurance or deduction from liability may be disallowed upon a finding by the commissioner that either the condition of the reinsurer, or the collateral or other security provided by the reinsurer, does not satisfy the credit for reinsurance requirements applicable to ceding insurers domiciled in this state. [1997 c 379 § 8.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.170 Valuation of bonds. (1) All bonds or other evidences of debt having a fixed term and rate held by any insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(a) If purchased at par, at the par value.

(b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at the earliest date callable at par or maturing at par and so as to yield in the meantime the effective rate of interest at which the purchase was made; or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(c) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

(d) Unless otherwise provided by a valuation established or approved by the National Association of Insurance Commissioners, no such security shall be carried at above call price for the entire issue during any period within which the security may be so called.

(2) Such securities not amply secured or in default as to principal or interest shall be carried at market value.

(3) The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section, and not inconsistent with any such methods then currently formulated or approved by the National Association of Insurance Commissioners. [1947 c 79 § .12.17; Rem. Supp. 1947 § 45.12.17.]

48.12.180 Valuation of stocks. (1) Securities, other than those referred to in RCW 48.12.170, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by him or her as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he or she may approve.

(3) The stock of a subsidiary of an insurer shall be valued on the basis of the greater of (a) the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer or (b) such other value determined pursuant to rules and cumulative limitations which shall be promulgated by the commissioner to effectuate the purposes of this chapter.

(4) The commissioner has full discretion in determining the method of calculating values according to the rules set forth in this section, and consistent with such methods as then adopted by the National Association of Insurance Commissioners. [1993 c 462 § 54; 1973 c 151 § 1; 1947 c 79 § .12.18; Rem. Supp. 1947 § 45.12.18.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.12.190 Valuation of property. (1) Real property acquired pursuant to a mortgage loan or a contract for a deed, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisi-

tion, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(2) Other real property held by an insurer shall not be valued at any amount in excess of fair value, less reasonable depreciation based on the estimated life of the improvements.

(3) Personal property acquired pursuant to chattel mortgages made under RCW 48.13.150 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at date of acquisition together with taxes and expenses incurred in connection with such acquisition, or the fair value of such property, whichever amount is the lesser.

(4) The commissioner has full discretion in determining the method of calculating values according to the rules set forth in this section, and consistent with such methods as then adopted by the National Association of Insurance Commissioners. [1993 c 462 § 55; 1967 ex.s. c 95 § 10; 1947 c 79 § .12.19; Rem. Supp. 1947 § 45.12.19.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.12.200 Valuation of purchase money mortgages.

(1) Purchase money mortgages shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or ninety percent of the fair value of such real property, whichever is less.

(2) The commissioner has full discretion in determining the method of calculating values according to the rules set forth in this section, and consistent with such methods as then adopted by the National Association of Insurance Commissioners. [1993 c 462 § 56; 1947 c 79 § .12.20; Rem. Supp. 1947 § 45.12.20.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.13 RCW INVESTMENTS

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48.13.010 Scope of chapter—Eligible investments.

(1) Investments of domestic insurers shall be eligible to be held as assets only as prescribed in this chapter.

(2) Any particular investment of a domestic insurer held by it on the effective date of this code and which was a legal investment immediately prior thereto, shall be deemed a legal investment hereunder.

(3) The eligibility of an investment shall be determined as of the date of its making or acquisition.

(4) Except as to RCW 48.13.360, this chapter applies only to domestic insurers. [1973 c 151 § 2; 1947 c 79 § .13.01; Rem. Supp. 1947 § 45.13.01.]

48.13.020 General qualifications. (1) No security or other investment shall be eligible for purchase or acquisition under this chapter unless it is interest bearing or interest accruing or dividend or income paying, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit, the interest or income accruing thereon; except,

(a) that an insurer may acquire real property as provided in RCW 48.13.160, and

(b) that this section shall not prevent participation by an insurer in a mortgage loan if the insurer, either individually or jointly with other lenders, holds a senior participation in such mortgage or deed of trust giving it substantially the rights of a first mortgagee as to its interest in that loan.

(2) No security shall be eligible for purchase at a price above its market value except voting stock of a corporation being acquired as a subsidiary.

(3) No provision of this chapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or if acquired pursuant to a lawful and bona fide agreement of bulk reinsurance or consolidation. Any investments so acquired through bulk reinsurance or consolidation, which are not otherwise eligible under this chapter, shall be dis-

posed of pursuant to RCW 48.13.290 if personal property or securities, or pursuant to RCW 48.13.170 if real property. [1983 1st ex.s. c 32 § 2; 1982 c 218 § 2; 1967 ex.s. c 95 § 11; 1947 c 79 § .13.02; Rem. Supp. 1947 § 45.13.02.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.030 Limitation on securities of one entity or a depository institution. (1) Except as set forth in RCW 48.13.273, an insurer shall not, except with the consent of the commissioner, have at any time any combination of investments in or loans upon the security of the obligations, property, and securities of any one person, institution, or municipal corporation aggregating an amount exceeding four percent of the insurer's assets. This section shall not apply to investments in, or loans upon the security of general obligations of the government of the United States or of any state of the United States, nor to investments in foreign securities pursuant to RCW 48.13.180(1), nor include policy loans made pursuant to RCW 48.13.190.

(2) An insurer shall not, except with the consent of the commissioner, have at any time investments in the voting securities of a depository institution or any company which controls a depository institution aggregating an amount exceeding five percent of the insurer's admitted assets. [2001 c 21 § 1; 1993 c 92 § 1; 1947 c 79 § .13.03; Rem. Supp. 1947 § 45.13.03.]

48.13.040 Public obligations. An insurer may invest any of its funds in bonds or other evidences of debt, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States or by any state thereof or by any territory or possession of the United States or by the District of Columbia or by any county, city, town, village, municipality or district therein or by any political subdivision thereof or by any civil division or public instrumentality of one or more of the foregoing, if, by statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, (1) from taxes levied or required to be levied upon all taxable property or all taxable income within the jurisdiction of such governmental unit or, (2) from adequate special revenues pledged or otherwise appropriated or by law required to be provided for the purpose of such payment, but not including any obligation payable solely out of special assessments on properties benefited by local improvements unless adequate security is evidenced by the ratio of assessment to the value of the property or the obligation is additionally secured by an adequate guaranty fund required by law. [1947 c 79 § .13.04; Rem. Supp. 1947 § 45.13.04.]

48.13.050 Corporate obligations. Except as set forth in RCW 48.13.273, an insurer may invest any of its funds in obligations other than those eligible for investment under RCW 48.13.110 if they are issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, district or territory thereof, and are qualified under any of the following:

(1) Obligations which are secured by adequate collateral security and bear fixed interest if during each of any three, including the last two, of the five fiscal years next preceding

the date of acquisition by the insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as defined in RCW 48.13.060, have been not less than one and one-fourth times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of such required collateral shall consist of stock other than stock meeting the requirements of RCW 48.13.080.

(2) Fixed interest bearing obligations, other than those described in subdivision (1) of this section, if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period and if during the last year of such period such net earnings have been not less than one and one-half times its fixed charges for such year.

(3) Adjustment, income or other contingent interest obligations if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during each of the last two years of such period such net earnings have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year. [1993 c 92 § 2; 1947 c 79 § .13.05; Rem. Supp. 1947 § 45.13.05.]

48.13.060 Terms defined. (1) Certain terms used are defined for the purposes of this chapter as follows:

(a) "Obligation" includes bonds, debentures, notes or other evidences of indebtedness.

(b) "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of such institution.

(c) "Fixed charges" includes interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

(d) "Admitted assets" means the amount as of the last day of the most recently concluded annual statement year, computed in the same manner as "assets" in RCW 48.12.010.

(e) "Aggregate amount" of medium grade and lower grade obligations means the aggregate statutory statement value of those obligations thereof.

(f) "Institution" means a corporation, a joint stock company, an association, a trust, a business partnership, a business joint venture, or similar entity.

(2) If net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, such net earnings shall be determined after provision for income taxes of subsidiaries and after proper allowance for minority stock interest, if any; and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other than those payable by such subsidiaries to the parent corporation

or to any other of such subsidiaries, except that if the minority common stock interest in the subsidiary corporation is substantial, the fixed charges and preferred dividends may be apportioned in accordance with regulations prescribed by the commissioner. [1993 c 92 § 3; 1947 c 79 § .13.06; Rem. Supp. 1947 § 45.13.06.]

48.13.070 Securities of merged or reorganized institutions. In applying the earnings test set forth in RCW 48.13.060 to any such institution, whether or not in legal existence during the whole of such five years next preceding the date of investment by the insurer, which has at any time during the five-year period acquired substantially all of the assets of any other institution or institutions by purchase, merger, consolidation or otherwise, or has been reorganized pursuant to the bankruptcy law, the earnings of the predecessor or constituent institutions, or of the institution so reorganized, available for interest and dividends for such portion of the five-year period as may have preceded such acquisition, or such reorganization, may be included in the earnings of such issuing, assuming or guaranteeing institution for such portion of such period as may be determined in accordance with adjusted or pro forma consolidated earnings statements covering such portion of such period and giving effect to all stock or shares outstanding, and all fixed charges existing, immediately after such acquisition, or such reorganization. [1947 c 79 § .13.07; Rem. Supp. 1947 § 45.13.07.]

48.13.080 Preferred or guaranteed stocks. (1) An insurer may invest any of its funds, in an aggregate amount not exceeding ten percent of its assets, if a life insurer, or not exceeding fifteen percent of such assets if other than a life insurer, in preferred or guaranteed stocks or shares, other than common stocks, of solvent institutions existing under the laws of the United States or of any state, district or territory thereof, if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition by the insurer are eligible as investments under this chapter; and if qualified under either of the following:

(a) Preferred stocks or shares shall be deemed qualified if both these requirements are met:

(i) The net earnings of the institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer must have averaged per year not less than one and one-half times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to such period; and

(ii) during each of the last two years of such period such net earnings must have been not less than one and one-half times the sum of its fixed charges, contingent interest and preferred dividend requirements for such year. The term "preferred dividend requirements" shall be deemed to mean cumulative or noncumulative dividends whether paid or not.

(b) Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing institution meets the requirements of subdivision (1) of RCW 48.13.050, construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends.

(2) An insurer shall not invest in or loan upon any preferred stock having voting rights, of any one institution, in excess of such proportion of the total issued and outstanding preferred stock of such institution having voting rights, as would, when added to any common shares of such institution, directly or indirectly held by it, exceed fifteen percent of all outstanding shares of such institution having voting rights, nor an amount in excess of the limit provided by RCW 48.13.030. This limitation shall not apply to such shares of a corporation which is the subsidiary of an insurer, and which corporation is engaged exclusively in a kind of business properly incidental to the insurance business of the insurer. [1947 c 79 § .13.08; Rem. Supp. 1947 § 45.13.08.]

48.13.090 Trustees' or receivers' obligations. An insurer may invest any of its funds, in an aggregate amount not exceeding two percent of its assets, in certificates, notes, or other obligations issued by trustees or receivers of institutions existing under the laws of the United States or of any state, district or territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction, if such obligation is adequately secured as to principal and interest. [1947 c 79 § .13.09; Rem. Supp. 1947 § 45.13.09.]

48.13.100 Equipment trust certificates. An insurer may invest any of its funds, in an aggregate amount not exceeding ten percent of its assets, in equipment trust obligations or certificates which are adequately secured, or in other adequately secured instruments evidencing an interest in transportation equipment wholly or in part within the United States and the right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such transportation equipment. [1947 c 79 § .13.10; Rem. Supp. 1947 § 45.13.10.]

48.13.110 Mortgages, deeds of trust, mortgage bonds, notes, contracts. An insurer may invest any of its funds in:

(1)(a) Bonds or evidences of debt which are secured by first mortgages or deeds of trust on improved unencumbered real property located in the United States;

(b) Chattel mortgages in connection therewith pursuant to RCW 48.13.150;

(c) The equity of the seller of any such property in the contract for a deed, covering the entire balance due on a bona fide sale of such property, in amount not to exceed ten thousand dollars or the amount permissible under RCW 48.13.030, whichever is greater, in any one such contract for deed.

(2) Purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to RCW 48.13.160 as amended in *section 7 of this 1969 amendatory act.

(3) Bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration under the terms of an act of congress of the United States of June 27, 1934, entitled the "National Housing Act," as amended.

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(4) Bonds or notes secured by mortgage or trust deed guaranteed or insured as to principal in whole or in part by the Administrator of Veterans' Affairs pursuant to the provisions of Title III of an act of congress of the United States of June 22, 1944, entitled the "Servicemen's Readjustment Act of 1944," as amended.

(5) Evidences of debt secured by first mortgages or deeds of trust upon leasehold estates, except agricultural leaseholds executed pursuant to **RCW 79.01.096, running for a term of not less than fifteen years beyond the maturity of the loan as made or as extended, in improved real property, otherwise unencumbered, and if the mortgagee is entitled to be subrogated to all the rights under the leasehold.

(6) Evidences of debt secured by first mortgages or deeds of trust upon agricultural leasehold estates executed pursuant to **RCW 79.01.096, otherwise unencumbered, and if the mortgagee is entitled to be subrogated to all the rights under the leasehold. [1975 1st ex.s. c 154 § 1; 1969 ex.s. c 241 § 4; 1947 c 79 § .13.11; Rem. Supp. 1947 § 45.13.11.]

Reviser's note: *(1) The reference to "section 7 of this 1969 amendatory act" is to section 7, chapter 241, Laws of 1969 ex. sess., which amended RCW 48.13.160.

** (2) RCW 79.01.096 was recodified as RCW 79.11.010 pursuant to 2003 c 334 § 556. For agricultural leaseholds, see RCW 79.13.060.

48.13.120 Investments limited by property value. (1) An investment made pursuant to the provisions of RCW 48.13.110 shall not exceed seventy-five percent of the fair value of the particular property at the time of investment. However, if the loan is secured by a first mortgage or other first lien upon real property improved with a single-family residential building, the terms of such loan provide for monthly payments of principal and interest sufficient to effect full repayment of the loan within the remaining useful life of the building as estimated in the appraisal for the loan, or thirty years and two months, whichever is less, the principal so loaned or the entire note or bond issue so secured, plus the amount of the liens of any public bond, assessment, or tax assessed upon the property, may not exceed eighty percent of the market value of the real property, or of the real property together with the improvements which are taken as security. This restriction shall not apply to purchase money mortgages or like securities received by an insurer upon the sale or exchange of real property acquired pursuant to RCW 48.13.160.

(2) The extent to which a mortgage loan made under RCW 48.13.110 (3) or (4) is guaranteed or insured by the Federal Housing Administration or guaranteed by the Administrator of Veterans' Affairs may be deducted before application of the limitations contained in subsection (1) of this section. [1993 c 92 § 7; 1969 ex.s. c 241 § 5; 1967 c 150 § 11; 1955 c 303 § 1; 1949 c 190 § 16; 1947 c 79 § .13.12; Rem. Supp. 1949 § 45.13.12.]

48.13.125 Mortgage loans on one family dwellings—Limitation on amortization. Loans on one family dwellings secured by mortgages or deeds of trust or investments therein shall be amortized within not more than thirty years and two months by payments of installments thereon at regular intervals not less frequent than every three months; except those

guaranteed or insured in whole or in part by the Federal Housing Administration, the Administrator of Veterans' Affairs or the Farmers Home Administration. [1969 ex.s. c 241 § 6; 1967 c 150 § 10.]

48.13.130 "Encumbrance" defined. (1) Real property shall not be deemed to be encumbered within the meaning of RCW 48.13.110 by reason of the existence of:

(a) Instruments reserving mineral, oil, timber or similar rights, rights of way, sewer rights, or rights in walls;

(b) Liens for taxes or assessments not delinquent, or liens not delinquent for community recreational facilities, or for the maintenance of community facilities, or for service and maintenance of water rights;

(c) Building restrictions or other restrictive covenants;

(d) Encroachments, if such encroachments are taken into consideration in determining the fair value of the property;

(e) A lease under which rents or profits are reserved to the owner if in any event the security for the loan or investment is a first lien upon the real property; or

(f) With respect to loans secured by mortgage, deed of trust, or other collateral guaranteed or insured in full or in part by the government of the United States, such encumbrances as are allowed as exceptions in title by the administrator or administration of the division of such government so guaranteeing or insuring.

(2) If under any of the exceptions set forth in subsection (1) of this section there is any sum owing but not due or delinquent, the total amount of such sum shall be deducted from the amount which otherwise might be loaned on the property. The value of any mineral, oil, timber or similar right reserved shall not be included in the fair value of the property. [1955 c 303 § 2; 1947 c 79 § .13.13; Rem. Supp. 1947 § 45.13.13.]

48.13.140 Appraisal of property—Insurance—Limit of loan. (1) The fair value of property shall be determined by appraisal by a competent appraiser at the time of the acquisition of real property or of the making or acquiring of a mortgage loan or investing in a contract for the deed thereon; except, that as to bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration, or guaranteed or insured as to principal in full or in part by the Administrator of Veterans' Affairs, or guaranteed or insured by the Farmers Home Administration, the valuation made by such administration or administrator shall be deemed to have been made by a competent appraiser for the purposes of this subsection.

(2) Buildings and other improvements located on mortgaged premises shall be kept insured for the benefit of the mortgagee against loss or damage from fire in an amount not less than the unpaid balance of the obligation, or the insurable value of the property, whichever is the lesser.

(3) An insurer shall not make or acquire a loan or loans upon the security of any one parcel of real property in aggregate amount in excess of twenty-five thousand dollars or more than the amount permissible under RCW 48.13.030, whichever is the greater. [1967 ex.s. c 95 § 12; 1955 c 303 § 3; 1947 c 79 § .13.14; Rem. Supp. 1947 § 45.13.14.]

48.13.150 Auxiliary chattel mortgages. (1) In connection with a mortgage loan on the security of real property designed and used primarily for residential purposes only, acquired pursuant to RCW 48.13.110, an insurer may loan or invest an amount not exceeding twenty percent of the amount loaned on or invested in such real property mortgage, on the security of a chattel mortgage for a term of not more than five years representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(2) The term "durable equipment" shall include only mechanical refrigerators, mechanical laundering machines, heating and cooking stoves and ranges, mechanical kitchen aids, vacuum cleaners, and fire extinguishing devices; and in addition in the case of apartment houses and hotels, room furniture and furnishings.

(3) Prior to acquisition of a chattel mortgage, items of property to be included shall be separately appraised by a competent appraiser and the fair market value thereof determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property. [1947 c 79 § .13.15; Rem. Supp. 1947 § 45.13.15.]

48.13.160 Real property owned—Home office building. (1) An insurer may own and invest or have invested in its home office and branch office buildings any of its funds in aggregate amount not to exceed ten percent of its assets unless approved by the commissioner, or if a mutual or reciprocal insurer not to exceed ten percent of its assets nor such amount as would reduce its surplus, exclusive of such investment, below fifty thousand dollars unless approved by the commissioner.

(2) An insurer may own real property acquired in satisfaction or on account of loans, mortgages, liens, judgments, or other debts previously owing to the insurer in the course of its business.

(3) An insurer may invest or have invested in aggregate amount not exceeding three percent of its assets in the following real property, and in the repair, alteration, furnishing, or improvement thereof:

(a) Real property requisite for its accommodation in the convenient transaction of its business if approved by the commissioner.

(b) Real property acquired by gift or devise.

(c) Real property acquired in exchange for real property owned by it. If necessary in order to consummate such an exchange, the insurer may put up cash in amount not to exceed twenty percent of the fair value of its real property to be so exchanged, in addition to such property.

(d) Real property acquired through a lawful merger or consolidation with it of another insurer and not required for the purposes specified in subsection (1) and in paragraph (a) of subsection (2) of this section.

(e) Upon approval of the commissioner, in real property and equipment incident to real property, requisite or desirable for the protection or enhancement of the value of other real property owned by the insurer.

(4) A domestic life insurer with assets of at least twenty-five million dollars and at least ten million dollars in capital

and surplus, and a domestic property and casualty insurer with assets of at least seventy-five million dollars and at least thirty million dollars in capital and surplus, or, if a mutual or reciprocal property or casualty insurer, at least thirty million dollars in surplus, may, in addition to the real property included in subsections (1), (2) and (3) of this section, own such real property other than property to be used for ranch, mining, recreational, amusement, or club purposes, as may be acquired as an investment for the production of income, or as may be acquired to be improved or developed for such investment purpose pursuant to an existing program therefor, subject to the following limitations and conditions:

(a) The cost of each parcel of real property so acquired under this subsection (4), including the estimated cost to the insurer of the improvement or development thereof, when added to the book value of all other real property under this subsection (4), together with the admitted value of all common stock, then held by it, shall not exceed twenty percent of its admitted assets or fifty percent of its surplus over the minimum required surplus, whichever is greater, as of the thirty-first day of December next preceding; and

(b) The cost of each parcel of real property so acquired, including the estimated cost to the insurer of the improvement or development thereof, shall not exceed as of the thirty-first day of December next preceding, four percent of its admitted assets.

(c) Indirect or proportionate interests in real estate held by a domestic life insurer through any subsidiary shall be included in proportion to such insurer's interest in the subsidiary in applying the limits provided in subsection (4). [1981 c 339 § 6; 1973 c 151 § 3; 1969 ex.s. c 241 § 7; 1967 ex.s. c 95 § 13; 1949 c 190 § 17; 1947 c 79 § .13.16; Rem. Supp. 1949 § 45.13.16.]

48.13.170 Disposal of real property—Time limit. (1) Real property acquired by an insurer pursuant to paragraph (a) of subsection (3) of RCW 48.13.160 shall be disposed of within five years after it has ceased being necessary for the use of the insurer in the transaction of its business. Real property acquired by an insurer pursuant to loans, mortgages, liens, judgments, or other debts, or pursuant to paragraphs (b), (c), (d), and (e) of subsection (3) of RCW 48.13.160 shall be disposed of within five years after date of acquisition. The time for any such disposal may be extended by the commissioner for a definite additional period or periods upon application and proof that forced sale of the property, otherwise necessary, would be against the best interests of the insurer.

(2) Any such real property held by the insurer without the commissioner's consent beyond the time permitted for its disposal shall not be carried or allowed as an asset. [1967 ex.s. c 95 § 14; 1947 c 79 § .13.17; Rem. Supp. 1947 § 45.13.17.]

48.13.180 Foreign securities. (1) An insurer authorized to transact insurance in a foreign country may invest any of its funds, in aggregate amount not exceeding its deposit and reserve obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to those required pursuant to this chapter for investments in the United States.

(2) Subject to the limitations in this chapter, an insurer may invest any of its funds, in an aggregate amount not exceeding ten percent of its assets, in addition to any amount permitted pursuant to subsection (1) of this section, in obligations of foreign governments including provinces, counties, municipalities, or similar entities, and in obligations and securities of foreign corporations, which have not been in default during the five years next preceding date of acquisition, and if the foreign jurisdiction has a sovereign debt rating of SVO 1. However, an investment made in any one foreign country pursuant to this subsection shall not exceed five percent of the insurer's assets. [2003 c 251 § 1; 1947 c 79 § .13.18; Rem. Supp. 1947 § 45.13.18.]

48.13.190 Policy loans. A life insurer may loan to its policyholder upon the pledge of the policy as collateral security, any sum not exceeding the legal reserve maintained on the policy. [1947 c 79 § .13.19; Rem. Supp. 1947 § 45.13.19.]

48.13.200 Savings and share accounts. An insurer may invest or deposit any of its funds in share or savings accounts of savings and loan associations, or in savings accounts of banks, and in any one such institution only to the extent that such an account is insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation. [1947 c 79 § .13.20; Rem. Supp. 1947 § 45.13.20.]

48.13.210 Insurance stocks. (1) An insurer other than a life insurer may invest a portion of its surplus funds in an aggregate amount not exceeding fifty percent of its surplus over its capital stock and other liabilities, or thirty-five percent of its capital funds, whichever is greater, in the stocks of other insurers organized and existing under the laws of states of the United States. Indirect or proportionate interests in insurance stocks held by an insurer through any intermediate subsidiary or subsidiaries shall be included in applying the limitations provided in subsections (1), (2), and (3) of this section.

(2) A life insurer may invest in such insurance stocks in an aggregate amount not exceeding the smaller of the following amounts: Five percent of its assets; or twenty-five percent of its surplus over its capital stock and other liabilities, or of surplus over its required minimum surplus if a mutual life insurer.

(3) An insurer shall not purchase or hold as an investment more than five percent of the voting stock of any one other insurer, and subject further to the investment limits of RCW 48.13.030. This limitation shall not apply if such other insurer is the subsidiary of, and substantially all its shares having voting powers are owned by, the insurer.

(4) No such insurance stock shall be eligible as an investment unless it meets the qualifications for stocks of other corporations as set forth in RCW 48.13.220.

(5) The limitations on investment in insurance stocks set forth in this chapter shall not apply to stocks acquired under a plan for merger of the insurers which has been approved by the commissioner or to shares received as stock dividends

upon shares already owned. [1979 ex.s. c 199 § 3; 1979 ex.s. c 130 § 4; 1947 c 79 § .13.21; Rem. Supp. 1947 § 45.13.21.]

48.13.218 Limitation on insurer loans or investments. (1) Notwithstanding RCW 48.13.220 and 48.13.240, an insurer may not loan or invest its funds in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries in an aggregate amount exceeding the lesser of the following sums: Ten percent of its assets, or fifty percent of its surplus as regards policyholders. In calculating the amount of investments under this section, investments in domestic or foreign subsidiary insurers, health care service contractors, and health maintenance organizations are excluded.

(2) For the purposes of this section, "subsidiary" has the same meaning as in RCW 48.31B.005. [2001 c 90 § 1.]

48.13.220 Common stocks—Investment—Acquisition—Engaging in certain businesses. (1) After satisfying the requirements of RCW 48.13.260, an insurer may invest any of its funds in common shares of stock in solvent United States corporations that qualify as a sound investment; except, that as to life insurers such investments shall further not aggregate an amount in excess of fifty percent of the insurer's surplus over its minimum required surplus.

(2) The insurer shall not invest in or loan upon the security of more than ten percent of the outstanding common shares of any one such corporation, subject further to the aggregate investment limitation of RCW 48.13.030.

(3) The limitations of subsection (2) of this section shall not apply to investment in the securities of any subsidiary corporations of the insurer which are engaged or organized to engage exclusively in one or more of the following businesses:

(a) Acting as an insurance agent for its parent or for any of its parent's insurer subsidiaries or affiliates;

(b) Investing, reinvesting, or trading in securities or acting as a securities broker or dealer for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(c) Rendering management, sales, or other related services to any investment company subject to the Federal Investment Company Act of 1940, as amended;

(d) Rendering investment advice;

(e) Rendering services related to the functions involved in the operation of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims appraisal, and collection services;

(f) Acting as administrator of employee welfare benefit and pension plans for governments, government agencies, corporations, or other organizations or groups;

(g) Ownership and management of assets which the parent could itself own and manage: PROVIDED, That the aggregate investment by the insurer and its subsidiaries acquired pursuant to this paragraph shall not exceed the limitations otherwise applicable to such investments by the parent;

(h) Acting as administrative agent for a government instrumentality which is performing an insurance function or is responsible for a health or welfare program;

(i) Financing of insurance premiums;

(j) Any other business activity reasonably ancillary to an insurance business;

(k) Owning one or more subsidiary (i) insurers to the extent permitted by this chapter, or (ii) businesses specified in paragraphs (a) through (k) of this subsection inclusive, or (iii) other businesses the stock of which is eligible under RCW 48.13.240 or 48.13.250, or any combination of such insurers and businesses.

(4) No acquisition of a majority of the total outstanding common shares of any corporation shall be made pursuant to this section unless a notice of intention of such proposed acquisition shall have been filed with the commissioner not less than ninety days, or such shorter period as may be permitted by the commissioner, in advance of such proposed acquisition, nor shall any such acquisition be made if the commissioner at any time prior to the expiration of the notice period finds that the proposed acquisition is contrary to law, or determines that such proposed acquisition would be contrary to the best interests of the parent insurer's policyholders or of the people of this state. The following shall be the only factors to be considered in making the foregoing determination:

(a) The availability of the funds or assets required for such acquisition;

(b) The fairness of any exchange of stock, assets, cash, or other consideration for the stock or assets to be received;

(c) The impact of the new operation on the parent insurer's surplus and existing insurance business and the risks inherent in the parent insurer's investment portfolio and operations;

(d) The fairness and adequacy of the financing proposed for the subsidiary;

(e) The likelihood of undue concentration of economic power;

(f) Whether the effect of the acquisition may be substantially to lessen competition in any line of commerce in insurance or to tend to create a monopoly therein; and

(g) Whether the acquisition might result in an excessive proliferation of subsidiaries which would tend to unduly dilute management effectiveness or weaken financial strength or otherwise be contrary to the best interests of the parent insurer's policyholders or of the people of this state. At any time after an acquisition, the commissioner may order its disposition if he finds, after notice and hearing, that its continued retention is hazardous or prejudicial to the interests of the parent insurer's policyholders. The contents of each notice of intention of a proposed acquisition filed hereunder and information pertaining thereto shall be kept confidential, shall not be subject to subpoena, and shall not be made public unless after notice and hearing the commissioner determines that the interests of policyholders, stockholders, or the public will be served by the publication thereof.

(5) A domestic insurance company may, provided that it maintains books and records which separately account for such business, engage directly in any business referred to in paragraphs (d), (e), (h), and (j) of subsection (3) of this section either to the extent necessarily or properly incidental to

the insurance business the insurer is authorized to do in this state or to the extent approved by the commissioner and subject to any limitations he may prescribe for the protection of the interests of the policyholders of the insurer after taking into account the effect of such business on the insurer's existing insurance business and its surplus, the proposed allocation of the estimated cost of such business, and the risks inherent in such business as well as the relative advantages to the insurer and its policyholders of conducting such business directly instead of through a subsidiary. [1982 c 218 § 3; 1973 c 151 § 4; 1949 c 190 § 18; 1947 c 79 § .13.22; Rem. Supp. 1949 § 45.13.22.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.230 Collateral loans. An insurer may loan its funds upon the pledge of securities or evidences of debt eligible for investment under this chapter. As at date made, no such loan shall exceed in amount ninety percent of the market value of such collateral pledged, except that loans upon pledges of United States government bonds may be equal to the market value of the bonds pledged. The amount so loaned shall be included in the maximum percentage of funds permitted to be invested in the kinds of securities or evidences of debt pledged or permitted by RCW 48.13.030. [1947 c 79 § .13.23; Rem. Supp. 1947 § 45.13.23.]

48.13.240 Miscellaneous investments. (1) An insurer may loan or invest its funds in an aggregate amount not exceeding the lesser of the following sums: Ten percent of its assets, or fifty percent of its surplus over its capital and other liabilities, or if a mutual or reciprocal insurer fifty percent of its surplus over minimum required surplus, in loans or investments not otherwise eligible for investment and not specifically prohibited by RCW 48.13.270.

(2) No such loan or investment shall be any item described in RCW 48.12.020.

(3) No such investment in or loan upon the security of any one person or entity shall exceed the amount specified in subsection (1) of this section or one percent of the insurer's assets, whichever is the lesser, except that an investment in a limited liability company formed under chapter 25.15 RCW to develop real property owned by the insurer as permitted by RCW 48.13.160 shall not exceed the lesser of the amount specified in subsection (1) of this section or four percent of the insurer's assets. This subsection (3) shall not apply to an investment in the stock of a subsidiary company.

(4) The insurer shall keep a separate record of all investments acquired under this section. [2004 c 88 § 1; 1982 c 218 § 4; 1947 c 79 § .13.24; Rem. Supp. 1947 § 45.13.24.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.250 Special consent investments. Upon advance approval of the commissioner and in compliance with RCW 48.13.020, an insurer may make any investment or kind of investment or exchange of assets otherwise prohibited or not eligible under any other section of this chapter. The commissioner's order of approval if granted shall specify whether the investment or any part thereof may be credited to required minimum capital or surplus investments, or to investment of reserves. [1947 c 79 § .13.25; Rem. Supp. 1947 § 45.13.25.]

(2004 Ed.)

48.13.260 Required investments for capital and reserves. (1) An insurer shall invest and keep invested its funds aggregating in amount, if a stock insurer, not less than one hundred percent of its minimum required capital, or if a mutual or reciprocal insurer, not less than one hundred percent of its required minimum surplus, in cash or investments eligible in accordance with RCW 48.13.040 (public obligations), and in mortgage loans on real property located within this state, pursuant to RCW 48.13.110.

(2) In addition to the investments required by subsection (1) of this section, an insurer shall invest and keep invested its funds aggregating not less than one hundred percent of its reserves required by this code in cash or premiums in course of collection or in investments eligible in accordance with the following sections: RCW 48.13.040 (public obligations), 48.13.050 (corporate obligations), 48.13.080 (preferred or guaranteed stocks), 48.13.090 (trustees' or receivers' obligations), 48.13.100 (equipment trust certificates), 48.13.110 (mortgages, loans and contracts), 48.13.150 (auxiliary chattel mortgages), 48.13.160 (real property, home office building, etc.), 48.13.180 (foreign securities), 48.13.190 (policy loans), 48.13.200 (savings and share accounts), 48.13.220 (common stocks), 48.13.230 (collateral loans), 48.13.250 (special consent investments).

(3) This section shall not apply to title insurers nor to mutual insurers on the assessment premium plan. [1971 ex.s. c 13 § 16; 1947 c 79 § .13.26; Rem. Supp. 1947 § 45.13.26.]

48.13.265 Investments secured by real estate—Amount restricted. An insurer shall not invest or have invested at any one time more than sixty-five percent of its assets in investments in real estate, real estate contracts, and notes, bonds and other evidences of debt secured by mortgage on real estate, as described in RCW 48.13.110 and 48.13.160. Any insurer which, on June 13, 1957, has in excess of sixty-five percent of its assets so invested shall not make any further such investments while such excess exists. [1957 c 193 § 8.]

48.13.270 Prohibited investments. An insurer shall not, except with the commissioner's approval in advance, invest in or loan its funds upon the security of, or hold:

(1) Issued shares of its own capital stock, except for the purpose of mutualization in accordance with RCW 48.08.080;

(2) Securities issued by any corporation if a majority of its stock having voting power is owned directly or indirectly by or for the benefit of any one or more of the insurer's officers and directors;

(3) Any investment or loan ineligible under the provisions of RCW 48.13.030;

(4) Securities issued by any insolvent corporation;

(5) Obligations contrary to the provisions of RCW 48.13.273; or

(6) Any investment or security which is found by the commissioner to be designed to evade any prohibition of this code. [1995 c 84 § 1; 1993 c 92 § 4; 1982 c 218 § 5; 1947 c 79 § .13.27; Rem. Supp. 1947 § 45.13.27.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.273 Acquisition of medium and lower grade obligations—Definitions—Limitations—Rules. (1) As used in this section:

(a) "Lower grade obligations" means obligations that are rated four, five, or six by the securities valuation office.

(b) "Medium grade obligations" means obligations that are rated three by the securities valuation office.

(c) "Securities valuation office" means the entity created by the national association of insurance commissioners in part, to assign rating categories for bond obligations acquired by insurers.

(2) No insurer may acquire directly or indirectly, any medium grade or lower grade obligation if, after giving effect to the acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the insurer would exceed twenty percent of its admitted assets provided that:

(a) No more than ten percent of an insurer's admitted assets may be invested in lower grade obligations;

(b) No more than three percent of an insurer's admitted assets may be invested in lower grade obligations rated five or six by the securities valuation office;

(c) No more than one percent of an insurer's admitted assets may be invested in lower grade obligations rated six by the securities valuation office;

(d) No more than one percent of an insurer's admitted assets may be invested in medium and lower grade obligations issued, guaranteed, or insured by any one institution; and

(e) No more than one-half of one percent of an insurer's admitted assets may be invested in lower grade obligations issued, guaranteed, or insured by any one institution.

(3) This section does not require an insurer to sell or otherwise dispose of any obligation lawfully acquired before July 25, 1993, or in accordance with this chapter. The commissioner shall adopt rules identifying the circumstances under which the commissioner may approve an investment in obligations exceeding the limitations of this section as necessary to mitigate financial loss by an insurer.

(4) The board of directors of any domestic insurance company which acquires or invests, directly or indirectly, more than two percent of its admitted assets in medium grade and lower grade obligations of any institution, shall adopt a written plan for making those investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification standards including, but not limited to, standards for issuer, industry, duration, liquidity, and geographic location. [1993 c 92 § 5.]

48.13.275 Obligations rated by the securities valuation office. Notwithstanding the provisions of RCW 48.13.050, an insurer may invest its funds in obligations rated by the securities valuation office. Investments in obligations that are rated one or two by the securities valuation office shall be subject to the limitations contained in RCW 48.13.030. [1993 c 92 § 6.]

48.13.280 Securities underwriting, agreements to withhold or repurchase, prohibited. No insurer shall

(1) participate in the underwriting of the marketing of securities in advance of their issuance or enter into any trans-

action for such underwriting for the account of such insurer jointly with any other person; or

(2) enter into any agreement to withhold from sale any of its property, or to repurchase any property sold by it. [1947 c 79 § .13.28; Rem. Supp. 1947 § 45.13.28.]

48.13.285 Derivative transactions—Restrictions—Definitions—Rules. (1) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined by rule by the insurance commissioner;

(b) Derivative instruments shall not be used for speculative purposes, but only as stated in (a) of this subsection;

(c) An insurer shall be able to demonstrate to the insurance commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analysis;

(d) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(i) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent of its admitted assets;

(ii) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent of its admitted assets; and

(iii) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent of its admitted assets;

(e) An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent of its admitted assets:

(i) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;

(ii) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(iii) Sales of covered puts on investments that the insurer is permitted to acquire under this chapter, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or

(iv) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding;

(f) An insurer shall include all counterparty exposure amounts in determining compliance with general diversification requirements and medium and low grade investment limitations under this chapter; and

(g) Pursuant to rules adopted by the insurance commissioner under subsection (3) of this section, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limitations in (d) of this subsection or for other risk management purposes under rules adopted by the commissioner, but replication transactions shall not be permitted for other than risk management purposes.

(2) For purposes of this section:

(a) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price;

(b) "Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor;

(c) "Counterparty exposure amount" means the net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse. The amount of the credit risk equals the market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer, or zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

If over-the-counter derivative instruments are entered into under a written master agreement which provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or, if not within the United States, within a foreign jurisdiction listed in the purposes and procedures of the securities valuation office as eligible for netting, the net amount of credit risk shall be the greater of zero or the sum of:

(i) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(ii) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one or both parties;

(d) "Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants or conversion rights already owned, the underlying interest in

order to fulfill or secure its obligations under a call option, cap or floor it has written, or has set aside under a custodial or escrow agreement cash or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written, in an income generation transaction;

(e) "Derivative instrument" means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar thereto or any series or combination thereof and any agreements, options, or instruments permitted under rules adopted by the commissioner under subsection (3) of this section;

(f) "Derivative transaction" means a transaction involving the use of one or more derivative instruments;

(g) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one or more underlying interests;

(h) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one or more underlying interests;

(i) "Hedging transaction" means a derivative transaction which is entered into and maintained to reduce:

(i) The risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(ii) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring;

(j) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend, or terminate or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests;

(k) "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, level, performance, or value of one or more underlying interests;

(l) "Underlying interest" means the assets, liabilities, other interests, or a combination thereof underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities, or derivative instruments; and

(m) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in

connection with the sale of other securities, for example, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

(3) The insurance commissioner may adopt rules implementing the provisions of this section. [1997 c 317 § 1.]

48.13.290 Disposal of ineligible property or securities. (1) Any ineligible personal property or securities acquired by an insurer may be required to be disposed of within the time not less than six months specified by order of the commissioner, unless before that time it attains the standard of eligibility, if retention of such property or securities would be contrary to the policyholders or public interest in that it tends to substantially lessen competition in the insurance business or threatens impairment of the financial condition of the insurer.

(2) Any personal property or securities acquired by an insurer contrary to RCW 48.13.270 shall be disposed of forthwith or within any period specified by order of the commissioner.

(3) Any property or securities ineligible only because of being excess of the amount permitted under this chapter to be invested in the category to which it belongs shall be ineligible only to the extent of such excess. [1982 c 218 § 6; 1973 c 151 § 5; 1947 c 79 § .13.29; Rem. Supp. 1947 § 45.13.29.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.340 Authorization of investments. No investment, loan, sale or exchange thereof shall, except as to the policy loans of a life insurer, be made by any domestic insurer unless authorized or approved by its board of directors or by a committee charged by the board of directors or the bylaws with the duty of making such investment, loan, sale or exchange. The minutes of any such committee shall be recorded and reports thereof shall be submitted to the board of directors for approval or disapproval. [1949 c 190 § 19; 1947 c 79 § .13.34; Rem. Supp. 1949 § 45.13.34.]

48.13.350 Record of investments. (1) As to each investment or loan of the funds of a domestic insurer a written record in permanent form showing the authorization thereof shall be made and signed by an officer of the insurer or by the chairman of such committee authorizing the investment or loan.

(2) As to each such investment or loan the insurer's records shall contain:

(a) In the case of loans: The name of the borrower; the location and legal description of the property; a physical description, and the appraised value of the security; the amount of the loan, rate of interest and terms of repayment.

(b) In the case of securities: The name of the obligor; a description of the security and the record of earnings; the amount invested, the rate of interest or dividend, the maturity and yield based upon the purchase price.

(c) In the case of real estate: The location and legal description of the property; a physical description and the appraised value; the purchase price and terms.

(d) In the case of all investments:

(i) The amount of expenses and commissions if any incurred on account of any investment or loan and by whom

and to whom payable if not covered by contracts with mortgage loan representatives or correspondents which are part of the insurer's records.

(ii) The name of any officer or director of the insurer having any direct, indirect, or contingent interest in the securities or loan representing the investment, or in the assets of the person in whose behalf the investment or loan is made, and the nature of such interest. [1949 c 190 § 20; 1947 c 79 § .13.35; Rem. Supp. 1949 § 45.13.35.]

48.13.360 Investments of foreign and alien insurers. The investments of a foreign or alien insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as those required under this chapter for similar funds of like domestic insurers. [1947 c 79 § .13.36; Rem. Supp. 1947 § 45.13.36.]

48.13.450 Safeguarding securities—Definitions. The definitions in this section apply throughout RCW 48.13.450 through 48.13.475 unless the context clearly requires otherwise.

(1) "Broker" means a broker as defined in RCW 62A.8-102(1)(c).

(2) "Clearing corporation" means a depository corporation which maintains a book entry accounting system and which meets the requirements of RCW 62A.8-102(1)(e).

(3) "Commissioner" means the insurance commissioner of the state of Washington.

(4) "Federal reserve book-entry securities system" means the computerized systems sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, and managed by the federal reserve system for participating financial institutions.

(5) "Participating financial institution" means a depository financial institution such as a national bank, state bank, savings and loan, credit union, or trust company that is:

(a) Authorized to participate in the federal reserve book-entry system; and

(b) Licensed by the United States or the banking authorities in its state of domicile and is regularly examined by the licensing authority.

(6) "Qualified custodian" means either a participating financial institution or a clearing corporation, or both. A qualified custodian does not include a broker.

(7) "Securities" means instruments as defined in RCW 62A.8-102(1)(o). [2000 c 221 § 1.]

48.13.455 Safeguarding securities—Deposit in a clearing corporation or the federal reserve book-entry securities system—Certificates—Records. Notwithstanding any other provision of law, a domestic insurance company may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the federal reserve book-entry securities system. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and

held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of any participating financial institution through which an insurance company holds securities in the federal reserve book-entry securities system, and the records of any custodian banks through which an insurance company holds securities in a clearing corporation, shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation or in the federal reserve book-entry securities system without, in either case, physical delivery of certificates representing such securities. [2000 c 221 § 2.]

48.13.460 Safeguarding securities—Authorized methods of holding securities. The following are the only authorized methods of holding securities:

(1) A domestic insurance company may hold securities in definitive certificates;

(2) A domestic insurance company may, pursuant to an agreement, designate a participating financial institution or institutions as its custodian through which it can transact and maintain book-entry securities on behalf of the insurance company; or

(3) A domestic insurance company may, pursuant to an agreement, participate in depository systems of clearing corporations directly or through a custodian bank. [2000 c 221 § 3.]

48.13.465 Safeguarding securities—Requirement to receive a confirmation. A domestic insurance company using the methods of holding securities under RCW 48.13.460 (2) or (3) is required to receive a confirmation from:

(1) The participating financial institution or the qualified custodian whenever securities are received or surrendered pursuant to the domestic insurance company's instructions to a securities broker; or

(2) The securities broker provided that the domestic insurance company has given the participating financial institution or qualified custodian and the securities broker matching instructions authorizing the transaction, which have been confirmed by the participating financial institution or qualified custodian prior to surrendering funds or securities to conduct the transaction. [2000 c 221 § 4.]

48.13.470 Safeguarding securities—Broker executing a trade—Time limits. (1) A broker executing a securities trade pursuant to an order from a domestic insurance company shall send confirmation to the domestic insurance company or the clearing corporation confirming the order has been executed within twenty-four hours after order completion.

(2) A broker may not hold in its own account for longer than seventy-two hours any securities bought or sold pursu-

ant to an order from a domestic insurance company. [2000 c 221 § 5.]

48.13.475 Safeguarding securities—Maintenance with a qualified custodian—Commissioner may order transfer—Challenge to order—Standing at hearing or for judicial review. (1) Notwithstanding the maintenance of securities with a qualified custodian pursuant to agreement, if the commissioner:

(a) Has reasonable cause to believe that the domestic insurer:

(i) Is conducting its business and affairs in such a manner as to threaten to render it insolvent;

(ii) Is in a hazardous condition or is conducting its business and affairs in a manner that is hazardous to its policyholders, creditors, or the public; or

(iii) Has committed or is committing or has engaged or is engaging in any act that would constitute grounds for rendering it subject to rehabilitation or liquidation proceedings; or

(b) Determines that irreparable loss and injury to the property and business of the domestic insurer has occurred or may occur unless the commissioner acts immediately;

then the commissioner may, without hearing, order the insurer and the qualified custodian promptly to effect the transfer of the securities to another qualified custodian approved by the commissioner. Upon receipt of the order, the qualified custodian shall promptly effect the transfer of the securities. Notwithstanding the pendency of any hearing or request for hearing, the order shall be complied with by those persons subject to that order. Any challenge to the validity of the order shall be made under chapter 48.04 RCW, however, the stay of action provisions of RCW 48.04.020 do not apply. It is the responsibility of both the insurer and the qualified custodian to oversee that compliance with the order is completed as expeditiously as possible. Upon receipt of an order, there shall be no trading of the securities without specific instructions from the commissioner until the securities are received by the new qualified custodian, except to the extent trading transactions are in process on the day the order is received by the insurer and the failure to complete the trade may result in loss to the insurer's account. Issuance of an order does not affect the qualified custodian's liabilities with regard to the securities that are the subject of the order.

(2) No person other than the insurer has standing at the hearing by the commissioner or for any judicial review of the order. [2000 c 221 § 6.]

48.13.490 Safeguarding securities—Rules. The commissioner may adopt rules to implement and administer RCW 48.13.450 through 48.13.475. [2000 c 221 § 7.]

Chapter 48.14 RCW FEES AND TAXES

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48.14.010 Fee schedule. (1) The commissioner shall collect in advance the following fees:

(a) For filing charter documents:	
(i)	Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed. \$250.00
(ii)	Amended charter documents, or certified copy thereof, other than amendments of bylaws \$ 10.00
(iii)	No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.
(b) Certificate of authority:	
(i)	Issuance. \$ 25.00
(ii)	Renewal \$ 25.00
(c) Annual statement of insurer, filing \$ 20.00	
(d) Organization or financing of domestic insurers and affiliated corporations:	
(i)	Application for solicitation permit, filing \$100.00
(ii)	Issuance of solicitation permit . . . \$ 25.00
(e) Agents' licenses:	
(i)	Agent's qualification licenses every two years. \$ 50.00
(ii)	Filing of appointment of each such agent, every two years \$ 20.00
(iii)	Limited license issued pursuant to RCW 48.17.190, every two years \$ 20.00
(f) Reinsurance intermediary licenses:	
(i)	Reinsurance intermediary-broker, each year \$ 50.00
(ii)	Reinsurance intermediary-manager, each year \$100.00
(g) Brokers' licenses:	
(i)	Broker's license, every two years \$100.00
(ii)	Surplus line broker, every two years \$200.00
(h) Solicitors' license, every two years. . . . \$ 20.00	
(i) Adjusters' licenses:	
(i)	Independent adjuster, every two years \$ 50.00

(ii)	Public adjuster, every two years \$ 50.00
(j)	Resident general agent's license, every two years. \$ 50.00
(k)	Managing general agent appointment, every two years \$200.00
(l)	Examination for license, each examination: All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service \$ 20.00
(m)	Miscellaneous services:
(i)	Filing other documents \$ 5.00
(ii)	Commissioner's certificate under seal \$ 5.00
(iii)	Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund: PROVIDED, That fees for examinations administered by an independent testing service which are approved by the commissioner pursuant to subsection (1)(l) of this section shall be collected directly by such independent testing service and retained by it. [1994 c 131 § 2; 1993 c 462 § 57; 1988 c 248 § 7; 1981 c 111 § 1; 1979 ex.s. c 269 § 1; 1977 ex.s. c 182 § 1; 1969 ex.s. c 241 § 8; 1967 c 150 § 12; 1955 c 303 § 4; 1947 c 79 § .14.01; Rem. Supp. 1947 § 45.14.01.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date, implementation—1979 ex.s. c 269: "This act shall take effect on April 1, 1980. The insurance commissioner is authorized to immediately take such steps as are necessary to insure that this 1979 act is implemented on its effective date." [1979 ex.s. c 269 § 10.]

48.14.020 Premium taxes. (1) Subject to other provisions of this chapter, each authorized insurer except title insurers shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in subsection (2) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer during the preceding calendar year other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

(2) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless of the length of term for which

such policies are written, such tax shall be in the amount of two percent of the gross amount of such premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-first day of December next preceding, less the unused or unabsorbed portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in part payment of any renewal premiums or premium deposits on one-year policies expiring during such year.

(3) Each authorized insurer shall with respect to all ocean marine and foreign trade insurance contracts written within this state during the preceding calendar year, on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax of ninety-five one-hundredths of one percent on its gross underwriting profit. Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such ocean marine and foreign trade insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amounts refunded, or paid as participation dividends, by such insurers to the holders of such contracts.

(4) The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their agents, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or their agents.

(5) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums. [1986 c 296 § 1; 1983 2nd ex.s. c 3 § 7; 1982 2nd ex.s. c 10 § 1; 1982 1st ex.s. c 35 § 15; 1979 ex.s. c 233 § 2; 1969 ex.s. c 241 § 9; 1947 c 79 § .14.02; Rem. Supp. 1947 § 45.14.02.]

Severability—1986 c 296: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 296 § 11.]

Application—1986 c 296 § 1: "[The 1986 c 296 amendment of] RCW 48.14.020 applies to the payment of taxes due beginning July 1, 1986, and thereafter." [1986 c 296 § 12.]

Effective date—1986 c 296: "Section 7 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1986." [1986 c 296 § 13.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Payment of additional premium tax—1982 2nd ex.s. c 10: "The additional premium tax payments required by the amendment of RCW 48.14.020 by section 1 of this act shall be paid to the state treasurer through the insurance commissioner's office on March 1, 1983. Thereafter the prepayment schedule provided by RCW 48.14.025 shall apply." [1982 2nd ex.s. c 10 § 2.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

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Effective date—1979 ex.s. c 233: "This 1979 amendatory act shall become effective beginning upon and after January 1, 1980." [1979 ex.s. c 233 § 4.]

Intent—1979 ex.s. c 233: "It is the intent of the legislature to eliminate existing tax discrimination between qualified and nonqualified pension plans which are effectuated by annuity contracts, by excluding the consideration paid for such contracts from premiums subject to the premium tax." [1979 ex.s. c 233 § 1.]

Severability—1979 ex.s. c 233: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 233 § 3.]

Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c): RCW 48.32.145.

*Portion of state taxes on fire insurance premiums to be deposited in firemen's pension fund: RCW 41.16.050.
volunteer fire fighters' and reserve officers' relief and pension principal fund: RCW 41.24.030.*

48.14.0201 Premiums and prepayments tax—Health care services—State preemption. (1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in RCW 48.44.010, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer shall pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax shall be equal to the total amount of all premiums and prepayments for health care services received by the taxpayer during the preceding calendar year multiplied by the rate of two percent.

(3) Taxpayers shall prepay their tax obligations under this section. The minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation for the preceding calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation that would have been due had the tax been in effect during the previous calendar year. The tax prepayments shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

- (a) On or before June 15, forty-five percent;
- (b) On or before September 15, twenty-five percent;
- (c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the health maintenance organization's, health care service contractor's, self-funded multiple employer welfare arrangement's, or certified health plan's prepayment obligations for the current tax year.

(5) Moneys collected under this section shall be deposited in the general fund through March 31, 1996, and in the health services account under RCW 43.72.900 after March 31, 1996.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any health care service contractor, as defined in RCW 48.44.010, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020.

(c) Participant contributions to self-funded multiple employer welfare arrangements that are not taxable in this state.

(7) Beginning January 1, 2000, the state does hereby preempt the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision shall have the right to impose any such taxes upon such taxpayers. This subsection shall be limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection shall not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW.

(8) The taxes imposed by this section apply to a self-funded multiple employer welfare arrangement only in the event that they are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing state premium taxes on these arrangements. If there has not been a final determination by the United States department of labor or a federal court that the taxes are not preempted by federal law, the taxes provided for in this section become effective on March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later. During the time period between March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later, and the final determination by the United States department of labor or a federal court, any taxes shall be deposited in an interest bearing escrow account maintained by the [self-funded] multiple employer welfare arrangement. Upon a final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the state treasurer. [2004 c 260 § 24; 1998 c 323 § 1; 1997 c 154 § 1; 1993 sp.s. c 25 § 601; 1993 c 492 § 301.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Effective date—1997 c 154: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 154 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

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48.14.021 Reduction of tax—Policies connected with pension, etc., plans exempt or qualified under internal revenue code. As to premiums received from policies or contracts issued in connection with a pension, annuity or profit-sharing plan exempt or qualified under sections 401, 403(b), 404, 408(b), or 501(a) of the United States internal revenue code, the rate of tax specified in RCW 48.14.020 shall be reduced twelve and one-half percent with respect to the tax payable in 1964, twenty-five percent with respect to the tax payable in 1965, thirty-seven and one-half percent with respect to the tax payable in 1966, fifty percent with respect to the tax payable in 1967, sixty-two and one-half percent with respect to the tax payable in 1968, seventy-five percent with respect to the tax payable in 1969, eighty-seven and one-half percent with respect to the tax payable in 1970, and one hundred percent with respect to the tax payable in 1971 and annually thereafter. [1975-'76 2nd ex.s. c 119 § 1; 1974 ex.s. c 132 § 1; 1963 c 166 § 1.]

48.14.022 Taxes—Exemptions and deductions. (1) The taxes imposed in RCW 48.14.020 and 48.14.0201 do not apply to premiums and prepayments collected or received for policies of insurance issued under RCW 48.41.010 through 48.41.210.

(2) In computing tax due under RCW 48.14.020 and 48.14.0201, there may be deducted from taxable premiums and prepayments the amount of any assessment against the taxpayer under RCW 48.41.010 through 48.41.210. Any portion of the deduction allowed in this section which cannot be deducted in a tax year without reducing taxable premiums below zero may be carried forward and deducted in successive years until the deduction is exhausted. [1995 c 304 § 1; 1987 c 431 § 23.]

Effective date—1995 c 304: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 9, 1995]." [1995 c 304 § 2.]

Severability—1987 c 431: See RCW 48.41.910.

Business and occupation tax deductions: RCW 82.04.4329.

48.14.025 Prepayment of tax obligations under RCW 48.14.020. (1) Every insurer with a tax obligation under RCW 48.14.020 shall make prepayment of the tax obligations under RCW 48.14.020 for the current calendar year's business, if the sum of the tax obligations under RCW 48.14.020 for the preceding calendar year's business is four hundred dollars or more.

(2) The commissioner shall credit the prepayment toward the appropriate tax obligations of the insurer for the current calendar year under RCW 48.14.020.

(3) The minimum amounts of the prepayments shall be percentages of the insurer's preceding calendar year's tax obligation recomputed using the rate in effect for the current year and shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

- (a) On or before June 15, forty-five percent;
- (b) On or before September 15, twenty-five percent; and
- (c) On or before December 15, twenty-five percent.

For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding

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calendar year's tax obligation as recomputed for calculating the insurer's prepayment obligations.

(4) The effect of transferring policies of insurance from one insurer to another insurer is to transfer the tax prepayment obligation with respect to the policies.

(5) On or before June 1 of each year, the commissioner shall notify each insurer required to make prepayments in that year of the amount of each prepayment and shall provide remittance forms to be used by the insurer. However, an insurer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the insurer to receive, the notice or forms. [1986 c 296 § 2; 1982 c 181 § 4; 1981 c 6 § 1.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Severability—1982 c 181: See note following RCW 48.03.010.

48.14.027 Exemption for state health care premiums before July 1, 1990. The taxes imposed in RCW 48.14.020 do not apply to premiums collected or received before July 1, 1990, for medical and dental coverage purchased under chapter 41.05 RCW. [1988 c 107 § 32.]

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

48.14.029 Premium tax credit—New employment for international service activities in eligible areas—Designation of census tracts for eligibility—Records—Tax due upon ineligibility—Interest assessment—Information from employment security department. (1) Subject to the limits in this section, an eligible person is allowed a credit against the tax due under RCW 48.14.020. The credit is based on qualified employment positions in eligible areas. The credit is available to persons who are engaged in international insurance services as defined in this section. In order to receive the credit, the international insurance services activities must take place at a business within the eligible area.

(2)(a) The credit shall equal three thousand dollars for each qualified employment position created after July 1, 1998, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position, plus the four subsequent consecutive years, if the position is maintained for those four years.

(b) Credit may not be taken for hiring of persons into positions that exist on July 1, 1998. Credit is authorized for new employees hired for new positions created after July 1, 1998. New positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire.

(c) When a position is newly created, if it is filled before July 1st, this position is eligible for the full yearly credit. If it is filled after June 30th, this position is eligible for half of the credit.

(d) Credit may be accrued and carried over until it is used. No refunds may be granted for credits under this section.

(3) For the purposes of this section:

(a) "Eligible area" means: (i) A community empowerment zone under RCW 43.31C.020; or (ii) a contiguous group of census tracts that meets the unemployment and pov-

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erty criteria of RCW 43.31C.030 and is designated under subsection (4) of this section;

(b) "Eligible person" means a person, as defined in RCW 82.04.030, who in an eligible area at a specific location is engaged in the business of providing international insurance services;

(c) "International insurance services" means a business that provides insurance services related directly to the delivery of the service outside the United States or on behalf of persons residing outside the United States; and

(d) "Qualified employment position" means a permanent full-time position to provide international insurance services. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee.

(4) By ordinance, the legislative authority of a city with population greater than eighty thousand, located in a county containing no community empowerment zones as designated under RCW 43.31C.020, may designate a contiguous group of census tracts within the city as an eligible area under this section. Each of the census tracts must meet the unemployment and poverty criteria of RCW 43.31C.030. Upon making the designation, the city shall transmit to the department of revenue a certification letter and a map, each explicitly describing the boundaries of the census tract. This designation must be made by December 31, 1998.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes:

(a) Employment records for the previous six years;

(b) Information relating to description of international insurance services activity engaged in at the eligible location by the person; and

(c) Information relating to customers of international insurance services activity engaged in at that location by the person.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used shall be immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The employment security department shall provide to the department of revenue such information needed by the department of revenue to verify eligibility under this section. [2003 c 248 § 3; 1998 c 313 § 3.]

Intent—Findings—Effective date—1998 c 313: See notes following RCW 82.04.44525.

Business and occupation tax credit: RCW 82.04.44525.

48.14.030 Tax statement. The insurer shall file with the commissioner as part of its annual statement a statement of premiums so collected or received according to such form as shall be prescribed and furnished by the commissioner. In every such statement the reporting of premiums for tax purposes shall be on a written basis or on a paid-for basis consist-

tent with the basis required by the annual statement. [1947 c 79 § .14.03; Rem. Supp. 1947 § 45.14.03.]

48.14.040 Retaliatory provision. (1) If pursuant to the laws of any other state or country, any taxes, licenses, fees, deposits, or other obligations or prohibitions, in the aggregate, or additional to or at a net rate in excess of any such taxes, licenses, fees, deposits or other obligations or prohibitions imposed by the laws of this state upon like foreign or alien insurers and their agents and solicitors, are imposed on insurers of this state and their agents doing business in such other state or country, a like rate, obligation or prohibition may be imposed by the commissioner, as to any item or combination of items involved, upon all insurers of such other state or country and their agents doing business in this state, so long as such laws remain in force or are so applied.

(2) For the purposes of this section, an alien insurer may be deemed to be domiciled in the state wherein it has established its principal office or agency in the United States. If no such office or agency has been established, the domicile of the alien insurer shall be deemed to be the country under the laws of which it is formed. [1988 c 248 § 8; 1949 c 190 § 21, part; 1947 c 79 § .14.04; Rem. Supp. 1949 § 45.14.04.]

48.14.050 "Ocean marine and foreign trade insurances" defined. For the purposes of this code other than as to chapter 48.19 RCW "ocean marine and foreign trade insurances" shall include only:

(1) Insurances upon vessels, crafts, hulls and of interests therein or with relation thereto;

(2) Insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;

(3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition;

(4) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation coastwise, including transportation by land, water or air from point of origin to final destination, in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto. [1947 c 79 § .14.05; Rem. Supp. 1947 § 45.14.05.]

48.14.060 Failure to pay tax—Penalty. (1) Any insurer or taxpayer, as defined in RCW 48.14.0201, failing to file its tax statement and to pay the specified tax or prepayment of tax on premiums and prepayments for health care services by the last day of the month in which the tax becomes due shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not paid within forty-five days after the due date, the insurer will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not paid within sixty days of the due date, the insurer will be assessed a total penalty of twenty percent of the amount of the tax. The tax may be collected by distraint, and the penalty recovered by any action instituted by the commissioner in any court of competent jurisdiction. The amount of any pen-

alty collected must be paid to the state treasurer and credited to the general fund.

(2) In addition to the penalties set forth in subsection (1) of this section, interest will accrue on the amount of the unpaid tax or prepayment at the maximum legal rate of interest permitted under RCW 19.52.020 commencing sixty-one days after the tax is due until paid. This interest will not accrue on taxes imposed under RCW 48.15.120.

(3) The commissioner may revoke the certificate of authority or registration of any delinquent insurer or taxpayer, and the certificate of authority or registration will not be reissued until all taxes, prepayments of tax, interest, and penalties have been fully paid and the insurer or taxpayer has otherwise qualified for the certificate of authority or registration. [2003 c 341 § 1; 1981 c 6 § 2; 1947 c 79 § .14.06; Rem. Supp. 1947 § 45.14.06.]

48.14.070 Refunds. In event any person has paid to the commissioner any tax, license fee or other charge in error or in excess of that which he is lawfully obligated to pay, the commissioner shall upon written request made to him make a refund thereof. A person may only request a refund of taxes within six years from the date the taxes were paid. A person may only request a refund of fees or charges other than taxes within thirteen months of the date the fees or charges were paid. Refunds may be made either by crediting the amount toward payment of charges due or to become due from such person, or by making a cash refund. To facilitate such cash refunds the commissioner may establish a revolving fund out of funds appropriated by the legislature for his use. [1979 ex.s. c 130 § 2; 1947 c 79 § .14.07; Rem. Supp. 1947 § 45.14.07.]

48.14.080 Premium tax in lieu of other forms. As to insurers, other than title insurers and taxpayers under RCW 48.14.0201, the taxes imposed by this title shall be in lieu of all other taxes, except taxes on real and tangible personal property, excise taxes on the sale, purchase or use of such property, and the tax imposed in RCW 82.04.260(12). [1998 c 312 § 1; 1993 sp.s. c 25 § 602; 1993 c 492 § 302; 1949 c 190 § 21, part; Rem. Supp. 1949 § 45.14.08.]

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.14.090 Determining amount of direct premium taxable in this state. In determining the amount of direct premium taxable in this state, all such premiums written, procured, or received in this state shall be deemed written upon risks or property resident, situated, or to be performed in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. [1963 c 195 § 14.]

48.14.095 Unlawful or delinquent insurers or taxpayers—Computing the tax payable—Risks, exposures, or

enrolled participants only partially in state. (1) This section applies to any insurer or taxpayer, as defined in RCW 48.14.0201, violating or failing to comply with RCW 48.05.030(1), 48.17.060 (1) or (2), 48.36A.290(1), 48.44.015(1), or 48.46.027(1).

(2) Except as provided in subsection (7) of this section, RCW 48.14.020, 48.14.0201, and 48.14.060 apply to insurers or taxpayers identified in subsection (1) of this section.

(3) If an insurance contract, health care services contract, or health maintenance agreement covers risks or exposures, or enrolled participants only partially in this state, the tax payable is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state, or enrolled participants residing in this state.

(4) In determining the amount of taxable premiums under subsection (3) of this section, all premiums, other than premiums properly allocated or apportioned and reported as taxable premiums of another state, that are written, procured, or received in this state, or that are for a policy or contract negotiated in this state, are considered to be written on risks or property resident, situated, or to be performed in this state, or for health care services to be provided to enrolled participants residing in this state.

(5) Insurance on risks or property resident, situated, or to be performed in this state, or health coverage for the provision of health care services for residents of this state, is considered to be insurance procured, continued, renewed, or performed in this state, regardless of the location from which the application is made, the negotiations are conducted, or the premiums are remitted.

(6) Premiums on risks or exposures that are properly allocated to federal waters or international waters or under the jurisdiction of a foreign government are not taxable by this state.

(7) This section does not apply to premiums on insurance procured by a licensed surplus line broker under chapter 48.15 RCW. [2003 c 341 § 3.]

48.14.100 Foreign or alien insurers, continuing liability for taxes. Any foreign or alien insurer authorized to do business in this state which hereafter either withdraws from the state or has its certificate of authority suspended or revoked shall continue to pay premium taxes pursuant to this chapter as to policies upon risks or property resident, situated, or to be performed in this state, which policies were issued during the time the insurer was authorized in this state. [1963 c 195 § 15.]

Chapter 48.15 RCW

UNAUTHORIZED INSURERS

Sections

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48.15.170	Records of insureds—Inspection.

48.15.020 Solicitation by unauthorized insurer prohibited—Personal liability. (1) An insurer that is not authorized by the commissioner may not solicit insurance business in this state or transact insurance business in this state, except as provided in this chapter.

(2)(a) A person may not, in this state, represent an unauthorized insurer except as provided in this chapter. This subsection does not apply to any adjuster or attorney at law representing an unauthorized insurer from time to time in this state in his or her professional capacity.

(b) A person, other than a duly licensed surplus line broker acting in good faith under his or her license, who makes a contract of insurance in this state, directly or indirectly, on behalf of an unauthorized insurer, without complying with the provisions of this chapter, is personally liable for the performance of such contract.

(3) Each violation of subsection (2) of this section constitutes a separate offense punishable by a fine of not more than twenty-five thousand dollars, and the commissioner, at the commissioner's discretion, may order replacement of policies improperly placed with an unauthorized insurer with policies issued by an authorized insurer. Violations may result in suspension or revocation of a license. [2003 c 250 § 2; 1992 c 149 § 1; 1983 1st ex.s. c 32 § 3; 1980 c 102 § 2; 1947 c 79 § .15.02; Rem. Supp. 1947 § 45.15.02.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.15.023 Unauthorized activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract.

(3) Any person who knowingly violates RCW 48.15.020(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.15.020(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts

collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 3.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.15.030 Validity of contracts illegally effectuated.

A contract of insurance effectuated by an unauthorized insurer in violation of the provisions of this code shall be voidable except at the instance of the insurer. [1947 c 79 § .15.03; Rem. Supp. 1947 § 45.15.03.]

48.15.040 "Surplus line" coverage. If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated as "surplus lines," may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker.

(2) The insurance must not be procurable, after diligent effort has been made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state.

(3) Coverage shall not be procured from an unauthorized insurer for the purpose of securing a lower premium rate than would be accepted by any authorized insurer nor to secure any other competitive advantage.

(4) The commissioner may by regulation establish the degree of effort required to comply with subsections (2) and (3) of this section.

(5) At the time of the procuring of any such insurance an affidavit setting forth the facts referred to in subsections (2) and (3) of this section must be executed by the surplus line broker. Such affidavit shall be filed with the commissioner within thirty days after the insurance is procured. [1983 1st ex.s. c 32 § 4; 1947 c 79 § .15.04; Rem. Supp. 1947 § 45.15.04.]

48.15.050 Endorsement of contract. Every insurance contract procured and delivered as a surplus line coverage pursuant to this chapter shall have stamped upon it and be initialed by or bear the name of the surplus line broker who procured it, the following:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, enacted in 1947." [1947 c 79 § .15.05; Rem. Supp. 1947 § 45.15.05.]

48.15.060 Validity of contracts. Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this chapter shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers. [1947 c 79 § .15.06; Rem. Supp. 1947 § 45.15.06.]

48.15.070 Surplus line brokers—Licensing. Any individual while a resident of this state, or any firm or any corporation that has in its employ a qualified individual who is a resident of this state and who is authorized to exercise the powers of the firm or corporation, deemed by the commissioner to be competent and trustworthy, and while maintain-

ing an office at a designated location in this state, may be licensed as a surplus line broker in accordance with this section.

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner. As part of, or in connection with, this application, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business records; purposes; and other pertinent information, as the commissioner may reasonably require.

(2) The license shall expire if not timely renewed. Surplus line brokers licenses shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(3) Prior to issuance of license the applicant shall file with the commissioner a bond in favor of the state of Washington in the penal sum of twenty thousand dollars, with authorized corporate sureties approved by the commissioner, conditioned that he or she will conduct business under the license in accordance with the provisions of this chapter and that he or she will promptly remit the taxes provided by RCW 48.15.120. The licensee shall maintain such bond in force for as long as the license remains in effect.

(4) Every applicant for a surplus line broker's license or for the renewal of a surplus line broker's license shall file with the application or request for renewal a bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of one hundred thousand dollars and shall be the bonding requirement for new licensees. The licensee shall maintain such bond in force while so licensed. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the amount stated in the bond. The bond shall be contingent on the accounting by the surplus line broker to any person requesting such broker to obtain insurance, for moneys or premiums collected in connection therewith. A bond issued in accordance with RCW 48.17.250 or with this subsection will satisfy the requirements of both RCW 48.17.250 and this subsection if the limit of liability is not less than the greater of the requirement of RCW 48.17.250 or the requirement of this subsection.

(5) Any bond issued pursuant to subsection (3) or (4) of this section shall remain in force until the surety is released from liability by the commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon thirty days' advance notice in writing filed with the commissioner.

(6) If in the process of verifying fingerprints under subsection (1) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(7) For the purposes of this section, a "qualified individual" is a natural person who has met all the requirements that must be met by an individual surplus line broker. [2002 c 227

§ 3; 1994 c 131 § 3; 1983 1st ex.s. c 32 § 24; 1982 c 181 § 5; 1981 c 199 § 1; 1980 c 102 § 3; 1979 ex.s. c 130 § 3; 1977 ex.s. c 182 § 2; 1959 c 225 § 4; 1947 c 79 § .15.07; Rem. Supp. 1947 § 45.15.07.]

Effective date—2002 c 227: See note following RCW 48.06.040.

Severability—1982 c 181: See note following RCW 48.03.010.

48.15.073 Nonresident surplus line brokers—Licensing—Reciprocity. (1) The commissioner may license as a surplus line broker a person who is otherwise qualified under this code but who is not a resident of this state, if by the laws of the state or province of his or her residence or domicile a similar privilege is extended to residents of this state.

(2) A person under subsection (1) of this section must meet the same qualifications, other than residency, as any other person seeking to be licensed as a surplus line broker under this chapter. A person granted a nonresident surplus line broker's license must have all the same responsibilities as any other surplus line broker and is subject to the (a) commissioner's supervision as though resident in this state and (b) rules adopted under this chapter. [2001 c 91 § 1.]

48.15.080 Broker may accept business. A licensed surplus line broker may accept and place surplus line business for any insurance agent or broker licensed in this state for the kind of insurance involved, and may compensate such agent or broker therefor. [1947 c 79 § .15.08; Rem. Supp. 1947 § 45.15.08.]

48.15.085 Liability of insurer assuming direct risk.

(1) If pursuant to the surplus lines provisions of this chapter an insurer has assumed direct risk under a coverage and the premium therefor has been paid to the broker who placed such insurance, the insurer shall be liable to the insured for unearned premiums payable upon cancellation of the insurance, whether or not the broker is indebted to the insurer for such premium or otherwise. This provision shall not affect rights as between the insurer and the broker.

(2) Each such insurer shall be deemed to have subjected itself to this section by acceptance of such direct risk. [1959 c 225 § 5.]

48.15.090 Solvent insurer required. (1) A surplus line broker shall not knowingly place surplus line insurance with insurers unsound financially. The surplus line broker shall ascertain the financial condition of the unauthorized insurer, and maintain written evidence thereof, before placing insurance therewith. The surplus line broker shall not so insure with:

(a) Any foreign insurer having less than six million dollars of capital and surplus or substantially equivalent capital funds, of which not less than one million five hundred thousand dollars is capital; or

(b) Any alien insurer having less than six million dollars of capital and surplus or substantially equivalent capital funds. By January 1, 1992, this requirement shall be increased to twelve million five hundred thousand dollars. By January 1, 1993, this requirement shall be further increased to fifteen million dollars.

(2004 Ed.)

Such alien insurers must have in force in the United States an irrevocable trust fund, in a qualified United States financial institution, on behalf of United States policyholders of not less than five million four hundred thousand dollars and consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state.

There must be on file with the commissioner a copy of the trust, certified by the trustee, evidencing a subsisting trust fund deposit having an expiration date which at no time shall be less than five years after the date of creation of the trust. Such trust fund shall be included in the calculation of the insurer's capital and surplus or its equivalents; or

(c) Any group including incorporated and individual insurers maintaining a trust fund of less than fifty million dollars as security to the full amount thereof for all policyholders in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in (b) of this subsection for an alien insurer; or

(d) Any insurance exchange created by the laws of an individual state, maintaining capital and surplus, or substantially equivalent capital funds of less than fifty million dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than six million dollars. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of (a) of this subsection.

(2) The commissioner may, by rule:

(a) Increase the financial requirements under subsection (1) of this section by not more than one million dollars in any twelve-month period, but in no case may the requirements exceed fifteen million dollars; or

(b) Prescribe the terms under which the foregoing financial requirements may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(3) For any violation of this section the surplus line broker may be fined not less than one hundred dollars or more than five thousand dollars, and in addition to or in lieu thereof the surplus line broker's license may be revoked, suspended, or nonrenewed. [1997 c 89 § 1; 1994 c 86 § 2; 1991 sp.s. c 5 § 2; 1980 c 102 § 4; 1975 1st ex.s. c 266 § 6; 1969 ex.s. c 241 § 10; 1955 c 303 § 5; 1947 c 79 § .15.09; Rem. Supp. 1947 § 45.15.09.]

Effective date—1997 c 89: "This act takes effect June 1, 1998." [1997 c 89 § 2.]

Effective date—1994 c 86: See note following RCW 48.12.160.

Effective date—1991 sp.s. c 5: See note following RCW 48.05.340.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.15.100 Record of surplus line broker. (1) Each licensed surplus line broker shall keep a full and true record of each surplus line contract procured by him including a

copy of the daily report, if any, showing such of the following items as may be applicable:

- (a) Amount of the insurance;
- (b) Gross premiums charged;
- (c) Return premium paid, if any;
- (d) Rate of premium charged upon the several items of property;
- (e) Effective date of the contract, and the terms thereof;
- (f) Name and address of the insurer;
- (g) Name and address of the insured;
- (h) Brief general description of property insured and where located;
- (i) Other information as may be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years next following the date of completion of such transaction. [1955 c 303 § 6; 1947 c 79 § .15.10; Rem. Supp. 1947 § 45.15.10.]

48.15.110 Broker's annual statement. (1) Each surplus line broker shall on or before the first day of March of each year file with the commissioner a verified statement of all surplus line insurance transacted by him during the preceding calendar year.

(2) The statement shall be on forms as prescribed and furnished by the commissioner and shall show:

- (a) Aggregate of net premiums;
- (b) Additional information as required by the commissioner. [1955 c 303 § 7; 1947 c 79 § .15.11; Rem. Supp. 1947 § 45.15.11.]

48.15.120 Premium tax—Surplus lines. (1) On or before the first day of March of each year each surplus line broker shall remit to the state treasurer through the commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by him during the preceding calendar year as shown by his annual statement filed with the commissioner, and at the same rate as is applicable to the premiums of authorized foreign insurers under this code. Such tax when collected shall be credited to the general fund.

(2) If a surplus line policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state. [1947 c 79 § .15.12; Rem. Supp. 1947 § 45.15.12.]

48.15.130 Penalty for default. If any surplus line broker fails to file his or her annual statement, or fails to remit the tax provided by RCW 48.15.120, by the last day of the month in which the tax becomes due, the surplus line broker must pay the penalties provided in RCW 48.14.060(1). The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction. Any fine collected by the commissioner must be paid to the state treasurer and credited to the general fund. [2003 c 341 § 2; 1983 1st ex.s. c 32 § 5;

1980 c 102 § 5; 1947 c 79 § .15.13; Rem. Supp. 1947 § 45.15.13.]

48.15.140 Revocation, suspension, or failure to renew broker's license. (1) The commissioner may revoke, suspend, or refuse to renew any surplus line broker's license:

- (a) If the surplus line broker fails to file his annual statement or to remit the tax as required by this chapter; or
- (b) If the surplus line broker fails to maintain an office in this state, or to keep the records, or to allow the commissioner to examine his records as required by this chapter; or
- (c) For any of the causes for which a broker's license may be revoked under chapter 48.17 RCW.

(2) The commissioner may suspend or revoke any such license whenever he deems suspension or revocation to be for the best interests of the people of this state.

(3) The procedures provided by this code for the suspension or revocation of general brokers' licenses shall be applicable to suspension or revocation of a surplus line broker's license.

(4) No broker whose license has been so revoked shall again be so licensed within one year thereafter, nor until any fines or delinquent taxes owing by him have been paid. [1980 c 102 § 6; 1947 c 79 § .15.14; Rem. Supp. 1947 § 45.15.14.]

48.15.150 Legal process against surplus line insurer.

(1) An unauthorized insurer shall be sued, upon any cause of action arising in this state under any contract issued by it as a surplus line contract, pursuant to this chapter, in the superior court of the county in which the cause of action arose.

(2) Service of legal process against the insurer may be made in any such action by service upon the commissioner of duplicate copies of such legal process either by a person competent to serve a summons or by registered mail or certified mail with return receipt requested. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action. The commissioner shall forthwith mail the documents of process served, or a true copy thereof, to the insurer at its principal place of business last known to the commissioner, or to the person designated by the insurer for that purpose in the most recent document filed with the commissioner, on forms prescribed by the commissioner, by prepaid registered or certified mail with return receipt requested. The insurer shall have forty days from the date of service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer.

(3) An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision designating the commissioner as the person upon whom service of process may be made. [1979 ex.s. c 199 § 4; 1963 c 195 § 16; 1955 c 303 § 8; 1947 c 79 § .15.15; Rem. Supp. 1947 § 45.15.15.]

48.15.160 Exemptions from surplus line requirements. (1) The provisions of this chapter controlling the

placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Agents and brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this chapter and shall meet the requirements imposed upon a surplus line broker pursuant to RCW 48.15.090 and any regulations adopted thereunder. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The agent or broker shall furnish to the commissioner at the commissioner's request and on forms as designated and furnished by him or her a report of all such coverages so placed in a designated calendar year. [1987 c 185 § 23; 1985 c 264 § 5; 1949 c 190 § 22; 1947 c 79 § .15.16; Rem. Supp. 1949 § 45.15.16.]

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

48.15.170 Records of insureds—Inspection. Every person for whom insurance has been placed with an unauthorized insurer pursuant to or in violation of this chapter shall, upon the commissioner's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person shall be liable to a fine of not more than five hundred dollars. [1947 c 79 § .15.17; Rem. Supp. 1947 § 45.15.17.]

Chapter 48.16 RCW DEPOSITS OF INSURERS

Sections

48.16.010	Deposits of insurers—In general.
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48.16.030	Securities eligible for deposit.
48.16.050	Commissioner's receipt—Records.
48.16.060	Transfer of securities.
48.16.070	Depositaries—Designation.
48.16.080	Liability for safekeeping.
48.16.090	Dividends and substitutions.
48.16.100	Release of deposits—Generally.
48.16.110	Release of existing deposits.
48.16.120	Voluntary excess deposits.
48.16.130	Immunity from levy.

(2004 Ed.)

48.16.010 Deposits of insurers—In general. The commissioner shall accept deposits of securities or funds by insurers as follows:

(1) Deposits in amount as required to be made as prerequisite to a certificate of authority to transact insurance in this state.

(2) Deposits of domestic or alien insurers in amount as required to be made by the laws of other states as prerequisite for authority to transact insurance in such other states.

(3) Deposits in amounts as result from application of the retaliatory provision, RCW 48.14.040.

(4) Deposits in other additional amounts permitted to be made by this code. [1955 c 86 § 3; 1947 c 79 § .16.01; Rem. Supp. 1947 § 45.16.01.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.020 Deposits to be held in trust. Each such deposit shall be held by the commissioner in trust for the protection of all policyholders in the United States of the insurer making it; except that deposits of alien insurers shall be so held for the security of such insurer's obligations arising out of its insurance transactions in the United States, and except as to deposits the purpose of which may be further limited pursuant to the retaliatory provision, RCW 48.14.040. [1955 c 86 § 4; 1947 c 79 § .16.02; Rem. Supp. 1947 § 45.16.02.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.030 Securities eligible for deposit. All such deposits shall consist of cash funds or public obligations as specified in RCW 48.13.040; except, that with respect to deposits held on account of registered policies heretofore issued, the commissioner may accept deposit of such other kinds of securities as are expressly required to be deposited by the terms of such policies. [1955 c 86 § 5; 1947 c 79 § .16.03; Rem. Supp. 1947 § 45.16.03.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.050 Commissioner's receipt—Records. (1) The commissioner shall deliver to the insurer a receipt for all funds and securities so deposited by it.

(2) The commissioner or the designated depository shall keep a record in permanent form of all funds and securities so deposited. [1955 c 86 § 6; 1947 c 79 § .16.05; Rem. Supp. 1947 § 45.16.05.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.060 Transfer of securities. (1) No transfer of any funds or security so held on deposit, whether voluntary or by operation of law, shall be valid unless approved in writing by the commissioner.

(2) A statement of each such transfer shall be entered on the records of the commissioner or designated depository, showing the name of the insurer from whose deposit such transfer is made, the name of the transferee, and the par value of the securities so transferred. [1955 c 86 § 7; 1947 c 79 § .16.06; Rem. Supp. 1947 § 45.16.06.]

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Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.070 Depositories—Designation. The commissioner may designate any solvent trust company or other solvent financial institution having trust powers as the commissioner's depository to receive and hold any deposit of securities. Any deposit so held shall be at the expense of the insurer. Any solvent financial institution having trust powers, the deposits of which are insured by the Federal Deposit Insurance Corporation, may be designated as the commissioner's depository to receive and hold any deposit of funds. All funds deposited shall be fully insured by the Federal Deposit Insurance Corporation. For purposes of this section, "solvent financial institution" means any national or state-chartered commercial bank or trust company, savings bank, or savings association, or branch or branches thereof, having trust powers located in this state and lawfully engaged in business. [1998 c 25 § 1; 1985 c 264 § 6; 1955 c 86 § 8; 1947 c 79 § .16.07; Rem. Supp. 1947 § 45.16.07.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.080 Liability for safekeeping. The state of Washington shall be responsible for the safekeeping and return of all funds and securities deposited pursuant to this chapter with the commissioner or in any such depository so designated by him. [1955 c 86 § 9; 1947 c 79 § .16.08; Rem. Supp. 1947 § 45.16.08.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.090 Dividends and substitutions. While solvent and complying with this code an insurer shall be entitled:

- (1) To collect and receive interest and dividends accruing on the securities so held on deposit for its account, and
- (2) From time to time exchange and substitute for any of such securities, other securities eligible for deposit and of at least equal value. [1947 c 79 § .16.09; Rem. Supp. 1947 § 45.16.09.]

48.16.100 Release of deposits—Generally. (1) Any such required deposit shall be released in these instances only:

(a) Upon extinguishment of all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise.

(b) If any such deposit or portion thereof is no longer required under this code.

(c) If the deposit has been made pursuant to the retaliation provision, RCW 48.14.040, it shall be released in whole or in part when no longer so required.

(d) Upon proper order of a court of competent jurisdiction the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the insurer for whose account the deposit is held.

(2) No such release shall be made except on application to and written order of the commissioner made upon proof satisfactory to him of the existence of one of such grounds therefor. The commissioner shall have no personal liability

for any such release of any deposit or part thereof so made by him in good faith.

(3) All releases of deposits or any part thereof shall be made to the person then entitled thereto upon proof of title satisfactory to the commissioner.

(4) Deposits held on account of title insurers are subject further to the provisions of chapter 48.29 RCW. [1947 c 79 § .16.10; Rem. Supp. 1947 § 45.16.10.]

48.16.110 Release of existing deposits. Any part of any deposit of an insurer held by the commissioner which is in amount in excess of the deposit required or permitted to be made by such insurer under this code, shall, upon written order of the commissioner, be released; except, that no deposit held on account of any registered policies heretofore issued by the insurer shall be released except in accordance with the conditions under which such deposit was made. [1955 c 86 § 10; 1947 c 79 § .16.11; Rem. Supp. 1947 § 45.16.11.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.120 Voluntary excess deposits. An insurer may deposit and maintain on deposit with the commissioner funds and eligible securities in amount exceeding its required deposit under this code by not more than one hundred thousand dollars, for the purpose of absorbing fluctuations in the value of securities held in its required deposit, and to facilitate the exchange and substitution of such required securities. During the solvency of the insurer any such excess deposit or any part thereof shall be released to it upon its request. During the insolvency of the insurer such excess deposit shall be released only as provided in RCW 48.16.100. [1955 c 86 § 11; 1947 c 79 § .16.12; Rem. Supp. 1947 § 45.16.12.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.130 Immunity from levy. No judgment creditor or other claimant of an insurer shall levy upon any deposit held pursuant to this chapter, or upon any part thereof. [1947 c 79 § .16.13; Rem. Supp. 1947 § 45.16.13.]

Chapter 48.17 RCW AGENTS, BROKERS, SOLICITORS, AND ADJUSTERS

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Agent on commission not subject to unemployment compensation: RCW 50.04.230.

Binders: RCW 48.18.230.

Illegal inducements: RCW 48.30.150.

Independent agency contract: Chapter 48.18 RCW.

Rebating: RCW 48.30.140.

"Twisting" prohibited: RCW 48.30.180.

Unfair practices: Chapter 48.30 RCW.

48.17.010 "Agent" defined. "Agent" means any person appointed by an insurer to solicit applications for insurance on its behalf. If authorized so to do, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated. [1985 c 264 § 7; 1981 c 339 § 9; 1947 c 79 § .17.01; Rem. Supp. 1947 § 45.17.01.]

48.17.020 "Broker" defined. "Broker" means any person who, on behalf of the insured, for compensation as an independent contractor, for commission, or fee, and not being an agent of the insurer, solicits, negotiates, or procures insurance or reinsurance or the renewal or continuance thereof, or in any manner aids therein, for insureds or prospective insureds other than himself. [1947 c 79 § .17.02; Rem. Supp. 1947 § 45.17.02.]

(2004 Ed.)

48.17.030 "Solicitor" defined. "Solicitor" means an individual authorized by an agent or broker to solicit applications for insurance as a representative of such agent or broker and to collect premiums in connection therewith. An individual employed by, and devoting full time to clerical work with incidental taking of insurance applications and receiving premiums in the office of the agent or broker is not deemed to be a solicitor if his compensation is not related to the volume of such applications, insurances, or premiums. [1947 c 79 § .17.03; Rem. Supp. 1947 § 45.17.03.]

48.17.040 Service representatives. Individuals other than an officer, manager, or general agent of the insurer, employed on salary by an insurer or general agent to work with and assist agents in soliciting, negotiating, and effectuating insurance in such insurer or in the insurers represented by the general agent, are deemed to be service representatives and are not required to be licensed. [1947 c 79 § .17.04; Rem. Supp. 1947 § 45.17.04.]

48.17.050 "Adjuster" defined. (1) "Adjuster" means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to his principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. An attorney at law who adjusts insurance losses from time to time incidental to the practice of his profession, or an adjuster of marine losses, or a salaried employee of an insurer or of a general agent, is not deemed to be an "adjuster" for the purposes of this chapter.

(2) "Independent adjuster" means such an adjuster representing the interests of the insurer.

(3) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy. [1947 c 79 § .17.05; Rem. Supp. 1947 § 45.17.05.]

48.17.055 "Insurance education provider" defined. "Insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution created by Washington statutes, or vocational school licensed under Title 28C RCW or independent contractor to which the commissioner has granted authority to conduct and certify completion of a course satisfying the insurance education requirements of RCW 48.17.150. [1989 c 323 § 2.]

Effective date—1989 c 323: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 323 § 8.]

48.17.060 License required—Exceptions. (1) A person may not act as or hold himself or herself out to be an agent, broker, solicitor, or adjuster in this state unless licensed by the commissioner.

(2) An agent, solicitor, or broker may not solicit or take applications for, procure, or place for others any kind of insurance for which he or she is not then licensed.

(3) This section does not apply with respect to any person securing and forwarding information required for the purposes of group credit life and credit disability insurance or

credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations in connection with an extension of credit and such other credit life and disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations as the commissioner shall determine, and where no commission or other compensation is payable on account of the securing and forwarding of such information. However, the reimbursement of a creditor's actual expenses for securing and forwarding information required for the purposes of such group insurance will not be considered a commission or other compensation if such reimbursement does not exceed three dollars per certificate issued, or in the case of a monthly premium plan extending beyond twelve months, not to exceed three dollars per loan transaction revision per year. [2003 c 250 § 4; 1995 c 214 § 1; 1975 1st ex.s. c 266 § 7; 1955 c 303 § 9; 1947 c 79 § .17.06; Rem. Supp. 1947 § 45.17.06.]

Severability—2003 c 250: See note following RCW 48.01.080.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.17.063 Unlicensed activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract, health care services contract, or health maintenance agreement.

(3) Any person who knowingly violates RCW 48.17.060(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any person who knowingly violates RCW 48.17.060(2) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(5) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(6)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.17.060 (1) or (2), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080;

(ii) Suspend or revoke a license; and/or

(iii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 5.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.17.065 Application of chapter to health care service contractors and health maintenance organizations. The provisions of this chapter shall apply to agents of health care service contractors and health maintenance organizations. [1983 c 202 § 7.]

48.17.067 Determining whether authorization exists—Burden on solicitor, agent, or broker. Any solicitor, agent, or broker soliciting, negotiating, or procuring an application for insurance or health care services in this state must make a good faith effort to determine whether the entity that is issuing the coverage is:

(1) Authorized to transact insurance or health coverage in this state; or

(2) Conducting business through a surplus lines broker licensed under chapter 48.15 RCW. [2003 c 250 § 6.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.17.070 General qualifications for license. For the protection of the people of this state the commissioner shall not issue or renew any such license except in compliance with this chapter, nor to, nor to be exercised by, any person found by him to be untrustworthy, or incompetent, or who has not established to the satisfaction of the commissioner that he is qualified therefor in accordance with this chapter. [1947 c 79 § .17.07; Rem. Supp. 1947 § 45.17.07.]

48.17.090 Application for license. (1) Application for a license to be an agent, broker, solicitor, or adjuster shall be made to the commissioner upon forms furnished by the commissioner. As a part of or in connection with any such application, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, personal history, experience, business record, purposes, and other pertinent facts, as the commissioner may reasonably require.

(2) Persons resident in the United States but not in Washington may apply for such a license on a form prepared by the national association of insurance commissioners or others, if those forms are approved by the commissioner by rule. An applicant shall also furnish any other information required to be submitted but not provided for in that form.

(3) Any person willfully misrepresenting any fact required to be disclosed in any such application shall be liable to penalties as provided by this code.

(4) If in the process of verifying fingerprints under subsection (1) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of such fees or charges shall be paid to the commissioner's office by the applicant. [2002 c 227 § 2; 2001 c 56 § 1; 1982 c 181 § 6; 1981 c 339 § 10; 1967 c 150 § 15; 1947 c 79 § .17.09; Rem. Supp. 1947 § 45.17.09.]

Effective date—2002 c 227: See note following RCW 48.06.040.

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.100 One filing of personal data sufficient. (1) The filing of personal data by an individual in connection with one application for an agent's license shall be sufficient, regardless of the number of insurers to be represented by the agent or the number of subsequent applications by the same applicant.

(2) The commissioner may, for his information from time to time require any licensed agent, or solicitor, or broker, or adjuster, to supply him with the information called for in an application for license. [1947 c 79 § .17.10; Rem. Supp. 1947 § 45.17.10.]

48.17.110 Examination of applicants. (1) Each applicant for license as an agent, broker, solicitor, or adjuster shall, prior to the issuance of any such license, personally take and pass to the satisfaction of the examining authority, an examination given as a test of that person's qualifications and competence, but this requirement shall not apply to:

(a) Applicants for limited licenses under RCW 48.17.190, at the discretion of the commissioner.

(b) Applicants who within the two year period next preceding date of application have been licensed as a resident in this state under a license requiring qualifications similar to qualifications required by the license applied for or who have successfully completed a course of study recognized as a mark of distinction by the insurance industry and who are deemed by the commissioner to be fully qualified and competent.

(c) Applicants for license as a nonresident agent or as a nonresident broker or as a nonresident adjuster who are duly licensed in their state of residence and who are deemed by the commissioner to be fully qualified and competent for a similar license in this state.

(d) Applicants for an agent's or solicitor's license covering the same kinds of insurance as an agent's or solicitor's license then held by them.

(e) Applicants for an adjuster's license who for a period of one year, a portion of which was in the year next preceding the date of application, have been a full time salaried employee of an insurer or of a general agent to adjust, investigate, or report claims arising under insurance contracts.

(2) Any person licensed as an insurance broker by this state prior to June 8, 1967, who is otherwise qualified to be a licensed insurance broker, shall be entitled to renew that person's broker's license by payment of the applicable fee for such of the broker's licenses authorized by RCW 48.17.240, as that person shall elect, without taking any additional examination, except as provided in subsection (3).

(3) The commissioner may at any time require any licensed agent, broker, solicitor, or adjuster to take and successfully pass an examination testing the licensee's competence and qualifications as a condition to the continuance or renewal of a license, if the licensee has been guilty of violation of this code, or has so conducted affairs under an insurance license as to cause the commissioner reasonably to desire further evidence of the licensee's qualifications. [1990 1st ex.s. c 3 § 2; 1977 ex.s. c 182 § 3; 1967 c 150 § 16; 1965 ex.s. c 70 § 19; 1963 c 195 § 17; 1955 c 303 § 10; 1949 c 190 § 23; 1947 c 79 § .17.11; Rem. Supp. 1949 § 45.17.11.]

48.17.120 Scope of examinations. (1) Each such examination shall be of sufficient scope and difficulty to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for, and of the duties and responsibilities of, and laws of this state applicable to, such a licensee, and so as reasonably to assure that a

passing score indicates that the applicant is qualified from the standpoint of knowledge and education.

(2) Examination as to ocean marine and related coverages may be waived by the commissioner as to any applicant deemed by the commissioner to be qualified by past experience to deal in such insurances.

(3) The commissioner shall prepare, or approve, and make available to insurers, general agents, brokers, agents, and applicants a printed manual specifying in general terms the subjects which may be covered in any examination for a particular license. [1989 c 323 § 6; 1981 c 111 § 2; 1967 c 150 § 17; 1955 c 303 § 11; 1947 c 79 § .17.12; Rem. Supp. 1947 § 45.17.12.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.125 Examination questions—Confidentiality—Penalties. It is unlawful for any unauthorized person to remove, reproduce, duplicate, or distribute in any form, any question(s) used by the state of Washington to determine the qualifications and competence of insurance agents, brokers, solicitors, or adjusters required by Title 48 RCW to be licensed. This section shall not prohibit an insurance education provider from creating and using sample test questions in courses approved pursuant to RCW 48.17.150.

Any person violating this section shall be subject to penalties as provided by RCW 48.01.080 and 48.17.560. [1989 c 323 § 1.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.130 Examinations—Form, time of, fee. (1) The answers of the applicant to any such examination shall be written by the applicant under the examining authority's supervision, and any such written examination may be supplemented by oral examination at the discretion of the examining authority.

(2) Examinations shall be given at such times and places within this state as the examining authority deems necessary reasonably to serve the convenience of both the examining authority and applicants.

(3) The examining authority may require a waiting period of reasonable duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

(4) For each examination taken, the commissioner shall collect in advance the fee provided in RCW 48.14.010. In the event the commissioner contracts with an independent testing service for examination development and administration, the examination fee may be collected directly by such testing service. [1981 c 111 § 3; 1967 c 150 § 18; 1947 c 79 § .17.13; Rem. Supp. 1947 § 45.17.13.]

48.17.150 Agent's and broker's qualifications—Continuing education requirements. (1) To qualify for an agent's or broker's license an applicant must otherwise comply with this code therefor and must

(a) be eighteen years of age or over, if an individual;

(b) be a bona fide resident of and actually reside in this state, or if a corporation, be other than an insurer and maintain a lawfully established place of business in this state, except as provided in RCW 48.17.330;

(c) be empowered to be an agent or broker, as the case may be, under its members' agreement, if a firm, or by its articles of incorporation, if a corporation;

(d) complete such minimum educational requirements for the issuance of an agent's license for the kinds of insurance specified in RCW 48.17.210 as may be required by regulation issued by the commissioner;

(e) successfully pass any examination as required under RCW 48.17.110;

(f) be a trustworthy person;

(g) if for an agent's license, be appointed as its agent by one or more authorized insurers, subject to issuance of the license; and

(h) if for broker's license, have had at least two years experience either as an agent, solicitor, adjuster, general agent, broker, or as an employee of insurers or representatives of insurers, and special education or training of sufficient duration and extent reasonably to satisfy the commissioner that he possesses the competence necessary to fulfill the responsibilities of broker.

(2) The commissioner shall by regulation establish minimum continuing education requirements for the renewal or reissuance of a license to an agent or a broker: PROVIDED, That the commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses. The continuing education requirements shall be appropriate to the license for the kinds of insurance specified in RCW 48.17.210: PROVIDED FURTHER, That the continuing education requirements may be waived by the commissioner for good cause shown.

(3) If the commissioner finds that the applicant is so qualified and that the license fee has been paid, the license shall be issued. Otherwise, the commissioner shall refuse to issue the license. [1994 c 131 § 4; 1988 c 248 § 9; 1979 ex.s. c 269 § 7; 1971 ex.s. c 292 § 47; 1967 c 150 § 19; 1961 c 194 § 4; 1947 c 79 § .17.15; Rem. Supp. 1947 § 45.17.15.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

48.17.160 Appointment of agents—Revocation—Expiration—Renewal. (1) Each insurer on appointing an agent in this state shall file written notice thereof with the commissioner on forms as prescribed and furnished by the commissioner, and shall pay the filing fee therefor as provided in RCW 48.14.010. The commissioner shall return the appointment of agent form to the insurer for distribution to the agent. The commissioner may adopt regulations establishing alternative appointment procedures for individuals within licensed firms, corporations, or sole proprietorships who are empowered to exercise the authority conferred by the firm, corporate, or sole proprietorship license.

(2) Each appointment shall be effective until the agent's license expires or is revoked, the appointment has expired, or written notice of termination of the appointment is filed with the commissioner, whichever occurs first.

(3) When the appointment is revoked by the insurer, written notice of such revocation shall be given to the agent

and a copy of the notice of revocation shall be mailed to the commissioner.

(4) Revocation of an appointment by the insurer shall be deemed to be effective as of the date designated in the notice as being the effective date if the notice is actually received by the agent prior to such designated date; otherwise, as of the earlier of the following dates:

(a) The date such notice of revocation was received by the agent.

(b) The date such notice, if mailed to the agent at his last address of record with the insurer, in due course should have been received by the agent.

(5) Appointments expire if not timely renewed. Each insurer shall pay the renewal fee set forth for each agent holding an appointment on the renewal date assigned the agents of the insurer by the commissioner. The commissioner, by rule, shall determine renewal dates. If a staggered system is used, fees shall be prorated in the conversion to a staggered system. [1994 c 131 § 5; 1990 1st ex.s. c 3 § 3; 1979 ex.s. c 269 § 2; 1967 c 150 § 20; 1959 c 225 § 6; 1955 c 303 § 13; 1947 c 79 § .17.16; Rem. Supp. 1947 § 45.17.16.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.170 Form and content of licenses. Agents', solicitors', adjusters' and brokers' licenses shall be in the form and contain the essential information prescribed by the commissioner. [1979 ex.s. c 269 § 3; 1947 c 79 § .17.17; Rem. Supp. 1947 § 45.17.17.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.180 Licenses to firms and corporations. (1) A firm or corporation may be licensed as an agent, adjuster, or broker if each individual empowered to exercise the authority conferred by the corporate or firm license is also licensed. Exercise or attempted exercise of the powers of the firm or corporation by an unlicensed person, with the knowledge or consent of the firm or corporation, shall constitute cause for the revocation or suspension of the license.

(2) Licenses shall be issued in a trade name only upon proof satisfactory to the commissioner that the trade name has been lawfully registered.

(3) For the purpose of this section, a firm shall include a duly licensed individual acting as a sole proprietorship having associated licensees authorized to act on the proprietor's behalf in the proprietor's business or trade name. [1990 1st ex.s. c 3 § 4; 1979 ex.s. c 269 § 4; 1947 c 79 § .17.18; Rem. Supp. 1947 § 45.17.18.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

Title insurance agents, separate licenses for individuals not required: RCW 48.29.170.

48.17.190 Limited licenses. The commissioner may issue limited licenses to the following:

(1) Persons selling transportation tickets of a common carrier of persons or property who shall act as such agents only as to transportation ticket policies of disability insurance or baggage insurance on personal effects.

(2) Compensated master policyholders of credit life and credit accident and health insurance and credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations, retail dealers compensated by any such master policyholders, or the authorized representative(s) of either.

(3) Persons selling special or unique policies of insurance covering goods sold or leased from a primary business or activity other than the transaction of insurance or covering collateral securing loans from a primary business or activity other than the transaction of insurance if, in the commissioner's discretion, such limited license would safeguard and promote the public interest. [1995 c 214 § 2; 1979 c 138 § 1; 1967 c 150 § 21; 1947 c 79 § .17.19; Rem. Supp. 1947 § 45.17.19.]

48.17.200 One license required by agent. An agent is required to have but one license regardless of the number of appointments by insurers the agent may have. [1979 ex.s. c 269 § 5; 1955 c 303 § 14; 1947 c 79 § .17.20; Rem. Supp. 1947 § 45.17.20.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.210 Minimum license combinations. Except as provided in RCW 48.17.190, an agent's license shall not be issued unless it includes, and the applicant is qualified for, one or more of the following kinds of insurance:

- (1) Casualty.
- (2) Disability.
- (3) Life.
- (4) Marine and transportation.
- (5) Property.
- (6) Surety.
- (7) Vehicle. [1947 c 79 § .17.21; Rem. Supp. 1947 § 45.17.21.]

48.17.230 Agent placing rejected business. A licensed agent appointed by an insurer as to life or disability insurances may, if with the knowledge and consent of such insurer, place any portion of a life or disability risk which has been rejected by such insurer, with other authorized insurers without being licensed as to such other insurers. Any agent so placing rejected business becomes the agent for the company issuing the insurance with respect to that business just as if it had appointed such person as its agent. [1988 c 248 § 10; 1947 c 79 § .17.23; Rem. Supp. 1947 § 45.17.23.]

48.17.240 Scope of broker's license. A broker's license may be issued to cover the following lines of insurance:

- (a) All lines of insurance; or
- (b) All lines except life, which shall be designated as a casualty-property broker's license; or
- (c) Life and disability only. [1967 c 150 § 22; 1947 c 79 § .17.24; Rem. Supp. 1947 § 45.17.24.]

48.17.250 Broker's bond. (1) Every applicant for a broker's license or for the renewal of a broker's license existing on the effective date of this code shall file with the application or request for renewal and shall thereafter maintain in

force while so licensed a bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of twenty thousand dollars. If the applicant is a firm or corporation, the bond shall be in the amount of twenty thousand dollars plus five thousand dollars for the second and five thousand dollars for each additional individual empowered and designated in the license to exercise the powers conferred thereby. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond shall be contingent on the accounting by the broker to any person requesting the broker to obtain insurance, for moneys or premiums collected in connection therewith.

(2) Any such bond shall remain in force until the surety is released from liability by the commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon thirty days advance notice in writing filed with the commissioner. [1979 ex.s. c 269 § 8; 1977 ex.s. c 182 § 4; 1947 c 79 § .17.25; Rem. Supp. 1947 § 45.17.25.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.260 Broker's authority—Commissions. (1) A broker, as such, is not an agent or other representative of an insurer, and does not have power, by his own acts, to bind the insurer upon any risk or with reference to any insurance contract.

(2) An insurer or agent shall have the right to pay to a broker licensed under this code, or under the laws of any other state or province, and such broker shall have the right to receive from the insurer or agent, the customary commissions upon insurances placed in the insurer by the broker. [1949 c 190 § 24; 1947 c 79 § .17.26; Rem. Supp. 1949 § 45.17.26.]

48.17.270 Agent-broker combinations—Compensation—Disclosure. (1) A licensed agent may be licensed as a broker and be a broker as to insurers for which the licensee is not then appointed as agent. A licensed broker may be licensed as and be an agent as to insurers appointing such agent. The sole relationship between a broker and an insurer as to which the licensee is appointed as an agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent.

(2) Unless the agency-insurer agreement provides to the contrary, an insurance agent licensed as a broker may, with respect to property and casualty insurance, receive the following compensation:

- (a) A commission paid by the insurer;
- (b) A fee paid by the insured; or
- (c) A combination of commission paid by the insurer and a fee paid by the insured from which a broker may offset or reimburse the insured for all or part of the fee.

If the compensation received by an agent who is also licensed as a broker and who is dealing directly with the insured includes a fee, the full amount of compensation, including an explanation of any offset or reimbursement, must be disclosed in writing, signed by the broker and the insured, and the writing must be retained by the broker for not

less than five years. [1994 c 203 § 1; 1993 c 455 § 1; 1981 c 339 § 13; 1947 c 79 § .17.27; Rem. Supp. 1947 § 45.17.27.]

48.17.280 Solicitor's qualifications. The commissioner shall license as a solicitor an individual only who meets the following requirements:

- (1) Is a resident of this state.
- (2) Intends to and does make the soliciting and handling of insurance business under his license his principal vocation.
- (3) Is to represent and be employed by but one licensed agent or broker.
- (4) Has passed any examination as required under this chapter.
- (5) Is otherwise qualified under this code. [1947 c 79 § .17.28; Rem. Supp. 1947 § 45.17.28.]

48.17.290 Solicitor's license—Application. The commissioner shall issue a solicitor's license only upon application by the applicant and the request of the agent or broker to be represented, upon such forms as the commissioner shall prescribe and furnish. [1947 c 79 § .17.29; Rem. Supp. 1947 § 45.17.29.]

48.17.300 Solicitor's license fee—Custody—Cancellation. (1) The fee for issuance or renewal of a solicitor's license shall be paid by the agent or broker by whom the solicitor is employed.

(2) The solicitor's license shall be delivered to and shall remain in the possession of the employing agent or broker. Upon termination of such employment, the license shall likewise terminate and shall be returned to the commissioner for cancellation. [1947 c 79 § .17.30; Rem. Supp. 1947 § 45.17.30.]

48.17.310 Limitations upon solicitors. (1) A solicitor's license shall not cover any kind of insurance for which the agent or broker by whom he is employed is not then licensed.

(2) A solicitor shall not have power to bind an insurer upon or with reference to any risk or insurance contract, or to countersign insurance contracts.

(3) Any individual while licensed as a solicitor shall not be licensed as an agent or broker. [1947 c 79 § .17.31; Rem. Supp. 1947 § 45.17.31.]

48.17.320 Responsibility of employing agent or broker. All business transacted by a solicitor under his license shall be in the name of the agent or broker by whom he is employed and the agent or broker shall be responsible for all acts or omissions of the solicitor within the scope of such employment. [1947 c 79 § .17.32; Rem. Supp. 1947 § 45.17.32.]

48.17.330 Nonresident agents and brokers—Reciprocity. (1) The commissioner may license as an agent or as a broker, a person who is not a resident of or domiciled in this state and who holds a corresponding license issued by the state or province of his or her residence or domicile, subject to RCW 48.17.530, if by the laws of the state or province of his or her residence or domicile a similar privilege is extended to residents of or corporations domiciled in this

state. As used in this section, "state" means a state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands; and "province" means a province of Canada.

(2) Any such licensee shall be subject to the same obligations and limitations, and to the commissioner's supervision as though resident or domiciled in this state, subject to RCW 48.14.040.

(3) No such person shall be so licensed unless he or she files the power of attorney provided for in RCW 48.17.340, and, if a corporation, it must have complied with the laws of this state governing the admission of foreign corporations. [2001 c 56 § 2; 1973 1st ex.s. c 107 § 1; 1955 c 303 § 28; 1947 c 79 § .17.33; Rem. Supp. 1947 § 45.17.33.]

Severability—1973 1st ex.s. c 107: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 107 § 5.]

48.17.340 Service of process against nonresident agent or broker. (1) Each licensed nonresident agent or broker shall appoint the commissioner as his attorney to receive service of legal process issued against the agent or broker in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute effective legal service upon the agent or broker.

(2) The appointment shall be irrevocable for as long as there could be any cause of action against the agent or broker arising out of his insurance transactions in this state.

(3) Duplicate copies of such legal process against such agent or broker shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(4) Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant agent or broker at his last address of record with the commissioner.

(5) The commissioner shall keep a record of the day and hour of service upon him of all such legal process. No proceedings shall be had against the defendant agent or broker, and such defendant shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [1981 c 339 § 14; 1947 c 79 § .17.34; Rem. Supp. 1947 § 45.17.34.]

48.17.380 Adjusters—Qualifications for license. The commissioner shall license as an adjuster only an individual, firm, or corporation which has otherwise complied with this code therefor and the individual or responsible officer of the firm or corporation has furnished evidence satisfactory to the commissioner that he is qualified as follows:

- (1) Is eighteen or more years of age.
- (2) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state.
- (3) Is a trustworthy person.
- (4) Has had experience or special education or training with reference to the handling of loss claims under insurance

contracts, of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster.

(5) Has successfully passed any examination as required under this chapter.

(6) If for a public adjuster's license, has filed the bond required by RCW 48.17.430. [1981 c 339 § 15; 1971 ex.s. c 292 § 48; 1947 c 79 § .17.38; Rem. Supp. 1947 § 45.17.38.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

48.17.390 Adjusters—Separate licenses. The commissioner may license an individual, firm, or corporation as an independent adjuster or as a public adjuster, and separate licenses shall be required for each type of adjuster. An individual, firm, or corporation may be concurrently licensed under separate licenses as an independent adjuster and as a public adjuster. The full license fee shall be paid for each such license. [1981 c 339 § 16; 1947 c 79 § .17.39; Rem. Supp. 1947 § 45.17.39.]

48.17.410 Authority of adjuster. An adjuster shall have authority under his license only to investigate or report to his principal upon claims as limited under RCW 48.17.050 on behalf only of the insurers if licensed as an independent adjuster, or on behalf only of insureds if licensed as a public adjuster. An adjuster licensed concurrently as both an independent and a public adjuster shall not represent both the insurer and the insured in the same transaction. [1947 c 79 § .17.41; Rem. Supp. 1947 § 45.17.41.]

48.17.420 Agent may adjust—Nonresident adjusters. (1) On behalf of and as authorized by an insurer for which he is licensed as agent, an agent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.

(2) No license by this state shall be required of a nonresident independent adjuster, for the adjustment in this state of a single loss, or of losses arising out of a catastrophe common to all such losses. [1947 c 79 § .17.42; Rem. Supp. 1947 § 45.17.42.]

48.17.430 Public adjuster's bond. (1) Prior to the issuance of a license as public adjuster, the applicant therefor shall file with the commissioner and shall thereafter maintain in force while so licensed a surety bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of five thousand dollars. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the payment of five thousand dollars. The bond shall be contingent on the accounting by the adjuster to any insured whose claim he is handling, for moneys or any settlement received in connection therewith.

(2) Any such bond shall remain in force until the surety is released from liability by the commissioner, or until canceled by the surety. Without prejudice to any liability accrued prior to cancellation, the surety may cancel a bond upon thirty days advance notice in writing filed with the commissioner.

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(3) Such bond shall be required of any adjuster acting as a public adjuster as of the effective date of this code, or thereafter under any unexpired license heretofore issued. [1977 ex.s. c 5; 1947 c 79 § .17.43; Rem. Supp. 1947 § 45.17.43.]

48.17.450 Place of business. (1) Every licensed agent, broker, and adjuster, other than an agent licensed for life or disability insurances only, shall have and maintain in this state, or, if a nonresident agent or nonresident broker, in this state or in the state of the licensee's domicile, a place of business accessible to the public. Such place of business shall be that wherein the agent or broker principally conducts transactions under that person's licenses. The address of the licensee's place of business shall appear on all of that person's licenses, and the licensee shall promptly notify the commissioner of any change thereof. A licensee maintaining more than one place of business in this state shall obtain a duplicate license or licenses for each additional such place, and shall pay the full fee therefor.

(2) Any notice, order, or written communication from the commissioner to a person licensed under this chapter which directly affects the person's license shall be sent by mail to the person's last residential address, if an individual, and to the person's last business address, if licensed as a firm or corporation, as such address is shown in the commissioner's licensing records. A licensee shall promptly notify the commissioner of any change of residential or business address. [1990 1st ex.s. c 3 § 5; 1988 c 248 § 11; 1953 c 197 § 6; 1947 c 79 § .17.45; Rem. Supp. 1947 § 45.17.45.]

48.17.460 Display of license. (1) The license or licenses of each agent, other than licenses as to life or disability insurances only, or of each broker or adjuster shall be displayed in a conspicuous place in that part of his place of business which is customarily open to the public.

(2) The license of a solicitor shall be so displayed in the place of business of the agent or broker by whom he is employed. [1947 c 79 § .17.46; Rem. Supp. 1947 § 45.17.46.]

48.17.470 Records of agents, brokers, adjusters. (1) Every agent, or broker, or adjuster shall keep at his address as shown on his license, a record of all transactions consummated under his license. This record shall be in organized form and shall include:

(a) If an agent or broker,

(i) a record of each insurance contract procured, issued, or countersigned, together with the names of the insurers and insureds, the amount of premium paid or to be paid, and a statement of the subject of the insurance;

(ii) the names of any other licensees from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid.

(b) If an adjuster, a record of each investigation or adjustment undertaken or consummated, and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of such investigation or adjustment.

(c) Such other and additional information as shall be customary, or as may reasonably be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years immediately after the date of the completion of such transaction.

(3) This section shall not apply as to life or disability insurances. [1947 c 79 § .17.47; Rem. Supp. 1947 § 45.17.47.]

48.17.475 Licensee to reply promptly to inquiry by commissioner. Every insurance agent, broker, adjuster, or other person licensed under this chapter shall promptly reply in writing to an inquiry of the commissioner relative to the business of insurance. [1967 c 150 § 13.]

48.17.480 Reporting and accounting for premiums.

(1) An agent or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and such amount shall likewise be shown in the contract and in the records of the agent. Each willful violation of this provision is a misdemeanor.

(2) All funds representing premiums or return premiums received by an agent, solicitor or broker, shall be so received in his or her fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, or agent as entitled thereto.

(3) Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds.

(4) Any agent, solicitor, broker, adjuster or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, is guilty of theft under chapter 9A.56 RCW. [2003 c 53 § 269; 1988 c 248 § 12; 1947 c 79 § .17.48; Rem. Supp. 1947 § 45.17.48.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

48.17.490 Sharing commissions. (1) No agent, general agent, solicitor, or broker shall compensate or offer to compensate in any manner any person other than an agent, general agent, solicitor, or broker, licensed in this or any other state or province, for procuring or in any manner helping to procure applications for or to place insurance in this state. This provision shall not prohibit the payment of compensation not contingent upon volume of business transacted, in the form of salaries to the regular employees of such agent, general agent, solicitor or broker, or the payment for services furnished by an unlicensed person who does not participate in the transaction of insurance in any way requiring licensing as an agent, solicitor, broker, or adjuster and who is not compensated on any basis dependent upon a sale of insurance being made.

(2) No such licensee shall be promised or allowed any compensation on account of the procuring of applications for or the placing of kinds of insurance which he himself is not then licensed to procure or place.

(3) The commissioner shall suspend or revoke the licenses of all licensees participating in any violation of this section. [1988 c 248 § 13; 1947 c 79 § .17.49; Rem. Supp. 1947 § 45.17.49.]

48.17.500 Expiration and renewal of licenses. (1) All agents' licenses issued by the commissioner shall be valid for the time period established by the commissioner unless:

(a) Suspended or revoked; or

(b) The licensee ceases to hold a valid appointment by an insurer.

(2) All brokers', solicitors', and adjusters' licenses shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(3) The commissioner, by rule, shall determine renewal dates for licenses of all agents, brokers, solicitors, and adjusters. If a staggered system is used, fees shall be prorated in the conversion to a staggered system.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any agent's, broker's, solicitor's, or adjuster's license as provided in this code, any such license may be renewed into another like period by filing with the commissioner on or before the expiration date a written request, by or on behalf of the licensee, for such renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010. An agent or broker shall make and file renewal requests on behalf of his solicitors.

If the request and fee for renewal of an agent's, broker's, solicitor's, or adjuster's license is filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed order of such refusal to the licensee. Any request for renewal not so filed until after date of expiration may be considered by the commissioner as an application for a new license.

(5) As to all licenses, if request for renewal of an agent's license or appointment or broker's, solicitor's, or adjuster's license or payment of the fee is not received by the commissioner prior to the expiration date as required under subsection (4) of this section, the insurer or applicant for renewal shall pay to the commissioner and the commissioner shall collect, in addition to the regular fee, a surcharge as follows: For the first thirty days or part thereof of delinquency the surcharge shall be fifty percent of the fee; for all delinquencies extending more than thirty days, the surcharge shall be one hundred percent of the fee. This subsection shall not be deemed to exempt any person from any penalty provided by law for transacting business without a valid and subsisting license or appointment, or affect the commissioner's right, at his discretion, to consider such delinquent application as one for a new license or appointment. [1979 ex.s. c 269 § 6; 1977 ex.s. c 182 § 6; 1965 ex.s. c 70 § 20; 1957 c 193 § 9; 1953 c 197 § 7; 1947 c 79 § .17.50; Rem. Supp. 1947 § 45.17.50.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.510 Temporary licenses. (1) The commissioner may issue an agent's or broker's temporary license in the following circumstances:

(a) To the surviving spouse or next of kin or to the administrator or executor, or the employee of the administrator or executor, of a licensed agent or broker becoming deceased.

(b) To the spouse, next of kin, employee, or legal guardian of a licensed agent or broker becoming disabled because of sickness, insanity, or injury.

(c) To a surviving member of a firm or surviving officer or employee of a corporation licensed as agent or broker upon the death of an individual designated in the firm or corporation's license to exercise powers thereunder.

(2) An individual to be eligible for any such temporary license must be qualified as for a permanent license except as to experience, training, or the taking of any examination.

(3) Any fee paid to the commissioner for issuance of a temporary license as specified in RCW 48.14.010 shall be credited toward the fee required for a permanent license which is issued to replace the temporary license prior to the expiration of such temporary license. [1982 c 181 § 7; 1955 c 303 § 15; 1953 c 197 § 8; 1947 c 79 § .17.51; Rem. Supp. 1947 § 45.17.51.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.520 Temporary licenses—Duration—Limitations. (1) No such temporary license shall be effective for more than ninety days in any twelve month period, subject to extension for an additional period of not more than ninety days at the commissioner's discretion and for good cause shown. The commissioner may refuse so to license again any person who has previously been so licensed.

(2) An individual requesting temporary agent's license on account of death or disability of an agent, shall not be so licensed for any insurer as to which such agent was not licensed at the time of death or commencement of disability. [1985 c 264 § 8; 1953 c 197 § 9; 1947 c 79 § .17.52; Rem. Supp. 1947 § 47.17.52.]

48.17.530 Refusal, suspension, revocation of licenses. (1) The commissioner may suspend, revoke, or refuse to issue or renew any license which is issued or may be issued under this chapter or any surplus line broker's license for any cause specified in any other provision of this code, or for any of the following causes:

(a) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.

(b) If the licensee or applicant wilfully violates or knowingly participates in the violation of any provision of this code or any proper order or regulation of the commissioner.

(c) If the licensee or applicant has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required under this chapter.

(d) If the licensee or applicant has misappropriated or converted to his own use or has illegally withheld moneys required to be held in a fiduciary capacity.

(e) If the licensee or applicant has, with intent to deceive, materially misrepresented the terms or effect of any insur-

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ance contract; or has engaged or is about to engage in any fraudulent transaction.

(f) If the licensee or applicant has been guilty of "twisting," as defined in RCW 48.30.180, or of rebating, as defined in chapter 48.30 RCW.

(g) If the licensee or applicant has been convicted, by final judgment, of a felony.

(h) If the licensee or applicant has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public.

(i) If the licensee has dealt with, or attempted to deal with, insurances, or to exercise powers relative to insurance outside the scope of his licenses.

(2) If any natural person named under a firm or corporate license, or application therefor, commits or has committed any act or fails or has failed to perform any duty which is a ground for the commissioner to revoke, suspend or refuse to issue or renew the license or application for license, the commissioner may revoke, suspend, refuse to renew, or refuse to issue:

(a) The license, or application therefor, of the corporation or firm; or

(b) The right of the natural person to act thereunder; or

(c) Any other license held or applied for by the natural person; or

(d) He may take all such steps.

(3) Any conduct of an applicant or licensee which constitutes ground for disciplinary action under this code shall be deemed such ground notwithstanding that such conduct took place in another state.

(4) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request. [1973 1st ex.s. c 152 § 2; 1969 ex.s. c 241 § 11; 1967 c 150 § 23; 1947 c 79 § .17.53; Rem. Supp. 1947 § 45.17.53.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.17.535 License or certificate suspension—Non-compliance with support order—Reissuance. The commissioner shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the commissioner's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 857.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

48.17.540 Procedure to suspend, revoke, or refuse—Effect of conviction of felony. (1) The commissioner may revoke or refuse to renew any license issued under this chapter, or any surplus line broker's license, immediately and without hearing, upon sentencing of the licensee for conviction of a felony by final judgment of any court of competent jurisdiction, if the facts giving rise to such conviction demonstrate the licensee to be untrustworthy to maintain any such license.

(2) The commissioner may suspend, revoke, or refuse to renew any such license:

(a) By an order served by mail or personal service upon the licensee not less than fifteen days prior to the effective date thereof, subject to the right of the licensee to have a hearing as provided in RCW 48.04.010; or

(b) By an order on hearing made as provided in chapter 34.05 RCW, the Administrative Procedure Act, effective not less than ten days after the date of the service of the order, subject to the right of the licensee to appeal to the superior court.

(3) The commissioner may temporarily suspend such license by an order served by mail or by personal service upon the licensee not less than three days prior to the effective date thereof, provided the order contains a notice of revocation and includes a finding that the public safety or welfare imperatively requires emergency action. Such suspension shall continue only until proceedings for revocation are concluded. The commissioner also may temporarily suspend such license in cases where proceedings for revocation are pending if he or she finds that the public safety or welfare imperatively requires emergency action.

(4) Service by mail under this section shall mean posting in the United States mail, addressed to the licensee at the most recent address shown in the commissioner's licensing records for the licensee. Service by mail is complete upon deposit in the United States mail. [1990 1st ex.s. c 3 § 6; 1989 c 175 § 113; 1988 c 248 § 14; 1982 c 181 § 8; 1973 1st ex.s. c 107 § 2; 1967 c 150 § 24; 1947 c 79 § .17.54; Rem. Supp. 1947 § 45.17.54.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1982 c 181: See note following RCW 48.03.010.

Severability—1973 1st ex.s. c 107: See note following RCW 48.17.330.

48.17.550 Duration of suspension. Every order suspending any such license shall specify the period during which suspension will be effective, and which period shall in no event exceed twelve months. [1947 c 79 § .17.55; Rem. Supp. 1947 § 45.17.55.]

48.17.560 Fines may be imposed. After hearing or upon stipulation by the licensee or insurance education provider, and in addition to or in lieu of the suspension, revocation, or refusal to renew any such license or insurance education provider approval, the commissioner may levy a fine upon the licensee or insurance education provider. (1) For each offense the fine shall be an amount not more than one thousand dollars. (2) The order levying such fine shall spec-

ify that the fine shall be fully paid not less than fifteen nor more than thirty days from the date of the order. (3) Upon failure to pay any such fine when due, the commissioner shall revoke the licenses of the licensee or the approval(s) of the insurance education provider, if not already revoked. The fine shall be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1989 c 323 § 3; 1975 1st ex.s. c 266 § 8; 1967 c 150 § 25; 1947 c 79 § .17.56; Rem. Supp. 1947 § 45.17.56.]

Effective date—1989 c 323: See note following RCW 48.17.055.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.17.563 Insurance education providers—Commissioner's approval—Renewal fee. (1) The commissioner may require insurance education providers to furnish specific information regarding their curricula, faculty, methods of monitoring attendance, and other matters reasonably related to providing insurance education under this chapter. The commissioner may grant approvals to such providers who demonstrate the ability to conduct and certify completion of one or more courses satisfying the insurance education requirements of RCW 48.17.150.

(2) Provider and course approvals are valid for the time period established by the commissioner and shall expire if not timely renewed. Each provider shall pay the renewal fee set forth in RCW 48.14.010(1)(n).

(3) In granting approvals for courses required by RCW 48.17.150(1)(d):

(a) The commissioner may require the availability of a licensed agent with appropriate experience on the premises whenever instruction is being offered; and

(b) The commissioner shall not deny approval to any provider on the grounds that the proposed method of education employs nontraditional teaching techniques, such as substituting taped lectures for live instruction, offering instruction without fixed schedules, or providing education at individual learning rates. [1994 c 131 § 6; 1989 c 323 § 7.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.565 Insurance education providers—Violations—Costs awarded. If an investigation of any provider culminates in a finding by the commissioner or by any court of competent jurisdiction, that the provider has failed to comply with or has violated any statute or regulation pertaining to insurance education, the provider shall pay the expenses reasonably attributable and allocable to such investigation.

(1) The commissioner shall calculate such expenses and render a bill therefor by registered mail to the provider. Within thirty days after receipt of such bill, the provider shall pay the full amount to the commissioner. The commissioner shall transmit such payment to the state treasurer. The state treasurer shall credit the payment to the office of the insurance commissioner regulatory account, treating such payment as recovery of a prior expenditure.

(2) In any action brought under this section, if the insurance commissioner prevails, the court may award to the office of the insurance commissioner all costs of the action,

including a reasonable attorneys' fee to be fixed by the court. [1989 c 323 § 4.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.568 Insurance education providers—Bond. In addition to the regulatory requirements imposed pursuant to RCW 48.17.150, the commissioner may require each insurance education provider to post a bond, cash deposit, or irrevocable letter of credit. Every insurance education provider, other than an insurer, health care service contractor, health maintenance organization, or educational institution established by Washington statutes, is subject to the requirement.

(1) The provider shall file with each request for course approval and shall maintain in force while so approved, the bond, cash deposit, or irrevocable letter of credit in favor of the state of Washington, according to criteria which the commissioner shall establish by regulation. The amount of such bond, cash deposit, or irrevocable letter of credit, shall not exceed five thousand dollars for the provider's first approved course and one thousand dollars for each additional approved course.

(2) Proceeds from the bond, cash deposit, or irrevocable letter of credit shall inure to the commissioner for payment of investigation expenses or for payment of any fine ordered per Washington statutes or regulations governing insurance education: PROVIDED, That recoverable investigation expenses or fines shall not be limited to the amount of such required bond, cash deposit, or irrevocable letter of credit. [1989 c 323 § 5.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.591 Termination of agency contract—Effect on insured. (1) No insurer authorized to do business in this state may cancel or refuse to renew any policy because that insurer's contract with the independent agent through whom such policy is written has been terminated by the insurer, the agent, or by mutual agreement.

(2) If an insurer intends to terminate a written agency contract with an independent agent, the insurer shall give the agent not less than one hundred twenty days' advance written notice of the intent, unless the termination is based upon the agent's abandonment of the agency, the agent's gross and willful misconduct, the agent's loss of license by order of the insurance commissioner, the agent's sale of, or material change of ownership in, the agency, the agent's fraud or material misrepresentation relative to the business of insurance, or the agent's default in payments due the insurer under the terms of the agreement. During the notice period the insurer shall not amend the existing contract without the consent of the agent.

(a) Unless the agency contract provides otherwise, during the one hundred twenty day notice period the independent agent shall not write or bind any new business on behalf of the terminating insurer without specific written approval. However, routine adjustments by insureds are permitted. The terminating insurer shall permit renewal of all its policies in the agent's book of business for a period of one year following the effective date of the termination, to the extent the policies meet the insurer's underwriting standards and the insurer has no other reason for nonrenewal. The rate of commission

for any policies renewed under this provision shall be the same as the agent would have received had the agency agreement not been terminated.

(b) An independent agent whose agency contract has been terminated shall have a reasonable opportunity to transfer affected policies to other insurers with which the agent has an appointment: PROVIDED, HOWEVER, That prior to the conclusion of the one-year renewal period following the effective date of the termination, an insurer without a reason for not renewing an insured's policy and which has not received notification of the placement of such policy with another insurer shall provide its insured with appropriate written notice of an offer to continue the policy. In such cases, except where the terminated agent has placed the policy with another agent of the insurer, the insurer shall, where practical, assign the policy to an appointed agent located reasonably near the insured willing to accept the assignment.

(c) An insurer is not required to continue the appointment of a terminated independent agent during or after the one year renewal period. However, an agent whose contract has been terminated by the insurer remains an agent of the terminating insurer as to actions associated with the policies subject to this section just as if he or she were appointed by the insurer as its agent.

(3) In the absence of receipt of notice from the insured that coverage will not be continued with the existing insurer, an insurer whose agency contract has been terminated by an independent agent, or by the mutual agreement of the insurer and the agent, that elects to renew or lacks a reason not to renew, shall give the renewal notice required by chapter 48.18 RCW to affected insureds, and continue renewed coverage in accordance with the methods specified in subsection (2)(b) of this section. Agents affected by this subsection may provide the notice to an insurer that an insured does not intend to continue existing coverage with the insurer, after receiving written authority to do so from an insured.

(4) For purposes of this section an "independent agent" is a licensed insurance agent representing an insurer on an independent contractor basis and not as an employee. This term includes only those agents not obligated by contract to place insurance accounts with a particular insurer or group of insurers.

(5) This section does not apply to (a) agents or policies of an insurer or group of insurers if the business is not owned by the agent and the termination of any such contractual agreement does not result in the cancellation or nonrenewal of any policies of insurance; (b) general agents, to the extent that they are acting in that capacity; (c) life, disability, surety, ocean marine and foreign trade, and title insurance policies; (d) situations where the termination of the agency contract results from the insolvency or liquidation of the terminating insurer.

(6) No insurer may terminate its agency contract with an appointed agent unless it complies with this section.

(7) Nothing contained in this section excuses an insurer from giving cancellation and renewal notices that may be required by chapter 48.18 RCW. [1990 c 121 § 1. Formerly RCW 48.18.285.]

Reviser's note: Previously codified as RCW 48.18.285. Recodified to reflect legislative directive under 1990 c 121.

48.17.600 Separation of premium funds. (1) All funds representing premiums or return premiums received by an agent, solicitor or broker in his or her fiduciary capacity shall be accounted for and maintained in a separate account from all other business and personal funds.

(2) An agent, solicitor or broker shall not commingle or otherwise combine premiums with any other moneys, except as provided in subsection (3) of this section.

(3) An agent, solicitor or broker may commingle with premium funds any additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in his or her business of receiving and transmitting premium or return premium funds.

(4) Each willful violation of this section shall constitute a misdemeanor.

(5) This section shall not apply to agents for title insurance companies or insurance brokers whose average daily balance for premiums received on behalf of insureds in the state of Washington equals or exceeds one million dollars. [1988 c 248 § 15; 1986 c 69 § 1.]

Effective date—1986 c 69: "This act shall take effect on January 1, 1987." [1986 c 69 § 2.]

Chapter 48.18 RCW

THE INSURANCE CONTRACT

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False claims or proof: RCW 48.30.230.

Misrepresentation in application: RCW 48.30.210.

48.18.010 Scope of chapter. The applicable provisions of this chapter shall apply to insurances other than ocean marine and foreign trade insurances. This chapter shall not apply to life or disability insurance policies not issued for delivery in this state nor delivered in this state. [1947 c 79 § .18.01; Rem. Supp. 1947 § 45.18.01.]

48.18.020 Power to contract. (1) Any person eighteen years or older shall be considered of full legal age and may contract for or with respect to insurance. Any person seven years or younger shall be considered a minor for purposes of Title 48 RCW.

(2) A minor not less than fifteen years of age as at nearest birthday may, notwithstanding such minority, contract for life or disability insurance on his own life or body, for his own benefit or for the benefit of his father, mother, spouse, child, brother, sister, or grandparent, and may exercise all rights and powers with respect to or under the contract as though of full legal age, and may surrender his interest therein and give a valid discharge for any benefit accruing or money payable thereunder. The minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract, or any exercise of a right or privilege thereunder, except, that such minor, not otherwise emancipated, shall not

be bound by any unperformed agreement to pay, by promissory note or otherwise any premium on any such insurance contract. [1973 1st ex.s. c 163 § 2; 1970 ex.s. c 17 § 4; 1947 c 79 § .18.02; Rem. Supp. 1947 § 45.18.02.]

48.18.030 Insurable interest—Personal insurances—Nonprofit organizations. (1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives, or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement or injury of the individual insured, the individual insured or his executor or administrator, as the case may be, may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" as used in this section and in RCW 48.18.060 includes only interests as follows:

(a) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection; and

(b) In the case of other persons, a lawful and substantial economic interest in having the life, health or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the individual insured.

(c) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a close corporation or of an interest in such shares, has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

(d) A guardian, trustee or other fiduciary has an insurable interest in the life of any person for whose benefit the fiduciary holds property, and in the life of any other individual in whose life such person has an insurable interest.

(e) Subject to rules adopted under subsection (4) of this section, upon joint application with a nonprofit organization for, or transfer to a nonprofit organization of, an insurance policy on the life of a person naming the organization as owner and beneficiary, a nonprofit organization's interest in the life of a person if:

(i) The nonprofit organization was established exclusively for religious, charitable, scientific, literary, or educational purposes, or to promote amateur athletic competition, to conduct testing for public safety, or to prevent cruelty to children or animals; and

(ii) The nonprofit organization:

(A) Has existed for a minimum of five years; or

(B) Has been issued a certificate of exemption to conduct a charitable gift annuity business under RCW 48.38.010, or is

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authorized to conduct a charitable gift annuity business under RCW 28B.10.485; or

(C) Has been organized, and at all times has been operated, exclusively for benefit of, to perform the functions of, or to carry out the purposes of one or more nonprofit organizations described in (e)(ii)(A) or (B) of this subsection and is operated, supervised, or controlled by or in connection with one or more such nonprofit organizations; and

(iii) For a joint application, the person is not an employee, officer, or director of the organization who receives significant compensation from the organization and who became affiliated with the organization in that capacity less than one year before the joint application.

(4) The commissioner may adopt rules governing joint applications for, and transfers of, life insurance under subsection (3)(e) of this section. The rules may include:

(a) Standards for full and fair disclosure that set forth the manner, content, and required disclosure for the sale of life insurance issued under subsection (3)(e) of this section; and

(b) For joint applications, a grace period of thirty days during which the insured person may direct the nonprofit organization to return the policy and the insurer to refund any premium paid to the party that, directly or indirectly, paid the premium; and

(c) Standards for granting an exemption from the five-year existence requirement of subsection (3)(e)(ii)(A) of this section to a private foundation that files with the insurance commissioner documents, stipulations, and information as the insurance commissioner may require to carry out the purpose of subsection (3)(e) of this section.

(5) Nothing in this section permits the personal representative of the insured's estate to recover the proceeds of a policy on the life of a deceased insured person that was applied for jointly by, or transferred to, an organization covered by subsection (3)(e) of this section, where the organization was named owner and beneficiary of the policy.

This subsection applies to all life insurance policies applied for by, or transferred to, an organization covered by subsection (3)(e) of this section, regardless of the time of application or transfer and regardless of whether the organization would have been covered at the time of application or transfer. [1992 c 51 § 1; 1973 1st ex.s. c 89 § 3; 1947 c 79 § .18.03; Rem. Supp. 1947 § 45.18.03.]

Use of trust funds by fiduciaries for life insurance: RCW 11.110.120.

48.18.040 Insurable interest—Property insurances.

(1) No contract of insurance on property or of any interest therein or arising therefrom shall be enforceable except for the benefit of persons having an insurable interest in the things insured.

(2) "Insurable interest" as used in this section means any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage. [1947 c 79 § .18.04; Rem. Supp. 1947 § 45.18.04.]

48.18.050 Named insured—Interest insured. When the name of a person intended to be insured is specified in the policy, such insurance can be applied only to his own proper interest. This section shall not apply to life and disability

insurances. [1947 c 79 § .18.05; Rem. Supp. 1947 § 45.18.05.]

48.18.060 Application—When required. No life or disability insurance contract upon an individual, except a contract of group life insurance or of group or blanket disability insurance as defined in this code, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, in writing applies therefor or consents thereto, except in the following cases:

(1) A spouse may effectuate such insurance upon the other spouse.

(2) Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may effectuate insurance upon the life of the minor. [1947 c 79 § .18.06; Rem. Supp. 1947 § 45.18.06.]

48.18.070 Alteration of application. (1) Any application for insurance in writing by the applicant shall be altered solely by the applicant or by his written consent, except that insertions may be made by the insurer for administrative purposes only in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant. Violation of this provision shall be a misdemeanor.

(2) Any insurer issuing an insurance contract upon such an application unlawfully altered by its officer, employee, or agent shall not have available in any action arising out of such contract, any defense which is based upon the fact of such alteration, or as to any item in the application which was so altered. [1947 c 79 § .18.07; Rem. Supp. 1947 § 45.18.07.]

48.18.080 Application as evidence. (1) No application for the issuance of any insurance policy or contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of the application was attached to or otherwise made a part of the policy when issued and delivered. This provision shall not apply to policies or contracts of industrial life insurance.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within fifteen days after receipt of such request at its home office or at any of its branch offices, deliver or mail to the person making such request, a copy of such application. If such copy is not so delivered or mailed, the insurer shall be precluded from introducing the application as evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. [1947 c 79 § .18.08; Rem. Supp. 1947 § 45.18.08.]

48.18.090 Warranties and misrepresentations, effect of. (1) Except as provided in subsection (2) of this section, no oral or written misrepresentation or warranty made in the negotiation of an insurance contract, by the insured or in his behalf, shall be deemed material or defeat or avoid the contract or prevent it attaching, unless the misrepresentation or warranty is made with the intent to deceive.

(2) In any application for life or disability insurance made in writing by the insured, all statements therein made by the insured shall, in the absence of fraud, be deemed representations and not warranties. The falsity of any such statement shall not bar the right to recovery under the contract unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer. [1947 c 79 § .18.09; Rem. Supp. 1947 § 45.18.09.]

48.18.100 Forms of policies—Filing, certification, and approval. (1) No insurance policy form other than surety bond forms, forms exempt under RCW 48.18.103, or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form shall be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section shall not apply to policies, riders or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

(2) Every such filing containing a certification, in a form approved by the commissioner, by either the chief executive officer of the insurer or by an actuary who is a member of the American academy of actuaries, attesting that the filing complies with Title 48 RCW and Title 284 of the Washington Administrative Code, may be used by such insurer immediately after filing with the commissioner. The commissioner may order an insurer to cease using a certified form upon the grounds set forth in RCW 48.18.110. This subsection shall not apply to certain types of policy forms designated by the commissioner by rule.

(3) Except as provided in RCW 48.18.103, every filing that does not contain a certification pursuant to subsection (2) of this section shall be made not less than thirty days in advance of any such issuance, delivery, or use. At the expiration of such thirty days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he or she may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial thirty-day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may withdraw any such approval at any time for cause. By approval of any such form for immediate use, the commissioner may waive any unexpired portion of such initial thirty-day waiting period.

(4) The commissioner's order disapproving any such form or withdrawing a previous approval shall state the grounds therefor.

(5) No such form shall knowingly be so issued or delivered as to which the commissioner's approval does not then exist.

(6) The commissioner may, by order, exempt from the requirements of this section for so long as he or she deems proper, any insurance document or form or type thereof as specified in such order, to which in his or her opinion this section may not practicably be applied, or the filing and

approval of which are, in his or her opinion, not desirable or necessary for the protection of the public.

(7) Every member or subscriber to a rating organization shall adhere to the form filings made on its behalf by the organization. Deviations from such organization are permitted only when filed with the commissioner in accordance with this chapter. [1997 c 428 § 3; 1989 c 25 § 1; 1982 c 181 § 16; 1947 c 79 § .18.10; Rem. Supp. 1947 § 45.18.10.]

Effective date—1989 c 25: "This act shall take effect on September 1, 1989." [1989 c 25 § 10.]

Severability—1982 c 181: See note following RCW 48.03.010.

Format of disability policies: RCW 48.20.012.

48.18.103 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition. (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for forms.

(2) Commercial property casualty policies may be issued prior to filing the forms. All commercial property casualty forms shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty form has been filed, the commissioner finds that the form does not meet the requirements of this chapter, the commissioner shall disapprove the form and give notice to the insurer or rating organization that made the filing, specifying how the form fails to meet the requirements and stating when, within a reasonable period thereafter, the form shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a policy form under subsection (3) of this section, the insurer shall amend any previously issued disapproved form by endorsement to comply with the commissioner's disapproval.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof shall be on the commissioner. [2003 c 248 § 4; 1997 c 428 § 1.]

48.18.110 Grounds for disapproval. (1) The commissioner shall disapprove any such form of policy, application, rider, or endorsement, or withdraw any previous approval thereof, only:

(a) If it is in any respect in violation of or does not comply with this code or any applicable order or regulation of the commissioner issued pursuant to the code; or

(b) If it does not comply with any controlling filing theretofore made and approved; or

(c) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(d) If it has any title, heading, or other indication of its provisions which is misleading; or

(e) If purchase of insurance thereunder is being solicited by deceptive advertising.

(2) In addition to the grounds for disapproval of any such form as provided in subsection (1) of this section, the commissioner may disapprove any form of disability insurance policy, except an individual health benefit plan, if the benefits provided therein are unreasonable in relation to the premium charged. [2000 c 79 § 2; 1985 c 264 § 9; 1982 c 181 § 9; 1947 c 79 § .18.11; Rem. Supp. 1947 § 45.18.11.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Severability—1982 c 181: See note following RCW 48.03.010.

48.18.120 Standard forms. (1) The commissioner shall, after hearing, from time to time promulgate such rules and regulations as may be necessary to define and effect reasonable uniformity in all basic contracts of fire insurance which are commonly known as the standard form fire policies and may be so referred to in this code, and the usual supplemental coverages, riders, or endorsements thereon or thereto, to the end that such definitions shall be applied in the construction of the various sections of this code wherein such terms are used and that there be a reasonable concurrency of contract where two or more insurers insure the same subject and risk. All such forms heretofore approved by the commissioner and for use as of immediately prior to the effective date of this code, may continue to be so used until the further order of the commissioner made pursuant to this subsection or pursuant to any other provision of this code.

(2) The commissioner may from time to time, after hearing, promulgate such rules and regulations as he deems necessary to establish reasonable minimum standard conditions and terminology for basic benefits to be provided by disability insurance contracts which are subject to chapters 48.20 and 48.21 RCW, for the purpose of expediting his approval of such contracts pursuant to this code. No such promulgation shall be inconsistent with standard provisions as required pursuant to RCW 48.18.130, nor contain requirements inconsistent with requirements relative to the same benefit provision as formulated or approved by the National Association of Insurance Commissioners. [1957 c 193 § 10; 1947 c 79 § .18.12; Rem. Supp. 1947 § 45.18.12.]

48.18.125 Loss payable and mortgagee clauses for property and automobile physical damage insurances—Requirement to use adopted forms. The commissioner is hereby authorized, and shall within a reasonable time following July 30, 1967, adopt standard forms for loss payable and mortgagee clauses for property and automobile physical damage insurances, pursuant to the procedures set forth in RCW 48.18.120(1). Following the adoption of such forms,

no insurer authorized to do business in the state shall use any form other than those so adopted. [1967 ex.s. c 12 § 1.]

48.18.130 Standard provisions. (1) Insurance contracts shall contain such standard provisions as are required by the applicable chapters of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular standard provision in a particular insurance contract form if

(a) he finds such provision unnecessary for the protection of the insured, and inconsistent with the purposes of the contract, and

(b) the contract is otherwise approved by him.

(2) No insurance contract shall contain any provision inconsistent with or contradictory to any such standard provision used or required to be used, but the commissioner may, except as to the standard provisions of individual disability insurance contracts as required under chapter 48.20 RCW, approve any provision which is in his opinion more favorable to the insured than the standard provision or optional standard provision otherwise required. No endorsement, rider, or other documents attached to such contract shall vary, extend, or in any respect conflict with any such standard provision, or with any modification thereof so approved by the commissioner as being more favorable to the insured.

(3) In lieu of the standard provisions required by this code for contracts for particular kinds of insurance, substantially similar standard provisions required by the law of a foreign or alien insurer's domicile may be used when approved by the commissioner. [1947 c 79 § .18.13; Rem. Supp. 1947 § 45.18.13.]

Standard provisions

disability: Chapter 48.20 RCW.

group and blanket disability: Chapter 48.21 RCW.

group life and annuities: Chapter 48.24 RCW.

industrial life: Chapter 48.25 RCW.

life insurance and annuities: Chapter 48.23 RCW.

48.18.140 Contents of policies in general. (1) The written instrument, in which a contract of insurance is set forth, is the policy.

(2) A policy shall specify:

(a) The names of the parties to the contract. The insurer's name shall be clearly shown in the policy.

(b) The subject of the insurance.

(c) The risk insured against.

(d) The time at which the insurance thereunder takes effect and the period during which the insurance is to continue.

(e) A statement of the premium, and if other than life, disability, or title insurance, the premium rate where applicable.

(f) The conditions pertaining to the insurance.

(3) If under the contract the exact amount of premiums is determinable only at termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid shall be specified in the policy.

(4)(a) Periodic payment plans for private passenger automobile insurance shall allow a specific day of the month for a due date for payment of premiums. A late charge may not be

required if payment is received within five days of the date payment is due.

(b) The commissioner shall adopt rules to implement this subsection and shall take no disciplinary action against an insurer until ninety days after the effective date of the rule.

(5) This section shall not apply to surety insurance contracts. [2002 c 344 § 1; 1989 c 25 § 2; 1957 c 193 § 11; 1947 c 79 § .18.14; Rem. Supp. 1947 § 45.18.14.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.18.150 Additional contents. A policy may contain additional provisions, which are not inconsistent with this code, and which are

(1) required to be so inserted by the laws of the insurer's state of domicile; or

(2) necessary, on account of the manner in which the insurer is constituted or operated, to state the rights and obligations of the parties to the contract. [1947 c 79 § .18.15; Rem. Supp. 1947 § 45.18.15.]

48.18.160 Charter or bylaw provisions. No policy shall contain any provision purporting to make any portion of the charter, bylaws, or other constituent document of the insurer a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid. [1947 c 79 § .18.16; Rem. Supp. 1947 § 45.18.16.]

48.18.170 "Premium" defined. "Premium" as used in this code means all sums charged, received, or deposited as consideration for an insurance contract or the continuance thereof. Any assessment, or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge made by the insurer in consideration for an insurance contract is deemed part of the premium. [1947 c 79 § .18.17; Rem. Supp. 1947 § 45.18.17.]

48.18.180 Stated premium must include all charges.

(1) The premium stated in the policy shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof.

(2) No insurer or its officer, employee, agent, solicitor, or other representative shall charge or receive any fee, compensation, or consideration for insurance which is not included in the premium specified in the policy.

(3) Each violation of this section is a gross misdemeanor.

(4) This section does not apply to a fee paid to a broker by an insured as provided in RCW 48.17.270. [1994 c 203 § 2; 1947 c 79 § .18.18; Rem. Supp. 1947 § 45.18.18.]

48.18.190 Policy must contain entire contract. No agreement in conflict with, modifying, or extending any contract of insurance shall be valid unless in writing and made a part of the policy. [1947 c 79 § .18.19; Rem. Supp. 1947 § 45.18.19.]

48.18.200 Limiting actions, jurisdiction. (1) No insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state, shall contain any condition, stipulation, or agreement

(a) requiring it to be construed according to the laws of any other state or country except as necessary to meet the requirements of the motor vehicle financial responsibility laws of such other state or country; or

(b) depriving the courts of this state of the jurisdiction of action against the insurer; or

(c) limiting right of action against the insurer to a period of less than one year from the time when the cause of action accrues in connection with all insurances other than property and marine and transportation insurances. In contracts of property insurance, or of marine and transportation insurance, such limitation shall not be to a period of less than one year from the date of the loss.

(2) Any such condition, stipulation, or agreement in violation of this section shall be void, but such voiding shall not affect the validity of the other provisions of the contract. [1947 c 79 § .18.20; Rem. Supp. 1947 § 45.18.20.]

48.18.210 Execution of policies. (1) Every insurance contract shall be executed in the name of and on behalf of the insurer by its officer, employee, or representative duly authorized by the insurer.

(2) A facsimile signature of any such executing officer, employee or representative may be used in lieu of an original signature.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of any individual not authorized so to execute as of the date of the policy, if the policy is countersigned with the original signature of an individual then so authorized to countersign. [1947 c 79 § .18.21; Rem. Supp. 1947 § 45.18.21.]

48.18.220 Receipt of premium to bind coverage—Contents of receipt. Where an agent or other representative of an insurer receipts premium money at the time that agent or representative purports to bind coverage, the receipt shall state: (a) that it is a binder, (b) a brief description of the coverage bound, and (c) the identity of the insurer in which the coverage is bound. This section does not apply as to life and disability insurances. [1967 ex.s. c 12 § 2.]

48.18.230 Binders—Duration—Premium. (1) A "binder" is used to bind insurance temporarily pending the issuance of the policy. No binder shall be valid beyond the issuance of the policy as to which it was given, or beyond ninety days from its effective date, whichever period is the shorter.

(2) If the policy has not been issued a binder may be extended or renewed beyond such ninety days upon the commissioner's written approval, or in accordance with such rules and regulations relative thereto as the commissioner may promulgate.

(3) Where the premium used in the binder differs from the actual policy premium by less than ten dollars, the insurer shall not be required to notify the insured and may use the actual policy premium. [1996 c 95 § 1; 1947 c 79 § .18.23; Rem. Supp. 1947 § 45.18.23.]

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48.18.240 Binders—Agent's liability. The commissioner may suspend or revoke the license of any agent issuing or purporting to issue any binder as to any insurer named therein as to which he is not then authorized so to bind. [1947 c 79 § .18.24; Rem. Supp. 1947 § 45.18.24.]

48.18.250 Underwriters' and combination policies. (1) Two or more authorized insurers may jointly issue, and shall be jointly and severally liable on, an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department and such policies shall plainly show the true name of the insurer.

(2) Two or more authorized insurers may, with the commissioner's approval, issue a combination policy which shall contain provisions substantially as follows:

(a) That the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy.

(b) That service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(3) This section shall not apply to co-surety obligations. [1947 c 79 § .18.25; Rem. Supp. 1947 § 45.18.25.]

48.18.260 Delivery of policy. (1) Subject to the insurer's requirements as to payment of premium, every policy shall be delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft, and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle or aircraft is insured, a duplicate of such policy, or memorandum thereof setting forth the type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy, shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a conspicuous statement of such fact shall be printed, written, or stamped on the face of such duplicate policy or memorandum. [1947 c 79 § .18.26; Rem. Supp. 1947 § 45.18.26.]

Vehicle seller must furnish buyer itemized statement of insurance and other charges: RCW 46.70.130.

48.18.280 Renewal of policy. Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable, may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor for a specific additional period or periods by a certificate or by endorsement of the policy, and without requiring the issuance of a new policy. [1947 c 79 § .18.28; Rem. Supp. 1947 § 45.18.28.]

48.18.289 Cancellation, nonrenewal, renewal offer—Notice to agent. Whenever a notice of cancellation or nonrenewal or an offer to renew is furnished to an insured in accord with any provision of this chapter, a copy of such notice or offer shall be provided within five working days to the agent on the account or to the broker of record for the insured. When possible, the copy to the agent or broker may be provided electronically. [2000 c 220 § 1; 1988 c 249 § 1; 1987 c 14 § 1.]

Effective date—1988 c 249: "This act shall take effect September 1, 1988." [1988 c 249 § 4.]

48.18.290 Cancellation by insurer. (1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy which does not contain a clearly stated expiration date, may be effected as to any interest only upon compliance with the following:

(a) Written notice of such cancellation, accompanied by the actual reason therefor, must be actually delivered or mailed to the named insured not less than forty-five days prior to the effective date of the cancellation except for cancellation of insurance policies for nonpayment of premiums, which notice shall be not less than ten days prior to such date and except for cancellation of fire insurance policies under chapter 48.53 RCW, which notice shall not be less than five days prior to such date;

(b) Like notice must also be so delivered or mailed to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder. For purposes of this subsection (1)(b), "delivered" includes electronic transmittal, facsimile, or personal delivery.

(2) The mailing of any such notice shall be effected by depositing it in a sealed envelope, directed to the addressee at his or her last address as known to the insurer or as shown by the insurer's records, with proper prepaid postage affixed, in a letter depository of the United States post office. The insurer shall retain in its records any such item so mailed, together with its envelope, which was returned by the post office upon failure to find, or deliver the mailing to, the addressee.

(3) The affidavit of the individual making or supervising such a mailing, shall constitute prima facie evidence of such facts of the mailing as are therein affirmed.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in amount as computed on the pro rata basis, must be actually paid to the insured or other person entitled thereto as shown by the policy or by any endorsement thereon, or be mailed to the insured or such person as soon as possible, and no later than forty-five days after the date of notice of cancellation to the insured for homeowners', dwelling fire, and private passenger auto. Any such payment may be made by cash, or by check, bank draft, or money order.

(5) This section shall not apply to contracts of life or disability insurance without provision for cancellation prior to the date to which premiums have been paid, or to contracts of insurance procured under the provisions of chapter 48.15 RCW. [1997 c 85 § 1; 1988 c 249 § 2; 1986 c 287 § 1; 1985 c 264 § 17; 1982 c 110 § 7; 1980 c 102 § 7; 1979 ex.s. c 199

§ 5; 1975-'76 2nd ex.s. c 119 § 2; 1947 c 79 § .18.29; Rem. Supp. 1947 § 45.18.29.]

Effective date—1988 c 249: See note following RCW 48.18.289.

Application—1985 c 264 §§ 17-22: "Sections 17 through 22 of this act apply to all new or renewal policies issued or renewed after May 10, 1985. Sections 17 through 22 of this act shall not apply to or affect the validity of any notice of cancellation mailed or delivered prior to May 10, 1985. Sections 17 through 22 of this act shall not be construed to affect cancellation of a renewal policy, if notice of cancellation is mailed or delivered within forty-five days after May 10, 1985. Sections 17 through 22 of this act shall not be construed to require notice, other than that already required, of intention not to renew any policy which expires less than forty-five days after May 10, 1985." [1985 c 264 § 24.]

48.18.2901 Renewal required—Exceptions. (1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.290 unless one of the following situations exists:

(a) The insurer gives the named insured at least forty-five days' notice in writing as provided for in RCW 48.18.290, that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth in that writing the actual reason for refusing to renew;

(b) At least twenty days prior to its expiration date, the insurer has communicated, either directly or through its agent, its willingness to renew in writing to the named insured and has included in that writing a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, and the insured fails to discharge when due his or her obligation in connection with the payment of such premium or portion thereof;

(c) The insured has procured equivalent coverage prior to the expiration of the policy period;

(d) The contract is evidenced by a written binder containing a clearly stated expiration date which has expired according to its terms; or

(e) The contract clearly states that it is not renewable, and is for a specific line, subclassification, or type of coverage that is not offered on a renewable basis. This subsection (1)(e) does not restrict the authority of the insurance commissioner under this code.

(2) Any insurer failing to include in the notice required by subsection (1)(b) of this section the amount of any increased premium resulting from a change of rates and an explanation of any change in the contract provisions shall renew the policy if so required by that subsection according to the rates and contract provisions applicable to the expiring policy. However, renewal based on the rates and contract provisions applicable to the expiring policy shall not prevent the insurer from making changes in the rates and/or contract provisions of the policy once during the term of its renewal after at least twenty days' advance notice of such change has been given to the named insured.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal, or with respect to cancellation of fire policies under chapter 48.53 RCW.

(4) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of insurance previously issued and delivered by the same insurer, or the issu-

ance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term. However, (a) any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295 be considered as if written for a policy period or term of six months; and (b) any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295, be considered as if written for successive policy periods or terms of one year.

(5) A midterm blanket reduction in rate, approved by the commissioner, for medical malpractice insurance shall not be considered a renewal for purposes of this section. [2002 c 347 § 1; 1993 c 186 § 1; 1988 c 249 § 3; 1986 c 287 § 2; 1985 c 264 § 20.]

Effective date—1988 c 249: See note following RCW 48.18.289.

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

48.18.291 Cancellation of private automobile insurance by insurer—Notice—Requirements. (1) A contract of insurance predicated wholly or in part upon the use of a private passenger automobile may not be terminated by cancellation by the insurer until at least twenty days after mailing written notice of cancellation to the named insured at the latest address filed with the insurer by or on behalf of the named insured, accompanied by the reason therefor. If cancellation is for nonpayment of premium, or is within the first thirty days after the contract has been in effect, at least ten days notice of cancellation, accompanied by the reason therefor, shall be given. In case of a contract evidenced by a written binder which has been delivered to the insured, if the binder contains a clearly stated expiration date, no additional notice of cancellation or nonrenewal is required.

(2)(a) A notice of cancellation by the insurer as to a contract of insurance to which subsection (1) of this section applies is not valid if sent more than sixty days after the contract has been in effect unless:

(i) The named insured fails to discharge when due any of his or her obligations in connection with the payment of premium for the policy or any installment thereof, whether payable directly to the insurer or to its agent or indirectly under any premium finance plan or extension of credit; or

(ii) The driver's license of the named insured, or of any other operator who customarily operates an automobile insured under the policy, has been suspended, revoked, or cancelled during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty days immediately preceding the effective date of the renewal policy.

(b) Modification by the insurer of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars is not a cancellation of the coverage or of the policy.

(3) The substance of subsections (1) and (2)(a) of this section must be set forth in each contract of insurance subject to the provisions of subsection (1) of this section, and may be in the form of an attached endorsement.

(4) A notice of cancellation of a policy that may be canceled only pursuant to subsection (2) of this section is not effective unless the reason therefor accompanies or is included in the notice of cancellation. [2003 c 248 § 5; 1985 c 264 § 18; 1979 ex.s. c 199 § 6; 1969 ex.s. c 241 § 19.]

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

Construction—1969 ex.s. c 241: "Sections 19 through 25 of this 1969 amendatory act shall become operative September 1, 1969, and shall apply to policies written or renewed, or which have a renewal anniversary thereafter. Sections 19 through 25 of this 1969 amendatory act shall not apply to or affect the validity of any notice of cancellation mailed or delivered prior to the operative date of this amendatory act. Sections 19 through 25 of this 1969 amendatory act shall not be construed to affect cancellation of a renewal policy, if notice of cancellation is mailed or delivered within sixty days after the operative date of sections 19 through 25 of this amendatory act. Sections 19 through 25 of this 1969 amendatory act shall not be construed to require notice of intention not to renew any policy which expires less than thirty days after the operative date of sections 19 through 25 of this 1969 amendatory act." [1969 ex.s. c 241 § 25.]

48.18.292 Refusal to renew private automobile insurance by insurer—Change in amount of premium or deductibles. (1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.291 unless one of the following situations exists:

(a) The insurer gives the named insured at least twenty days' notice in writing as provided for in RCW 48.18.291(1), that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth therein the actual reason for refusing to renew; or

(b) At least twenty days prior to its expiration date, the insurer has communicated its willingness to renew in writing to the named insured, and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, including the amount by which the premium or deductibles have changed from the previous policy period, and the date by which such payment must be made, and the insured fails to discharge when due his obligation in connection with the payment of such premium or portion thereof; or

(c) The insured's agent or broker has procured other coverage acceptable to the insured prior to the expiration of the policy period.

(2) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(3) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of insurance previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term: PROVIDED, HOWEVER, That any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.291 through 48.18.297 be considered as if written for a policy period or term of six months: PROVIDED, FURTHER, That any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.291 through 48.18.297, be considered as if written for successive policy periods or terms of one year.

(4) On and after January 1, 1980, no policy of insurance subject to RCW 48.18.291 shall be issued for a policy period or term of less than six months.

(5) No insurer shall refuse to renew the liability and/or collision coverage of an automobile insurance policy on the basis that an insured covered by the policy of the insurer has submitted one or more claims under the comprehensive, road service, or towing coverage of the policy. Nothing in this subsection shall prohibit the nonrenewal of comprehensive, road service, or towing coverage on the basis of one or more claims submitted by an insured. [1985 c 264 § 19; 1981 c 339 § 17; 1979 ex.s. c 199 § 7; 1973 1st ex.s. c 152 § 3; 1969 ex.s. c 241 § 20.]

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

Construction—1969 ex.s. c 241: See note following RCW 48.18.291.

48.18.293 Nonliability of commissioner, agents, insurer for information giving reasons for cancellation or refusal to renew—Proof of mailing of notice. (1) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, his agents, or members of his staff, or against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew, for any statement made by any of them in any written notice of cancellation or refusal to renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith.

(2) Proof of mailing of notice of cancellation or refusal to renew or of reasons for cancellation, to the named insured, at the latest address filed with the insurer by or on behalf of the named insured shall be sufficient proof of notice. [1969 ex.s. c 241 § 21.]

Construction—1969 ex.s. c 241: See note following RCW 48.18.291.

48.18.295 RCW 48.18.290 through 48.18.297 not to prevent cancellation or nonrenewal, when. Nothing in RCW 48.18.290 through 48.18.297 shall be construed to prevent the cancellation or nonrenewal of any such insurance where:

(1) Such cancellation or nonrenewal is ordered by the commissioner under a statutory delinquency proceeding commenced under the provisions of chapter 48.31 RCW, or

(2) Permission for such cancellation or nonrenewal has been given by the commissioner on a showing that the continuation of such coverage can reasonably be expected to create a condition in the company hazardous to its policyholder, or to its creditors, or to its members, subscribers, or stockholders, or to the public. [1985 c 264 § 21; 1969 ex.s. c 241 § 22; 1967 ex.s. c 95 § 2.]

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

Construction—1969 ex.s. c 241: See note following RCW 48.18.291.

Severability—1967 ex.s. c 95: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act,

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or the application of the provision to other persons and circumstances is not affected." [1967 ex.s. c 95 § 16.]

48.18.296 Contracts to which RCW 48.18.291 through 48.18.297 inapplicable. The provisions of RCW 48.18.291 through 48.18.297 shall not apply to:

(1) Contracts of insurance issued under the assigned risk plan;

(2) Any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards; and

(3) Contracts of insurance procured under the provisions of chapter 48.15 RCW. [1986 c 287 § 3; 1985 c 264 § 22; 1983 1st ex.s. c 32 § 6; 1969 ex.s. c 241 § 23.]

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

Construction—1969 ex.s. c 241: See note following RCW 48.18.291.

48.18.297 Private passenger automobile defined. A private passenger automobile as used in RCW 48.18.291 through 48.18.297 shall mean:

(1) An individually owned motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others.

(2) Any other individually owned four-wheel motor vehicle with a load capacity of fifteen hundred pounds or less which is not used in the occupation, profession, or business of the insured. [1969 ex.s. c 241 § 24.]

Construction—1969 ex.s. c 241: See note following RCW 48.18.291.

48.18.298 Disability insurance—Refusal to renew by insurer. No insurer shall refuse to renew any policy of individual disability insurance issued after July 1, 1973 because of a change in the physical or mental condition or health of any person covered thereunder: PROVIDED, That after approval of the insurance commissioner, an insurer may discharge its obligation to renew the contract by obtaining for the insured coverage with another insurer which is comparable in terms of premiums and benefits. [1973 1st ex.s. c 188 § 1.]

Severability—1973 1st ex.s. c 188: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 188 § 5.]

48.18.299 Disability insurance—Cancellation by insurer. No contract of insurance enumerated in RCW 48.18.298 shall be terminated by cancellation by the insurer during the period of contract except for nonpayment of premium. This section shall not be deemed to affect the right of the insurer to rescind the policy as limited and defined in RCW 48.18.090. [1973 1st ex.s. c 188 § 2.]

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.18.300 Cancellation by insured. (1) Cancellation by the insured of any policy which by its terms is cancellable at the insured's option or of any binder based on such policy may be effected by written notice thereof to the insurer or surrender of the policy or binder for cancellation prior to or on the effective date of such cancellation. In [the] event the

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policy or binder has been lost or destroyed and cannot be so surrendered, the insurer may in lieu of such surrender accept and in good faith rely upon the insured's written statement setting forth the fact of such loss or destruction.

(2) As soon as possible, and no later than thirty days after the receipt of the notice of cancellation from the policyholder for homeowners', dwelling fire, and private passenger auto insurance, the insurer shall pay to the insured or to the person entitled thereto as shown by the insurer's records, any unearned portion of any premium paid on the policy as computed on the customary short rate or as otherwise specified in the policy: PROVIDED, That the refund of any unearned portion of any premium paid on a contract of dwelling fire insurance, homeowners' insurance, or insurance predicated upon the use of a private passenger automobile (as defined in RCW 48.18.297 and excluding contracts of insurance and policies enumerated in RCW 48.18.296) shall be computed on a pro rata basis and the insurer shall refund not less than ninety percent of any unearned portion not exceeding one hundred dollars, plus ninety-five percent of any unearned portion over one hundred dollars but not exceeding five hundred dollars, and not less than ninety-seven percent of the amount of any unearned portion in excess of five hundred dollars. If the amount of any refund is less than two dollars, no refund need be made. If no premium has been paid on the policy, the insured shall be liable to the insurer for premium for the period during which the policy was in force.

(3) The surrender of a policy to the insurer for any cause by any person named therein as having an interest insured thereunder shall create a presumption that such surrender is concurred in by all persons so named.

(4) This section shall not apply to life insurance policies or to annuity contracts. [1980 c 102 § 8; 1979 ex.s. c 199 § 8; 1955 c 303 § 16; 1947 c 79 § .18.30; Rem. Supp. 1947 § 45.18.30.]

48.18.310 Cancellation by commissioner. The commissioner may order the immediate cancellation of any policy the procuring or effectuation of which was accomplished through or accompanied by a violation of this code, except in cases where the policy by its terms is not cancellable by the insurer and the insured did not knowingly participate in any such violation. [1947 c 79 § .18.31; Rem. Supp. 1947 § 45.18.31.]

48.18.320 Annulment of liability policies. No insurance contract insuring against loss or damage through legal liability for the bodily injury or death by accident of any individual, or for damage to the property of any person, shall be retroactively annulled by any agreement between the insurer and insured after the occurrence of any such injury, death, or damage for which the insured may be liable, and any such annulment attempted shall be void. [1947 c 79 § .18.32; Rem. Supp. 1947 § 45.18.32.]

48.18.340 Dividends payable to real party in interest.

(1) Every insurer issuing participating policies, shall pay dividends, unused premium refunds or savings distributed on account of any such policy, only to the real party in interest entitled thereto as shown by the insurer's records, or to any

person to whom the right thereto has been assigned in writing of record with the insurer, or given in the policy by such real party in interest.

(2) Any person who is shown by the insurer's records to have paid for his own account, or to have been ultimately charged for, the premium for insurance provided by a policy in which another person is the nominal insured, shall be deemed such real party in interest proportionate to premium so paid or so charged. This subsection shall not apply as to any such dividend, refund, or distribution which would amount to less than one dollar.

(3) This section shall not apply to contracts of group life insurance, group annuities, or group disability insurance. [1947 c 79 § .18.34; Rem. Supp. 1947 § 45.18.34.]

48.18.350 Breach of warranty prior to loss—Effect.

If any breach of a warranty or condition in any insurance contract occurs prior to a loss under the contract, such breach shall not avoid the contract nor avail the insurer to avoid liability, unless the breach exists at the time of the loss. [1947 c 79 § .18.35; Rem. Supp. 1947 § 45.18.35.]

48.18.360 Assignment of policies—Life and disability.

Subject to the terms of the policy relating to its assignment, life insurance policies, other than industrial or group life insurance policies, and disability policies providing benefits for accidental death, whether such policies were heretofore or are hereafter issued, and under the terms of which the beneficiary may be changed upon the sole request of the insured, may be assigned either by pledge or transfer of title, by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Industrial life insurance policies may be made assignable only to a bank or trust company. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment. [1947 c 79 § .18.36; Rem. Supp. 1947 § 45.18.36.]

48.18.370 Payment discharges insurer—Life and disability.

Whenever the proceeds of, or payments under a life or disability insurance policy, heretofore or hereafter issued, become payable and the insurer makes payment thereof in accordance with the terms of the policy, or in accordance with any written assignment thereof pursuant to RCW 48.18.360, the person then designated in the policy or by such assignment as being entitled thereto, shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payment shall fully discharge the insurer from all claims under the policy unless, before payment is made, the insurer has received at its home office, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy. [1947 c 79 § .18.37; Rem. Supp. 1947 § 45.18.37.]

48.18.375 Assignment of interests under group insurance policy. A person whose life is insured under a group insurance policy may, subject and pursuant to the terms of the policy, or pursuant to an arrangement between the insured, the group policyholder and the insurer, assign to any or all his spouse, children, parents, or a trust for the benefit of any or all of them, all or any part of his incidents of ownership, rights, title, and interests, both present and future, under such policy including specifically, but not by way of limitation, the right to designate a beneficiary or beneficiaries thereunder and the right to have an individual policy issued to him in case of termination of employment or of said group insurance policy. Such an assignment by the insured, made either before or after July 16, 1973, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all of such incidents of ownership, rights, title, and interests so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment. This section acknowledges, declares, and codifies the existing right of assignment of interests under group insurance policies. [1973 1st ex.s. c 163 § 3.]

48.18.390 Simultaneous deaths—Payment of proceeds—Life insurance. Where the individual insured and the beneficiary designated in a life insurance policy or policy insuring against accidental death have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, unless otherwise expressly provided in the policy. [1947 c 79 § .18.39; Rem. Supp. 1947 § 45.18.39.]

Distribution of proceeds of insurance policy when insured and beneficiary die simultaneously: RCW 11.05.040.

48.18.400 Exemption of proceeds—Disability. The proceeds or avails of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for his use. [1947 c 79 § .18.40; Rem. Supp. 1947 § 45.18.40.]

48.18.410 Exemption of proceeds—Life. (1) The lawful beneficiary, assignee, or payee of a life insurance policy, other than an annuity, heretofore or hereafter effected by any person on his own life, or on the life of another, in favor of a person other than himself, shall be entitled to the proceeds and avails of the policy against the creditors and representatives of the insured and of the person effecting the insurance, and such proceeds and avails shall also be exempt from all liability for any debt of such beneficiary, existing at the time the proceeds or avails are made available for his own use.

(2) The provisions of subsection (1) of this section shall apply

(a) whether or not the right to change the beneficiary is reserved or permitted in the policy; or

(b) whether or not the policy is made payable to the person whose life is insured or to his estate if the beneficiary, assignee or payee shall predecease such person; except, that this subsection shall not be construed so as to defeat any policy provision which provides for disposition of proceeds in the event the beneficiary shall predecease the insured.

(3) The exemptions provided by subsection (1) of this section, subject to the statute of limitations, shall not apply

(a) to any claim to or interest in such proceeds or avails by or on behalf of the insured, or the person so effecting the insurance, or their administrators or executors, in whatever capacity such claim is made or such interest is asserted; or

(b) to any claim to or interest in such proceeds or avails by or on behalf of any person to whom rights thereto have been transferred with intent to defraud creditors; but an insurer shall be liable to all such creditors only as to amounts aggregating not to exceed the amount of such proceeds or avails remaining in the insurer's possession at the time the insurer receives at its home office written notice by or on behalf of such creditors, of claims to recover for such transfer, with specification of the amounts claimed; or

(c) to so much of such proceeds or avails as equals the amount of any premiums or portion thereof paid for the insurance with intent to defraud creditors, with interest thereon, and if prior to the payment of such proceeds or avails the insurer has received at its home office written notice by or on behalf of the creditor, of a claim to recover for premiums paid with intent to defraud creditors, with specification of the amount claimed.

(4) For the purposes of subsection (1) of this section a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

(5) No person shall be compelled to exercise any rights, powers, options or privileges under any such policy. [1947 c 79 § .18.41; Rem. Supp. 1947 § 45.18.41.]

48.18.420 Exemption of proceeds—Group life. (1) A policy of group life insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder, shall not be liable, either before or after payment, to be applied to any legal or equitable process to pay any liability of any person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, shall not constitute a part of the estate of the individual insured for the payment of his debts.

(2) This section shall not apply to group life insurance policies issued under RCW 48.24.040 (debtor groups) to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued. [1947 c 79 § .18.42; Rem. Supp. 1947 § 45.18.42.]

48.18.430 Exemption of proceeds, commutation—Annuities. (1) The benefits, rights, privileges and options which under any annuity contract heretofore or hereafter issued are due or prospectively due the annuitant who paid

the consideration for the annuity contract, shall not be subject to execution nor shall the annuitant be compelled to exercise any such rights, powers or options, nor shall creditors be allowed to interfere with or terminate the contract, except:

(a) As to amounts paid for or as premium on any such annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to the making of the payments to the annuitant out of which the creditor seeks to recover. Any such notice shall specify the amount claimed or such facts as will enable the insurer to ascertain such amount, and shall set forth such facts as will enable the insurer to ascertain the insurance or annuity contract, the person insured or annuitant and the payments sought to be avoided on the ground of fraud.

(b) The total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under which he is an annuitant, shall not at any time exceed two hundred and fifty dollars per month for the length of time represented by such installments, and that such periodic payment in excess of two hundred and fifty dollars per month shall be subject to garnishee execution to the same extent as are wages and salaries.

(c) If the total benefits presently due and payable to any annuitant under all annuity contracts under which he is an annuitant, shall at any time exceed payment at the rate of two hundred and fifty dollars per month, then the court may order such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such portion of such excess benefits as to the court may appear just and proper, after due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) The benefits, rights, privileges or options accruing under such contract to a beneficiary or assignee shall not be transferable nor subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions and exceptions contained herein for the annuitant, shall apply with respect to such beneficiary or assignee.

(3) An annuity contract within the meaning of this section shall be any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable consideration, regardless of whether or not such sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives, or for a specified term or terms. [1949 c 190 § 25; 1947 c 79 § .18.43; Rem. Supp. 1949 § 45.18.43.]

48.18.440 Spouse's rights in life insurance policy.

(1) Every life insurance policy heretofore or hereafter made payable to or for the benefit of the spouse of the insured, and every life insurance policy heretofore or hereafter assigned, transferred, or in any way made payable to a spouse or to a trustee for the benefit of a spouse, regardless of how such assignment or transfer is procured, shall, unless contrary to the terms of the policy, inure to the separate use and benefit of such spouse: PROVIDED, That the beneficial interest of a spouse in a policy upon the life of a child of the spouses, however such interest is created, shall be deemed to be a commu-

nity interest and not a separate interest, unless expressly otherwise provided by the policy.

(2) In any life insurance policy heretofore or hereafter issued upon the life of a spouse the designation heretofore or hereafter made by such spouse of a beneficiary in accordance with the terms of the policy, shall create a presumption that such beneficiary was so designated with the consent of the other spouse, but only as to any beneficiary who is the child, parent, brother, or sister of either of the spouses. The insurer may in good faith rely upon the representations made by the insured as to the relationship to him of any such beneficiary. [1947 c 79 § .18.44; Rem. Supp. 1947 § 45.18.44.]

48.18.450 Life insurance payable to trustee named as beneficiary in the policy.

Life insurance may be made payable to a trustee to be named as beneficiary in the policy and the proceeds of such insurance paid to such trustee shall be held and disposed of by the trustee as provided in a trust agreement or declaration of trust made by the insured during his lifetime. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such insurance proceeds as beneficiary, and any such trustee may also receive assets, other than insurance proceeds, by testamentary disposition and administer them according to the terms of the trust agreement or declaration of trust as they exist at the death of the testator. [1963 c 227 § 1.]

48.18.452 Life insurance designating as beneficiary a trustee named by will.

A policy of life insurance may designate as beneficiary a trustee or trustees named or to be named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurance company. Immediately after the proving of the will the proceeds of such insurance shall be paid to the trustee or trustees named therein to be held and disposed of under the terms of the will as they exist at the death of the testator, but if no qualified trustee makes claim to the proceeds from the insurance company within one year after the death of the insured, or if satisfactory evidence is furnished the insurance company within such one-year period showing that no trustee can qualify to receive the proceeds, payment shall be made by the insurance company to those thereafter entitled. The proceeds of the insurance as collected by the trustee or trustees shall not be subject to debts of the insured and inheritance tax to any greater extent than if such proceeds were payable to any other named beneficiary other than the estate of the insured. Enactment of this section shall not invalidate previous life insurance policy beneficiary designations naming trustees of trusts established by will. [1963 c 227 § 2.]

48.18.460 Proof of loss—Furnishing forms—May require oath.

An insurer shall furnish, upon request of any person claiming to have a loss under any insurance contract, forms of proof of loss for completion by such person. But such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion. If a person makes a claim under a policy of insurance, the insurer may require that the

person be examined under an oath administered by a person authorized by state or federal law to administer oaths. [1995 c 285 § 17; 1949 c 190 § 26; 1947 c 79 § .18.46; Rem. Supp. 1949 § 45.18.46.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.18.470 Claims administration—Not waiver. None of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(a) Acknowledgment of the receipt of notice of loss or of claim under the policy.

(b) Furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss, or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted.

(c) Investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim. [1947 c 79 § .18.47; Rem. Supp. 1947 § 45.18.47.]

48.18.480 Discrimination prohibited. No insurer shall make or permit any unfair discrimination between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, and expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged therefor, or in the benefits payable or in any other rights or privileges accruing thereunder. This provision shall not prohibit fair discrimination by a life insurer as between individuals having unequal expectation of life. [1957 c 193 § 12; 1947 c 79 § .18.48; Rem. Supp. 1947 § 45.18.480.]

48.18.510 Validity of noncomplying forms. Any insurance policy, rider, or endorsement hereafter issued and otherwise valid, which contains any condition or provision not in compliance with the requirements of this code, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code. [1947 c 79 § .18.51; Rem. Supp. 1947 § 45.18.51.]

48.18.520 Construction of policies. Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, or modified by any rider, endorsement, or application attached to and made a part of the policy. [1947 c 79 § .18.52; Rem. Supp. 1947 § 45.18.52.]

48.18.540 Cancellations, denials, refusals to renew—Written notification. Every insurer upon canceling, denying, or refusing to renew any disability policy, shall, upon written request, directly notify in writing the applicant or insured, as the case may be, of the reasons for the action by the insurer and to any person covered under a group contract. Any benefits, terms, rates, or conditions of such a contract that are restricted, excluded, modified, increased, or reduced shall, upon written request, be set forth in writing and supplied to the insured and to any person covered under a group

contract. The written communications required by this section shall be phrased in simple language that is readily understandable to a person of average intelligence, education, and reading ability. [1993 c 492 § 281.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.18.543 Single premium credit insurance—Residential mortgage loan—Restrictions—Definitions. (1) For the purposes of this section:

(a) "Licensee" means every insurance agent, broker, or solicitor licensed under chapter 48.17 RCW.

(b) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple family dwelling of four or less units.

(c) "Single premium credit insurance" means credit insurance purchased with a single premium payment at inception of coverage.

(2) An insurer or licensee may not issue or sell any single premium credit insurance product in connection with a residential mortgage loan unless:

(a) The term of the single premium credit insurance policy is the same as the term of the loan;

(b) The debtor is given the option to buy credit insurance paid with monthly premiums; and

(c) The single premium credit insurance policy provides for a full refund of premiums to the debtor if the credit insurance is canceled within sixty days of the date of the loan.

(3) This section does not apply to residential mortgage loans if:

(a) The loan amount does not exceed ten thousand dollars, exclusive of fees;

(b) The repayment term of the loan does not exceed five years; and

(c) The term of the single premium credit insurance does not exceed the repayment term of the loan. [2003 c 116 § 1.]

48.18.545 Underwriting restrictions that apply to personal insurance—Credit history or insurance score—Rules. (1) For the purposes of this section:

(a) "Adverse action" has the same meaning as defined in the fair credit reporting act, 15 U.S.C. Sec. 1681 et seq. Adverse actions include, but are not limited to:

(i) Cancellation, denial, or nonrenewal of personal insurance coverage;

(ii) Charging a higher insurance premium for personal insurance than would have been offered if the credit history or insurance score had been more favorable, whether the charge is by:

(A) Application of a rating rule;

(B) Assignment to a rating tier that does not have the lowest available rates; or

(C) Placement with an affiliate company that does not offer the lowest rates available to the consumer within the affiliate group of insurance companies; or

(iii) Any reduction, adverse, or unfavorable change in the terms of coverage or amount of any personal insurance

due to a consumer's credit history or insurance score. A reduction, adverse, or unfavorable change in the terms of coverage occurs when:

(A) Coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or

(B) The consumer is not eligible for benefits such as dividends that are available through affiliate insurers.

(b) "Affiliate" has the same meaning as defined in RCW 48.31B.005(1).

(c) "Consumer" means an individual policyholder or applicant for insurance.

(d) "Consumer report" has the same meaning as defined in the fair credit reporting act, 15 U.S.C. Sec. 1681 et seq.

(e) "Credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of serving as a factor in determining personal insurance premiums or eligibility for coverage.

(f) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit history.

(g) "Personal insurance" means:

(i) Private passenger automobile coverage;

(ii) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage;

(iii) Dwelling property coverage;

(iv) Earthquake coverage for a residence or personal property;

(v) Personal liability and theft coverage;

(vi) Personal inland marine coverage; and

(vii) Mechanical breakdown coverage for personal auto or home appliances.

(h) "Tier" means a category within a single insurer into which insureds with substantially like insuring, risk or exposure factors, and expense elements are placed for purposes of determining rate or premium.

(2) An insurer that takes adverse action against a consumer based in whole or in part on credit history or insurance score shall provide written notice to the applicant or named insured. The notice must state the significant factors of the credit history or insurance score that resulted in the adverse action. The insurer shall also inform the consumer that the consumer is entitled to a free copy of their consumer report under the fair credit reporting act.

(3) An insurer shall not cancel or nonrenew personal insurance based in whole or in part on a consumer's credit history or insurance score. An offer of placement with an affiliate insurer does not constitute cancellation or nonrenewal under this section.

(4) An insurer may use credit history to deny personal insurance only in combination with other substantive underwriting factors. For the purposes of this subsection:

(a) "Deny" means an insurer refuses to offer insurance coverage to a consumer;

(b) An offer of placement with an affiliate insurer does not constitute denial of coverage; and

(c) An insurer may reject an application when coverage is not bound or cancel an insurance contract within the first sixty days after the effective date of the contract.

(5) Insurers shall not deny personal insurance coverage based on:

(a) The absence of credit history or the inability to determine the consumer's credit history, if the insurer has received accurate and complete information from the consumer;

(b) The number of credit inquiries;

(c) Credit history or an insurance score based on collection accounts identified with a medical industry code;

(d) The initial purchase or finance of a vehicle or house that adds a new loan to the consumer's existing credit history, if evident from the consumer report; however, an insurer may consider the bill payment history of any loan, the total number of loans, or both;

(e) The consumer's use of a particular type of credit card, charge card, or debit card; or

(f) The consumer's total available line of credit; however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

(6)(a) If disputed credit history is used to determine eligibility for coverage and a consumer is placed with an affiliate that charges higher premiums or offers less favorable policy terms:

(i) The insurer shall reissue or rerate the policy retroactive to the effective date of the current policy term; and

(ii) The policy, as reissued or rerated, shall provide premiums and policy terms the consumer would have been eligible for if accurate credit history had been used to determine eligibility.

(b) This subsection only applies if the consumer resolves the dispute under the process set forth in the fair credit reporting act and notifies the insurer in writing that the dispute has been resolved.

(7) The commissioner may adopt rules to implement this section.

(8) This section applies to all personal insurance policies issued or renewed after January 1, 2003. [2002 c 360 § 1.]

Captions not law—2002 c 360: "Captions used in this act are not any part of the law." [2002 c 360 § 3.]

48.18.550 Victims of domestic abuse—Prohibition on certain cancellations, denials, refusals to renew, and different rates—Domestic abuse defined. (1) No insurer shall deny or refuse to accept an application for insurance, refuse to insure, refuse to renew, cancel, restrict, or otherwise terminate a policy of insurance, or charge a different rate for the same coverage, on the basis that the applicant or insured person is, has been, or may be a victim of domestic abuse.

(2) Nothing in this section shall prevent an insurer from taking any of the actions set forth in subsection (1) of this section on the basis of loss history or medical condition or for any other reason not otherwise prohibited by this section, any other law, regulation, or rule.

(3) Any form filed or filed after June 11, 1998, subject to RCW 48.18.120(1) or subject to a rule adopted under RCW 48.18.120(1) may exclude coverage for losses caused by intentional or fraudulent acts of any insured. Such an exclusion, however, shall not apply to deny an insured's otherwise-covered property loss if the property loss is caused by an act

of domestic abuse by another insured under the policy, the insured claiming property loss files a police report and cooperates with any law enforcement investigation relating to the act of domestic abuse, and the insured claiming property loss did not cooperate in or contribute to the creation of the property loss. Payment by the insurer to an insured may be limited to the person's insurable interest in the property less payments made to a mortgagee or other party with a legal secured interest in the property. An insurer making payment to an insured under this section has all rights of subrogation to recover against the perpetrator of the act that caused the loss.

(4) Nothing in this section prohibits an insurer from investigating a claim and complying with chapter 48.30A RCW.

(5) As used in this section, "domestic abuse" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; (b) sexual assault of one family or household member by another; (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member; or (d) intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another family or household member. [1998 c 301 § 1.]

48.18.553 Victims of malicious harassment—Restrictions of underwriting actions—Definitions. (1) For the purposes of this section:

(a) "Insured" means a current policyholder or a person or entity that is covered under the insurance policy.

(b) "Malicious harassment" has the same meaning as RCW 9A.36.080. Under this section, the perpetrator does not have to be identified for an act of malicious harassment to have occurred.

(c) "Underwriting action" means an insurer:

- (i) Cancels or refuses to renew an insurance policy; or
- (ii) Changes the terms or benefits in an insurance policy.

(2) This section applies to property insurance policies if the insured is:

- (a) An individual;
- (b) A religious organization;
- (c) An educational organization; or

(d) Any other nonprofit organization that is organized and operated for religious, charitable, or educational purposes.

(3) An insurer may not take an underwriting action on a policy described in subsection (2) of this section because an insured has made one or more insurance claims for any loss that occurred during the preceding sixty months that is the result of malicious harassment. An insurer may take an underwriting action due to other factors that are not prohibited by this subsection.

(4) If an insured sustains a loss that is the result of malicious harassment, the insured must file a report with the police or other law enforcement authority within thirty days of discovery of the incident, and a law enforcement authority must determine that a crime has occurred. The report must contain sufficient information to provide an insurer with reasonable notice that the loss was the result of malicious harassment. The insured has a duty to cooperate with any law

enforcement official or insurer investigation. For incidents of malicious harassment occurring prior to July 27, 2003, the insured must file the report within six months of the discovery of the incident.

(5) Annually, each insurer must report underwriting actions to the commissioner if the insurer has taken an underwriting action against any insured who has filed a claim during the preceding sixty months that was the result of malicious harassment. The report must include the policy number, name of the insured, location of the property, and the reason for the underwriting action. [2003 c 117 § 1.]

48.18.560 Year 2000 failure—Reinstating insurance policy under certain circumstances. (Expires December 31, 2006.) (1) An insurer shall reinstate back to the effective date of cancellation, with no penalties or interest, any personal lines insurance policy, subject to this chapter, that was canceled for nonpayment of premium, if the named insured:

(a) Provides notice to the insurer, no later than ten days after the effective date of cancellation, that the failure to pay the premium due for the insurance policy is caused by a year 2000 failure associated with an electronic computing device that is not under the named insured's dominion or control;

(b) Establishes that a year 2000 failure occurred and that if it were not for the year 2000 failure, the named insured would have been able to pay the premium due in a timely manner;

(c) Makes a premium payment to bring the insurance policy current as soon as possible, but no later than ten days after the year 2000 failure has been corrected or reasonably should have been corrected.

(2) If the named insured fails to pay the premium due within ten days after the year 2000 failure has been corrected or reasonably should have been corrected, the insurer's previous notice of cancellation for nonpayment of premium remains effective.

(3)(a) The definitions in RCW 4.22.080 apply to this section unless the context clearly requires otherwise.

(b) As used in this section, unless the context clearly requires otherwise, "named insurer" means a natural person or a small business as defined in RCW 19.85.020.

(4) This section does not effect [affect] the cancellation of any insurance policy that is unrelated to a year 2000 failure, or occurs before any disruption of financial or data transfer operations attributable to the year 2000 failure.

(5) This section does not apply to any claim or cause of action filed after December 31, 2003.

(6) This section expires December 31, 2006. [1999 c 369 § 3.]

Effective date—1999 c 369: See note following RCW 4.22.080.

48.18.565 Homeowner's insurance—Foster parent. An insurer licensed to write homeowner's insurance in this state shall not deny an application for a homeowner's insurance policy, or cancel, refuse to renew, or modify an existing homeowner's insurance policy for the principal reason that the applicant or insured is a foster parent licensed under chapter 74.15 RCW. [2004 c 84 § 1.]

Chapter 48.18A RCW
VARIABLE CONTRACT ACT

Sections

- 48.18A.010 Short title—Intent.
 48.18A.020 Separate accounts authorized—Allocations—Benefits—Limitations—Valuation—Sale, transfer, or exchange of assets.
 48.18A.030 Statements required in contracts—Payment on death, incidental benefit provision.
 48.18A.035 Return of policy and refund of premium—Notice required—Effect of return.
 48.18A.040 Requirements for operation under this chapter—Considerations—Authorization of subsidiary or affiliate—Exceptions.
 48.18A.050 Applicability of other code provisions—Contract requirements.
 48.18A.060 Licensing requirement.
 48.18A.070 Authority of commissioner.
 48.18A.900 Effective date—1969 c 104.

Reviser's note: Powers, duties, and functions of the department of licensing relating to securities were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

48.18A.010 Short title—Intent. This chapter shall be known as the "Variable Contract Act" and is intended to authorize the sale of both individual and group variable contracts. [1969 c 104 § 1.]

48.18A.020 Separate accounts authorized—Allocations—Benefits—Limitations—Valuation—Sale, transfer, or exchange of assets. A domestic life insurer may, by or pursuant to resolution of its board of directors, establish one or more separate accounts, and may allocate thereto amounts (including without limitation proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance or annuities (and other benefits incidental thereto), payable in fixed or variable amounts or both, subject to the following:

(1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(2)(a) Except as hereinafter provided, amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurers: PROVIDED, That to the extent that the insurer's reserve liability with regard to (i) benefits guaranteed as to dollar amount and duration, and (ii) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested under such conditions as the commissioner may prescribe. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to the investments of the insurer.

(b) With respect to seventy-five percent of the market value of the total assets in a separate account no insurer shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market value, would exceed ten percent

of the market value of the assets of such separate account: PROVIDED, That the commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state.

(c) Unless otherwise permitted by law or approved by the commissioner, no insurer shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of such issuer: PROVIDED, That the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.

(d) The limitations provided in paragraphs (b) and (c) of this subsection shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the United States Investment Company Act of 1940: PROVIDED, That the investments of such investment company shall comply in substance therewith.

(3) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account: PROVIDED, That unless otherwise approved by the commissioner, the portion, if any, of the assets of such separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (2) of this section shall be valued in accordance with the rules otherwise applicable to the insurer's assets.

(4) Amounts allocated to a separate account in the exercise of the power granted by this chapter shall be owned by the insurer and the insurer shall not be, nor hold itself out to be, a trustee with respect to such amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the insurer may conduct.

(5) No sale, exchange or other transfer of assets may be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (a) by a transfer of cash, or (b) by a transfer of securities having a readily determinable market value: PROVIDED, That such transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts, if, in his opinion, such transfers would not be inequitable.

(6) To the extent such insurer deems it necessary to comply with any applicable federal or state law, such insurer, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for

persons having interest therein, as may be appropriate, voting and other rights and special procedures for the conduct of the business of such account, including without limitation, special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such insurer, to manage the business of such account. [1973 1st ex.s. c 163 § 4; 1969 c 104 § 2.]

48.18A.030 Statements required in contracts—Payment on death, incidental benefit provision. (1) Every variable contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

(2) Variable annuity contracts delivered or issued for delivery in this state may include as an incidental benefit provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at time of death. For this purpose such benefit shall not be deemed to be life insurance and therefore not subject to any statutory provisions governing life insurance contracts. A provision for any other benefits on death during the deferred period will be subject to such insurance law provisions. [1973 1st ex.s. c 163 § 5; 1969 c 104 § 3.]

48.18A.035 Return of policy and refund of premium—Notice required—Effect of return. Every individual variable contract issued shall have printed on its face or attached thereto a notice stating in substance that the policy owner shall be permitted to return the policy within ten days after it is received by the policy owner and to have the market value of the assets purchased by its premium, less taxes and investment brokerage commissions, if any, refunded, if, after examination of the policy, the policy owner is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policy owner pursuant to such notice returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. [1983 1st ex.s. c 32 § 7; 1982 c 181 § 15.]

Effective date—1982 c 181 § 15: "Section 15 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1982." [1982 c 181 § 26.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.18A.040 Requirements for operation under this chapter—Considerations—Authorization of subsidiary or affiliate—Exceptions. No insurer shall deliver or issue,

for delivery within this state, contracts under this chapter unless it is licensed or organized to do a life insurance or annuity business in this state, and unless the commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider among other things:

- (1) The history and financial condition of the insurer;
- (2) The character, responsibility and fitness of the officers and directors of the insurer; and
- (3) The law and regulation under which the insurer is authorized in the state of domicile to issue variable contracts.

An insurer which issues variable contracts and which is a subsidiary of, or affiliated through common management or ownership with, another life insurer authorized to do business in this state may be deemed to have met the provisions of this section if either it or the parent or affiliated company meets the requirements hereof: PROVIDED, That no insurer may provide variable benefits in its contracts unless it is an admitted insurer having and continually maintaining a combined capital and surplus of at least five million dollars. [1982 c 181 § 10; 1969 c 104 § 4.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.18A.050 Applicability of other code provisions—Contract requirements. The provisions of RCW 48.23.020, 48.23.030, 48.23.080 through 48.23.120, 48.23.140, 48.23.150, 48.23.200 through 48.23.240, 48.23.310, and 48.23.360, and the provisions of chapters 48.24 and 48.76 RCW are inapplicable to variable contracts. Any provision in the code requiring contracts to be participating is not applicable to variable contracts. Except as otherwise provided in this chapter, all pertinent provisions of the insurance code apply to separate accounts and contracts relating thereto. Any individual variable life insurance or individual variable annuity contract delivered or issued for delivery in this state must contain grace, reinstatement, and nonforfeiture provisions appropriate to those contracts, and any variable life insurance contract must provide that the investment experience of the separate account may not operate to reduce the death benefit below an amount equal to the face amount of the contract at the time the contract was issued. Any individual variable life insurance contract may contain a provision for deduction from the death proceeds of amounts of due and unpaid premiums or of indebtedness which are appropriate to that contract. The reserve liability for variable annuities must be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees. [2003 c 248 § 6; 1983 c 3 § 150; 1979 c 157 § 2; 1973 1st ex.s. c 163 § 6; 1969 c 104 § 5.]

48.18A.060 Licensing requirement. No person shall be or act as an agent for the solicitation or sale of variable contracts except while duly appointed and licensed under the insurance code as a life insurance agent with respect to the insurer, and while duly licensed as a security salesman or securities broker under a license issued by the director of financial institutions pursuant to the securities act of this state; except that any person who participates only in the sale

or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under sections 401 or 403 of the United States internal revenue code need not be licensed pursuant to the securities act of this state. [1994 c 92 § 502; 1973 1st ex.s. c 163 § 7; 1969 c 104 § 6.]

48.18A.070 Authority of commissioner. Notwithstanding any other provision of law, the commissioner shall have sole and exclusive authority to regulate the issuance and sale of variable contracts; except for the examination, issuance or renewal, suspension or revocation, of a security salesman's license issued to persons selling variable contracts. To carry out the purposes and provisions of this chapter he or she may independently, and in concert with the director of financial institutions, issue such reasonable rules and regulations as may be appropriate. [1994 c 92 § 503; 1969 c 104 § 7.]

48.18A.900 Effective date—1969 c 104. This 1969 act shall take effect July 1, 1969. [1969 c 104 § 10.]

Chapter 48.19 RCW RATES

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Anti-compact law: RCW 48.30.020.

Discrimination prohibited: RCW 48.18.480.

Rate wars prohibited: RCW 48.30.240.

48.19.010 Scope of chapter. (1) Except as is otherwise expressly provided the provisions of this chapter apply to all insurances upon subjects located, resident or to be performed in this state except:

- (a) Life insurance;
- (b) disability insurance;
- (c) reinsurance except as to joint reinsurance as provided in RCW 48.19.360;

(d) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft;

(e) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity; and such other risks commonly insured under marine, as distinguished from inland marine, insurance contracts as may be defined by ruling of the commissioner for the purposes of this provision;

(f) title insurance.

(2) Except, that every insurer shall, as to disability insurance, before using file with the commissioner its manual of classification, manual of rules and rates, and any modifications thereof. [1987 c 185 § 24; 1947 c 79 § .19.01; Rem. Supp. 1947 § 45.19.01.]

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

48.19.020 Rate standard. Premium rates for insurance shall not be excessive, inadequate, or unfairly discriminatory. [1983 1st ex.s. c 32 § 13; 1947 c 79 § .19.02; Rem. Supp. 1947 § 45.19.02.]

48.19.030 Making of rates—Criteria. Rates shall be used, subject to the other provisions of this chapter, only if made in accordance with the following provisions:

(1) In the case of insurances under standard fire policies and that part of marine and transportation insurances not exempted under RCW 48.19.010, manual, minimum, class or classification rates, rating schedules or rating plans, shall be made and adopted; except as to specific rates on inland marine risks individually rated, which risks are not reasonably susceptible to manual or schedule rating, and which risks by general custom of the business are not written according to manual rates or rating plans.

(2) In the case of casualty and surety insurances:

(a) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which

subdivision or combination separate expense provisions are applicable.

(b) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(3) Due consideration in making rates for all insurances shall be given to:

(a) Past and prospective loss experience within this state for experience periods acceptable to the commissioner. If the information is not available or is not statistically credible, an insurer may use loss experience in those states which are likely to produce loss experience similar to that in this state.

(b) Conflagration and catastrophe hazards, where present.

(c) A reasonable margin for underwriting profit and contingencies.

(d) Dividends, savings and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(e) Past and prospective operating expenses.

(f) Past and prospective investment income.

(g) All other relevant factors within and outside this state.

(4) In addition to other factors required by this section, rates filed by an insurer on its own behalf may also be related to the insurer's plan of operation and plan of risk classification.

(5) Except to the extent necessary to comply with RCW 48.19.020 uniformity among insurers in any matter within the scope of this section is neither required nor prohibited. [1989 c 25 § 3; 1947 c 79 § .19.03; Rem. Supp. 1947 § 45.19.03.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.035 Making of rates—Definitions—Personal insurance—Use of credit history or insurance scores—Rules. (1) For the purposes of this section:

(a) "Affiliate" has the same meaning as defined in RCW 48.31B.005(1).

(b) "Consumer" means an individual policyholder or applicant for insurance.

(c) "Credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of serving as a factor in determining personal insurance premiums or eligibility for coverage.

(d) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit history.

(e) "Personal insurance" means:

(i) Private passenger automobile coverage;

(ii) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage;

(iii) Dwelling property coverage;

(iv) Earthquake coverage for a residence or personal property;

(v) Personal liability and theft coverage;

(vi) Personal inland marine coverage; and

(vii) Mechanical breakdown coverage for personal auto or home appliances.

(2)(a) Credit history shall not be used to determine personal insurance rates, premiums, or eligibility for coverage unless the insurance scoring models are filed with the commissioner. Insurance scoring models include all attributes and factors used in the calculation of an insurance score. RCW 48.19.040(5) does not apply to any information filed under this subsection, and the information shall be withheld from public inspection and kept confidential by the commissioner. All information filed under this subsection shall be considered trade secrets under RCW 48.02.120(3). Information filed under this subsection may be made public by the commissioner for the sole purpose of enforcement actions taken by the commissioner.

(b) Each insurer that uses credit history or an insurance score to determine personal insurance rates, premiums, or eligibility for coverage must file all rates and rating plans for that line of coverage with the commissioner. This requirement applies equally to a single insurer and two or more affiliated insurers. RCW 48.19.040(5) applies to information filed under this subsection except that any eligibility rules or guidelines shall be withheld from public inspection under RCW 48.02.120(3) from the date that the information is filed and after it becomes effective.

(3) Insurers shall not use the following types of credit history to calculate a personal insurance score or determine personal insurance premiums or rates:

(a) The absence of credit history or the inability to determine the consumer's credit history, unless the insurer has filed actuarial data segmented by demographic factors in a manner prescribed by the commissioner that demonstrates compliance with RCW 48.19.020;

(b) The number of credit inquiries;

(c) Credit history or an insurance score based on collection accounts identified with a medical industry code;

(d) The initial purchase or finance of a vehicle or house that adds a new loan to the consumer's existing credit history, if evident from the consumer report; however, an insurer may consider the bill payment history of any loan, the total number of loans, or both;

(e) The consumer's use of a particular type of credit card, charge card, or debit card; or

(f) The consumer's total available line of credit; however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

(4) If a consumer is charged higher premiums due to disputed credit history, the insurer shall rerate the policy retroactive to the effective date of the current policy term. As rerated, the consumer shall be charged the same premiums they would have been charged if accurate credit history was used to calculate an insurance score. This subsection applies only if the consumer resolves the dispute under the process

set forth in the fair credit reporting act and notifies the insurer in writing that the dispute has been resolved.

(5) The commissioner may adopt rules to implement this section.

(6) This section applies to all personal insurance policies issued or renewed on or after June 30, 2003. [2004 c 86 § 1; 2002 c 360 § 2.]

Captions not law—2002 c 360: See note following RCW 48.18.545.

48.19.040 Filing required—Contents. (1) Every insurer or rating organization shall, before using, file with the commissioner every classifications manual, manual of rules and rates, rating plan, rating schedule, minimum rate, class rate, and rating rule, and every modification of any of the foregoing which it proposes. The insurer need not so file any rate on individually rated risks as described in subdivision (1) of RCW 48.19.030; except that any such specific rate made by a rating organization shall be filed.

(2) Every such filing shall indicate the type and extent of the coverage contemplated and must be accompanied by sufficient information to permit the commissioner to determine whether it meets the requirements of this chapter. An insurer or rating organization shall offer in support of any filing:

(a) The experience or judgment of the insurer or rating organization making the filing;

(b) An exhibit detailing the major elements of operating expense for the types of insurance affected by the filing;

(c) An explanation of how investment income has been taken into account in the proposed rates; and

(d) Any other information which the insurer or rating organization deems relevant.

(3) If an insurer has insufficient loss experience to support its proposed rates, it may submit loss experience for similar exposures of other insurers or of a rating organization.

(4) Every such filing shall state its proposed effective date.

(5) A filing made pursuant to this chapter shall be exempt from the provisions of RCW 48.02.120(3). However, the filing and all supporting information accompanying it shall be open to public inspection only after the filing becomes effective.

(6) Where a filing is required no insurer shall make or issue an insurance contract or policy except in accordance with its filing then in effect, except as is provided by RCW 48.19.090. [1994 c 131 § 8; 1989 c 25 § 4; 1983 1st ex.s. c 32 § 14; 1947 c 79 § .19.04; Rem. Supp. 1947 § 45.19.04.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.043 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition. (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for rates.

(2) Notwithstanding the provisions of RCW 48.19.040(1), commercial property casualty policies may be issued prior to filing the rates. All commercial property casualty rates shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(2004 Ed.)

(3) If, within thirty days after a commercial property casualty rate has been filed, the commissioner finds that the rate does not meet the requirements of this chapter, the commissioner shall disapprove the filing and give notice to the insurer or rating organization that made the filing, specifying how the filing fails to meet the requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a rate filing under subsection (3) of this section, the insurer shall issue an endorsement changing the rate to comply with the commissioner's disapproval from the date the rate is no longer effective.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof is on the commissioner. [2003 c 248 § 7; 1997 c 428 § 2.]

48.19.050 Filings by rating bureau. (1) If so authorized by an insurer, the commissioner shall accept, in lieu of filings by the insurer, filings on its behalf made by a rating organization then licensed as provided in this chapter.

(2) As to fire insurance under a standard form fire policy, and the following insurances (other than vehicle insurance coverages) when issued as part of a standard form fire policy, an insurer may so authorize a rating organization to make all [of] its filings only, and may not make a portion of such filings upon its own behalf and authorize a rating organization to make other such filings:

(a) Additional property insurance coverages; or

(b) Coverages including any kind of insurance in addition to fire for a single undivided premium.

(3) Except, that notwithstanding the provisions of subsection (2) an insurer which prior to the first day of January, 1947, made its own filings in this state as to a particular class of fire risks, and its filings in this state as to other classes of fire risks were made by a rating organization authorized by the insurer so to do, may:

(a) Continue to make all [of] its own filings as to such specific class of risks or authorize a rating organization to make its filings as to such specific class of risks or any part thereof; and

(b) Authorize a different rating organization to make all only of its filings [all of its filings only] as to all other classes of risks insured by it in this state against fire under the standard form fire policy; or

(c) Make all [of] its own filings as to all classes of risks insured by it against fire under the standard form fire policy, or make all [of] its own such filings except as to any which

may relate to any such specific class of risks, which filings so excepted the insurer may authorize a rating organization to make; or

(d) Authorize a rating organization to make all only of its filings [all of its filings only] as to all classes or risks insured by it against fire in this state under the standard form fire policy. [1957 c 193 § 13; 1947 c 79 § .19.05; Rem. Supp. 1947 § 45.19.05.]

48.19.060 Filings—Review, waiting period, disapproval. (1) The commissioner shall review a filing as soon as reasonably possible after made, to determine whether it meets the requirements of this chapter.

(2) Except as provided in RCW 48.19.070 and 48.19.043:

(a) No such filing shall become effective within thirty days after the date of filing with the commissioner, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he or she gives notice within such waiting period to the insurer or rating organization which made the filing that he or she needs such additional time for the consideration of the filing. The commissioner may, upon application and for cause shown, waive such waiting period or part thereof as to a filing that he or she has not disapproved.

(b) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof. [1997 c 428 § 4; 1989 c 25 § 5; 1947 c 79 § .19.06; Rem. Supp. 1947 § 45.19.06.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.070 Special filings. The following special filings, when not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and for so long thereafter as the filing remains in effect:

(1) Special filings with respect to surety or guaranty bonds required by law or by court or executive order or by order, rule or regulation of a public body.

(2) Specific rates on inland marine risks individually rated by a rating organization, which risks are not reasonably susceptible to manual or schedule rating, and which risks by general custom of the business are not written according to manual rates or rating plans. [1947 c 79 § .19.07; Rem. Supp. 1947 § 45.19.07.]

48.19.080 Waiver of filing. Under such rules and regulations as he shall adopt the commissioner may, by order, suspend or modify the requirement of filing as to any kind of insurance. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standard prescribed in RCW 48.19.020. [1981 c 339 § 18; 1947 c 79 § .19.08; Rem. Supp. 1947 § 45.19.08.]

48.19.090 Excess rates on specific risks. Upon written application of the insured, stating his reasons therefor, filed

with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk. [1947 c 79 § .19.09; Rem. Supp. 1947 § 45.19.09.]

48.19.100 Disapproval of filing. If within the waiting period or any extension thereof as provided in RCW 48.19.060, the commissioner finds that a filing does not meet the requirements of this chapter, he shall disapprove such filing, and shall give notice of such disapproval, specifying the respect in which he finds the filing fails to meet such requirements, and stating that the filing shall not become effective, to the insurer or rating organization which made the filing. [1989 c 25 § 6; 1947 c 79 § .19.10; Rem. Supp. 1947 § 45.19.10.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.110 Disapproval of special filing. (1) If within thirty days after a special filing subject to RCW 48.19.070 has become effective, the commissioner finds that the filing does not meet the requirements of this chapter, he shall disapprove the filing and shall give notice to the insurer or rating organization which made the filing, specifying in what respects he finds that the filing fails to meet such requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective.

(2) Such disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval. [1947 c 79 § .19.11; Rem. Supp. 1947 § 45.19.11.]

48.19.120 Subsequent disapproval. (1) If at any time subsequent to the applicable review period provided in RCW 48.19.060 or 48.19.110, the commissioner finds that a filing does not meet the requirements of this chapter, he shall, after a hearing, notice of which was given to every insurer and rating organization which made such filing, issue his order specifying in what respect he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filings shall be deemed no longer effective.

(2) Such order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(3) Any person aggrieved with respect to any filing then in effect, other than the insurer or rating organization which made the filing, may make written application to the commissioner for a hearing thereon. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding the hearing, he shall, within thirty days after receipt of the application, hold a hearing as required in subsection (1) of this section. [1989 c 25 § 7; 1983 1st ex.s. c 32 § 15; 1947 c 79 § .19.12; Rem. Supp. 1947 § 45.19.12.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.140 Rating organizations—Discrimination—"Subscriber" defined. (1) Every rating organization operat-

ing in this state shall furnish its services without discrimination as between its subscribers.

(2) "Subscriber," for the purposes of this chapter and where the context does not otherwise specify, means any insurer which employs the services of a rating organization for the purpose of making filings, whether or not the insurer is a "member" of such rating organization.

(3) This chapter is not intended to and does not govern or affect the "membership" relation as such between a rating organization and insurers who are its "members." [1947 c 79 § .19.14; Rem. Supp. 1947 § 45.19.14.]

48.19.150 Subscribership not required. No provision of this code shall require, or be deemed to require, any insurer to be a subscriber of, or in any other respect affiliated with, any rating organization. [1947 c 79 § .19.15; Rem. Supp. 1947 § 45.19.15.]

48.19.160 Rating organization license. No rating organization shall do business in this state or make filings with the commissioner unless then licensed by the commissioner as a rating organization. [1947 c 79 § .19.16; Rem. Supp. 1947 § 45.19.16.]

48.19.170 Application for license. (1) Any person, whether domiciled within or outside this state, except as provided in subsection (2) of this section, may make application to the commissioner for a license as a rating organization for such kinds of insurance or subdivisions thereof, if for casualty or surety insurances, or for such subdivision, class of risks or a part or combination thereof, if for other insurances, as are specified in its application, and shall file therewith:

(a) A copy of its constitution, its articles of agreement or association, or its certificate of incorporation, or trust agreement, and of its bylaws, rules and regulations governing the conduct of its business;

(b) A list of its members and a list of its subscribers;

(c) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and

(d) A statement of its qualifications as a rating organization.

(2) Any rating organization proposing to act as such as to insurance under standard form fire policies, shall be licensed only if all the following conditions are complied with:

(a) The applicant and the operators of such rating organization shall be domiciled in and shall actually reside in this state.

(b) The ownership of such rating organization shall be vested in trustees for all its subscribers under such trust agreement as is approved by the commissioner, and the rating organization shall be and shall be conducted as a nonprofit public service institution.

(c) Such rating organization shall not be connected with any insurer or insurers except to the extent that any such insurer may be a subscriber to its services. [1947 c 79 § .19.17; Rem. Supp. 1947 § 45.19.17.]

48.19.180 Issuance of license. (1) If the commissioner finds that the applicant for a license as a rating organization is

competent, trustworthy and otherwise qualified so to act, and that its constitution, articles of agreement or association or certificate of incorporation or trust agreement, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall, upon payment of a license fee of twenty-five dollars, issue a license specifying the kinds of insurance, or subdivisions or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization.

(2) The commissioner shall grant or deny in whole or in part every such application within sixty days of the date of its filing with him.

(3) A license issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. [1947 c 79 § .19.18; Rem. Supp. 1947 § 45.19.18.]

48.19.190 Suspension or revocation of license. (1) The commissioner may, after a hearing, suspend or revoke the license issued to a rating organization for any of the following causes:

(a) If he finds that the licensee no longer meets the qualifications for the license.

(b) For failure to comply with an order of the commissioner within the time limited by the order, or any extension thereof which the commissioner may grant.

(2) The commissioner shall not so suspend or revoke a license for failure to comply with an order until the time prescribed by this code for an appeal from such order to the superior court has expired or if such appeal has been taken, until such order has been affirmed.

(3) The commissioner may determine when a suspension or revocation of license shall become effective. A suspension of license shall remain in effect for the period fixed by him, unless he modifies or rescinds the suspension, or until the order, failure to comply with which constituted grounds for the suspension, is modified, rescinded or reversed. [1947 c 79 § .19.19; Rem. Supp. 1947 § 45.19.19.]

48.19.200 Notice of changes. Every rating organization shall notify the commissioner promptly of every change in

(1) its constitution, its articles of agreement or association, or its certificate of incorporation, or trust agreement, and its bylaws, rules and regulations governing the conduct of its business;

(2) its list of members and subscribers;

(3) the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served. [1947 c 79 § .19.20; Rem. Supp. 1947 § 45.19.20.]

48.19.210 Subscribers—Rights, limitations. (1) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer to subscribe to its rating services for any kind of insurance or subdivision thereof, for which it is authorized to act as a rating organization, subject to subsection (2) of RCW 48.19.050.

(2) Notice of proposed changes in such rules and regulations shall be given to each subscriber.

(3) An insurer shall not concurrently be a subscriber to the services of more than one rating organization as to the same subdivision, class of risk or part or combination of a kind of insurance.

(4) As to fire insurance under standard form fire policies, an insurer may not concurrently be a subscriber to the services of more than one rating organization except as provided in subsection (2) of RCW 48.19.050. [1947 c 79 § .19.21; Rem. Supp. 1947 § 45.19.21.]

48.19.220 Review of rules and refusal to admit insurers. (1) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon notice to the rating organization, and to the subscriber or insurer.

(2) If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers who are not members of the rating organization.

(3) If a rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action. [1947 c 79 § .19.22; Rem. Supp. 1947 § 45.19.22.]

48.19.230 Subscriber committees. The subscribers of any rating organization may, from time to time, individually or through committees representing various subscribers, consult with the rating organization with respect to matters within this chapter which affect such subscribers. [1947 c 79 § .19.23; Rem. Supp. 1947 § 45.19.23.]

48.19.240 Rules cannot affect dividends. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. [1947 c 79 § .19.24; Rem. Supp. 1947 § 45.19.24.]

48.19.250 Cooperative activities. (1) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, if the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally.

(2) The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this code, he may issue a written order specifying in what respect such activity or practice is so unfair, unreasonable, or inconsistent, and requiring the discontinuance of such activity or practice. [1947 c 79 § .19.25; Rem. Supp. 1947 § 45.19.25.]

48.19.260 Technical services. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all subscribers without discrimination. [1947 c 79 § .19.26; Rem. Supp. 1947 § 45.19.26.]

48.19.270 Records—Examinations. Each rating organization shall keep an accurate and complete record of all work performed by it, and of all its receipts and disbursements. Such rating organization and its records shall be examined by the commissioner at such times and in such manner as is provided in chapter 48.03 RCW of this code. [1947 c 79 § .19.27; Rem. Supp. 1947 § 45.19.27.]

48.19.280 Deviations. (1) Every member or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization. Deviations from the organization's filings are permitted only when filed with the commissioner in accordance with this chapter.

(2) Every such deviation shall terminate upon a material change of the basic rate from which the deviation is made. The commissioner shall determine whether a change of the basic rate is so material as to require such termination of deviations. [1989 c 25 § 8; 1957 c 193 § 14; 1947 c 79 § .19.28; Rem. Supp. 1947 § 45.19.28.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.290 Appeal from rating organization's action. (1) Any subscriber to a rating organization may appeal to the commissioner from the rating organization's action or decision in approving or rejecting any proposed change in or addition to the rating organization's filings. The commissioner shall, after a hearing on the appeal:

(a) Issue an order approving the rating organization's action or decision or directing it to give further consideration to such proposal; or

(b) If the appeal is from the rating organization's action or decision in rejecting a proposed addition to its filings, he may, in event he finds that the action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the rating organization's failure to make a filing on behalf of such subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in subdivision (2) of RCW 48.19.030, from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding the appeal the commissioner shall apply the standards set forth in RCW 48.19.020 and 48.19.030. [1947 c 79 § .19.29; Rem. Supp. 1947 § 45.19.29.]

48.19.300 Service to insureds. Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the

authorized representative of such insured, all pertinent information as to such rate. [1947 c 79 § .19.30; Rem. Supp. 1947 § 45.19.30.]

48.19.310 Complaints of insureds. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon notice to the appellant and to the rating organization or insurer, may affirm or reverse such action. [1947 c 79 § .19.31; Rem. Supp. 1947 § 45.19.31.]

48.19.320 Advisory organizations—Definition. (1) Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

(2) This section does not apply to subscribers' committees provided for in RCW 48.19.230. [1947 c 79 § .19.32; Rem. Supp. 1947 § 45.19.32.]

48.19.330 Requisites of advisory organization. Every advisory organization before serving as such to any rating organization or independently filing insurer doing business in this state, shall file with the commissioner:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities;

(2) A list of its members;

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served; and

(4) An agreement that the commissioner may examine such advisory organization in accordance with the provisions of RCW 48.03.010. [1947 c 79 § .19.33; Rem. Supp. 1947 § 45.19.33.]

48.19.340 Desist orders. If, after a hearing, the commissioner finds that the furnishing of information or assistance by an advisory organization, as referred to in RCW 48.19.320, involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this code, he may issue a written order specifying in what respect such act or practice is unfair or unreasonable or so otherwise inconsistent, and requiring the discontinuance of such act or practice. [1947 c 79 § .19.34; Rem. Supp. 1947 § 45.19.34.]

(2004 Ed.)

48.19.350 Disqualification of data. No insurer which makes its own filing nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this chapter or with any order of the commissioner involving such statistics or recommendations issued under RCW 48.19.340. If the commissioner finds such insurer or rating organization to be in violation of this section he may issue an order requiring the discontinuance of the violation. [1947 c 79 § .19.35; Rem. Supp. 1947 § 45.19.35.]

48.19.360 Joint underwriting or joint reinsurance. (1) Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as is provided in this section, subject, however, with respect to joint underwriting, to all other provisions of this chapter, and, with respect to joint reinsurance, to RCW 48.19.270, 48.01.080 and 48.19.430; and to chapter 48.03 RCW of this code.

(2) If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair, or unreasonable or so inconsistent, and requiring the discontinuance of the activity or practice. [1947 c 79 § .19.36; Rem. Supp. 1947 § 45.19.36.]

48.19.370 Recording and reporting of loss and expense experience. (1) The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in RCW 48.19.020 and 48.19.030. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states.

(3) No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it.

(4) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

(5) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for

the application of rating plans. [1947 c 79 § .19.37; Rem. Supp. 1947 § 45.19.37.]

48.19.380 Exchange of information. Every rating organization and insurer may exchange information and experience data with insurers and rating organizations in this and other states and may consult with them with respect to rate making and the application of rating systems. [1947 c 79 § .19.38; Rem. Supp. 1947 § 45.19.38.]

48.19.390 False or misleading information. No person shall wilfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. [1947 c 79 § .19.39; Rem. Supp. 1947 § 45.19.39.]

48.19.400 Assigned risks. Agreements may be made among casualty insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner. [1947 c 79 § .19.40; Rem. Supp. 1947 § 45.19.40.]

48.19.410 Examination of contracts. (1) The commissioner may permit the organization and operation of examining bureaus for the examination of policies, daily reports, binders, renewal certificates, endorsements, and other evidences of insurance or of the cancellation thereof, for the purpose of ascertaining that lawful rates are being charged.

(2) A bureau shall examine documents with regard to such kinds of insurance as the commissioner may, after hearing, reasonably require to be submitted for examination. A bureau may examine documents as to such other kinds of insurance as the issuing insurers may voluntarily submit for examination. Upon request of the commissioner, a bureau shall also examine affidavits filed pursuant to RCW 48.15.040, surplus lines contracts and related documents, and shall make recommendations to the commissioner to assist the commissioner in determining whether surplus lines have been procured in accordance with chapter 48.15 RCW and rules issued thereunder.

(3) No bureau shall operate unless licensed by the commissioner as to the kinds of insurance as to which it is permitted so to examine. To qualify for a license a bureau shall:

(a) Be owned in trust for the benefit of all the insurers regularly using its services, under a trust agreement approved by the commissioner.

(b) Make its services available without discrimination to all authorized insurers applying therefor, subject to such reasonable rules and regulations as to the obligations of insurers using its services, as to the conduct of its affairs, and as to the correction of errors and omissions in documents examined by it as are approved by the commissioner.

(c) Have no manager or other employee who is an employee of an insurer other than to the extent that he is an employee of the bureau owned by insurers through such trust agreement.

(d) Pay to the commissioner a fee of ten dollars for issuance of its license.

(4) Such license shall be of indefinite duration and shall remain in force until revoked by the commissioner or terminated at the request of the bureau. The commissioner may revoke the license, after hearing,

(a) if the bureau is no longer qualified therefor;

(b) if the bureau fails to comply with a proper order of the commissioner;

(c) if the bureau violates or knowingly participates in the violation of any provision of this code.

(5) Any person aggrieved by any rule, regulation, act or omission of a bureau may appeal to the commissioner therefrom. The commissioner shall hold a hearing upon such appeal, and shall make such order upon the hearing as he deems to be proper.

(6) Every such bureau operating in this state shall be subject to the supervision of the commissioner, and the commissioner shall examine it as provided in chapter 48.03 RCW of this code.

(7) Every examining bureau shall keep adequate records of the outstanding errors and omissions found in coverages examined by it and of its receipts and disbursements, and shall hold as confidential all information contained in documents submitted to it for examination.

(8) The commissioner shall not license an additional bureau for the examination of documents relative to a kind of insurance if such documents are being examined by a then existing licensed bureau. Any examining bureau operating in this state immediately prior to the effective date of this code under any law of this state repealed as of such date, shall have prior right to apply for and secure a license under this section. [1983 1st ex.s. c 32 § 8; 1947 c 79 § .19.41; Rem. Supp. 1947 § 45.19.41.]

48.19.420 Rate agreements. Two or more insurers mutually may agree to adhere to rates, rating plans, rating systems or underwriting practices or uniform modifications thereof, all subject to the following conditions:

(1) All of the terms of the agreements shall be in writing executed on behalf of each such insurer.

(2) An executed copy of every such written agreement and of every modification thereof shall be filed with the commissioner.

(3) Within a reasonable length of time after every such filing, the commissioner shall either approve or disapprove such agreement or modification. No such agreement or modification shall be effective unless and until approved by the commissioner.

(4) The commissioner shall not approve any such agreement or modification which:

(a) Constitutes or would tend to result in an unreasonable restraint upon free competition;

(b) contains terms otherwise tending to injure the public interest.

(5) No cause of action shall lie in favor of any insurer which is party to any such agreement against any other insurer party thereto on account of any breach thereof.

(6) All rate filings covered by such agreement shall be subject to the provisions of this chapter or of other applicable law.

(7) The commissioner may after a hearing thereon and for cause withdraw any approval previously given any such agreement or modification. [1947 c 79 § .19.42; Rem. Supp. 1947 § 45.19.42.]

48.19.430 Penalties. Any person violating any provision of this chapter shall be subject to a penalty of not more than fifty dollars for each such violation, but if such violation is found to be wilful a penalty of not more than five hundred dollars for each such violation may be imposed. Such penalties may be in addition to any other penalty provided by law. [1947 c 79 § .19.43; Rem. Supp. 1947 § 45.19.43.]

48.19.450 Casualty rate filing—Credit. The commissioner shall, in reviewing a casualty rate filing, determine in accordance with sound and reliable actuarial principles whether chapter 305, Laws of 1986 requires an insurer to grant its policyholders a credit in such casualty rate filing. Upon determining that data in support of such a credit is actuarially credible, the commissioner shall approve or disapprove such casualty rate filing in accordance therewith. The commissioner shall not approve any casualty rate that is inadequate, excessive, or unfairly discriminatory. [1986 c 305 § 907.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

48.19.460 Automobile insurance—Premium reductions for older insureds completing accident prevention course. Any schedule of rates or rating plan for automobile liability and physical damage insurance submitted to or filed with the commissioner shall provide for an appropriate reduction in premium charges except for underinsured motorist coverage for those insureds who are fifty-five years of age and older, for a two-year period after successfully completing a motor vehicle accident prevention course meeting the criteria of the department of licensing with a minimum of eight hours, or additional hours as determined by rule of the department of licensing. An eight-hour program-learning self-instruction course shall be made available in areas in which a classroom course meeting the criteria of this section is not offered. The classroom course may be conducted by a public or private agency approved by the department. The self-instruction course shall be conducted by an agency approved by the department to conduct classroom courses under this section. [1987 c 377 § 1; 1986 c 235 § 1.]

48.19.470 Automobile insurance—Premium reductions for persons eligible under RCW 48.19.460. All insurance companies writing automobile liability and physical damage insurance in this state shall allow an appropriate reduction in premium charges except for underinsured motorist coverage to all eligible persons subject to RCW 48.19.460. [1986 c 235 § 2.]

(2004 Ed.)

48.19.480 Automobile insurance—Completion of accident prevention course, certificate. Upon successfully completing the approved course, each participant shall be issued by the course's sponsoring agency, a certificate that shall be the basis of qualification for the discount on insurance. [1986 c 235 § 3.]

48.19.490 Automobile insurance—Continued eligibility for discount. Each participant shall take an approved course every two years to continue to be eligible for the discount on insurance. [1986 c 235 § 4.]

48.19.500 Motor vehicle insurance—Seat belts, etc. Due consideration in making rates for motor vehicle insurance shall be given to any anticipated change in losses that may be attributable to the use of seat belts, child restraints, and other lifesaving devices. An exhibit detailing these changes and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance. [1989 c 11 § 20; 1987 c 310 § 1.]

Severability—1989 c 11: See note following RCW 9A.56.220.

48.19.501 Motor vehicle insurance—Anti-theft devices—Lights—Multiple vehicles. Due consideration in making rates for motor vehicle insurance shall be given to:

(1) Any anticipated change in losses that may be attributable to the use of properly installed and maintained anti-theft devices in the insured private passenger automobile. An exhibit detailing these losses and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance.

(2) Any anticipated change in losses that may be attributable to the use of lights and lighting devices that have been proven effective in increasing the visibility of motor vehicles during daytime or in poor visibility conditions and to the use of rear stop lights that have been proven effective in reducing rear-end collisions. An exhibit detailing these losses and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance.

(3) Any anticipated change in losses per vehicle covered that may be attributable to the fact that the insured has more vehicles covered under the policy than there are insured drivers in the same household. An exhibit detailing these changes and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance. [1989 c 11 § 21; 1987 c 320 § 1.]

Severability—1989 c 11: See note following RCW 9A.56.220.

Effective date—1987 c 320: "This act shall take effect on January 1, 1988." [1987 c 320 § 2.]

Chapter 48.20 RCW DISABILITY INSURANCE

Sections

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Approval of policy forms: RCW 48.18.100.

Assignment of policies: RCW 48.18.360.

Exemption of proceeds: RCW 48.18.400.

General provisions regarding filing, approval, contents of policies, execution, applications, etc.: Chapter 48.18 RCW.

Grounds for disapproval of policy forms: RCW 48.18.110.

Insurable interest, personal insurance, nonprofit organizations: RCW 48.18.030.

Minimum standard conditions and terminology for disability policies, established by commissioner: RCW 48.18.120(2).

Minor contracting for life or disability insurance: RCW 48.18.020.

Payment to person designated in policy or by assignment discharges insurer: RCW 48.18.370.

Rates, manuals, classifications—Filing: RCW 48.19.010(2).

Refusal to renew or cancellation of disability insurance: RCW 48.18.298, 48.18.299.

48.20.002 Scope of chapter. Nothing in this chapter shall apply to or affect (1) any policy of workers' compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract. [1987 c 185 § 25; 1951 c 229 § 1.]

Reviser's note: For prior laws governing standard provision requirements for individual accident or health insurance policies see 1947 c 79 §§ .20.01 through .20.33 and .20.37 and Rem. Supp. 1947 §§ 45.20.01 through 45.20.33 and 45.20.37.

Many of the sections enacted in 1951 c 229 are in substance amendatory of sections previously appearing in chapter 48.20 RCW, although they appear in 1951 c 229 as new sections. To assist those using the code, the prior enactment on the same subject is shown in the history note following the new section wherever practical.

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

48.20.012 Format of disability policies. No disability policy shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) It shall purport to insure only one person, except as to family expense insurance written pursuant to RCW 48.20.340.

(2) The style, arrangement and over-all appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and caption and subcaptions).

(3) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in RCW 48.20.042 to *48.20.272, inclusive, shall be printed, at the insurer's option, either included with the benefit provision to

which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies.

(4) Each such form, including riders and endorsements, shall be identified by a form number in the lower left hand corner of the first page thereof.

(5) It shall contain no provision purporting to make any portion of the insurer's charter, rules, constitution, or bylaws a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner. [1951 c 229 § 2; 1947 c 79 § .20.02; formerly Rem. Supp. 1949 § 45.20.02.]

*Reviser's note: RCW 48.20.272 was repealed by 2004 c 112 § 6.

48.20.013 Return of policy and refund of premium—Notice required—Effect of return. Every individual disability insurance policy issued after January 1, 1968, except single premium nonrenewable policies, shall have printed on its face or attached thereto a notice stating in substance that the person to whom the policy is issued shall be permitted to return the policy within ten days of its delivery to the purchaser and to have the premium paid refunded if, after examination of the policy, the purchaser is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policy holder or purchaser pursuant to such notice, returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. [1983 1st ex.s. c 32 § 9; 1967 c 150 § 26.]

48.20.015 Endorsements. If a contract is issued on any basis other than as applied for, an endorsement setting forth such modification(s) must accompany and be attached to the policy; and no endorsement shall be effective unless signed by the policyowner, and a signed copy thereof returned to the insurer. [1975 1st ex.s. c 266 § 9.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.20.022 Policies issued by domestic insurer for delivery in another state. If any policy is issued by a domestic insurer for delivery to a person residing in another state, and if the insurance commissioner or corresponding public official of such other state has advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the applicable standards set forth in this chapter and in chapter 48.18 RCW. [1951 c 229 § 3.]

48.20.025 Schedule of rates for individual health benefit plans—Loss ratio—Remittance of premiums—Defi-

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

(a) "Claims" means the cost to the insurer of health care services, as defined in RCW 48.43.005, provided to a policyholder or paid to or on behalf of the policyholder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for a policyholder.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(d) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(e) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(f) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) An insurer shall file, for informational purposes only, a notice of its schedule of rates for its individual health benefit plans with the commissioner prior to use.

(3) An insurer shall file with the notice required under subsection (2) of this section supporting documentation of its method of determining the rates charged. The commissioner may request only the following supporting documentation:

(a) A description of the insurer's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the insurer's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard established in subsection (7) of this section.

(4) The commissioner may not disapprove or otherwise impede the implementation of the filed rates.

(5) By the last day of May each year any insurer issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the insurer.

(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the insurer, be submitted to hearing under chapters 48.04 and 34.05 RCW.

(6) If the actual loss ratio for the preceding calendar year is less than the loss ratio established in subsection (7) of this section, a remittance is due and the following shall apply:

(a) The insurer shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (7) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (5)(a) of this section or the determination by an administrative law judge under subsection (5)(c) of this section.

(7) The loss ratio applicable to this section shall be seventy-four percent minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.020. [2003 c 248 § 8; 2001 c 196 § 1; 2000 c 79 § 3.]

Effective date—2001 c 196: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [2001 c 196 § 14.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.20.028 Calculation of premiums—Adjusted community rating method—Definitions. (1) Premiums for health benefit plans for individuals shall be calculated using the adjusted community rating method that spreads financial risk across the carrier's entire individual product population. All such rates shall conform to the following:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments

which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.21.045.

(3) As used in this section, "health benefit plan," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005. [2000 c 79 § 4; 1997 c 231 § 207; 1995 c 265 § 13.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.20.032 Standard provisions required—Substitutions—Captions. Except as provided in RCW 48.18.130, each such policy delivered or issued for delivery to any person in this state shall contain the provisions as specified in RCW 48.20.042 to 48.20.152, inclusive, in the words in which the same appear; except, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded by the applicable caption shown or,

at the insurer's option, by such appropriate individual or group caption or subcaption as the commissioner may approve. [1951 c 229 § 4; 1947 c 79 § .20.03; formerly Rem. Supp. 1947 § 45.20.03.]

48.20.042 Standard provision No. 1—Entire contract; changes. There shall be a provision as follows:

ENTIRE CONTRACTS; CHANGES: This policy, including the endorsements and attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or to waive any of its provisions. [1951 c 229 § 5. Prior law: (i) 1947 c 79 § .20.05; Rem. Supp. 1947 § 45.20.05. (ii) 1947 c 79 § .20.06; Rem. Supp. 1947 § 45.20.06.]

48.20.050 Standard provision No. 2—Misstatement of age or sex. There shall be a provision as follows:

"MISSTATEMENT OF AGE OR SEX: If the age or sex of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age or sex."

The amount of any underpayments which may have been made on account of any such misstatement under a disability income policy shall be paid the insured along with the current payment and the amount of any overpayment may be charged against the current or succeeding payments to be made by the insurer. Interest may be applied to such underpayments or overpayments as specified in the insurance policy form but not exceeding six percent per annum. [1983 1st ex.s. c 32 § 16.]

48.20.052 Standard provision No. 3—Time limit on certain defenses. There shall be a provision as follows:

"TIME LIMIT ON CERTAIN DEFENSES: (a) After two years from the date of issue of this policy no misstatements except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two year period, nor to limit the application of RCW 48.20.050, 48.20.172, 48.20.192, 48.20.202, and 48.20.212 in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE":

"After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.")

(2004 Ed.)

"(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(More stringent provisions may be required by the commissioner in connection with individual disability policies sold without any application or with minimal applications.) [1983 1st ex.s. c 32 § 17; 1975 1st ex.s. c 266 § 12; 1973 1st ex.s. c 152 § 4; 1969 ex.s. c 241 § 12; 1951 c 229 § 6.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.20.062 Standard provision No. 4—Grace period. There shall be a provision as follows:

GRACE PERIOD: A grace period of . . . (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision: "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.")

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision: "Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.") [1951 c 229 § 7.]

48.20.072 Standard provision No. 5—Reinstatement. There shall be a provision as follows:

REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy: **PROVIDED, HOWEVER,** That if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement.

ment. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.) [1951 c 229 § 8; 1947 c 79 § .20.07; formerly Rem. Supp. 1947 § 45.20.07.]

48.20.082 Standard provision No. 6—Notice of claim.

There shall be a provision as follows:

NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.") [1951 c 229 § 9. Prior law: 1947 c 79 § .20.08; Rem. Supp. 1947 § 45.20.08.]

48.20.092 Standard provision No. 7—Claim forms.

There shall be a provision as follows:

CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss written proof covering the occurrence, the character and the extent of the loss for which claim is made. [1951 c 229 § 10; 1947 c 79 § .20.10; formerly Rem. Supp. 1947 § 45.20.10.]

Furnishing claim forms does not constitute waiver of any defense by insurer: RCW 48.18.470.

Insurer has no responsibility as to completion of claim forms: RCW 48.18.460.

48.20.102 Standard provision No. 8—Proofs of loss.

There shall be a provision as follows:

PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required. [1951 c 229 § 11. Prior: (i) 1947 c 79 § .20.11; Rem. Supp. 1947 § 45.20.11. (ii) 1947 c 79 § .20.09, part; Rem. Supp. 1947 § 45.20.09, part.]

48.20.112 Standard provision No. 9—Time of payment of claims.

There shall be a provision as follows:

TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof. [1951 c 229 § 12. Prior: (i) 1947 c 79 § .20.13; Rem. Supp. 1947 § 45.20.13. (ii) 1947 c 79 § .20.14; Rem. Supp. 1947 § 45.20.14.]

48.20.122 Standard provision No. 10—Payment of claims.

(1) There shall be a provision as follows:

PAYMENT OF CLAIMS: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(2) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. (insert an amount which shall not exceed \$1000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, med-

ical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person." [1951 c 229 § 13. Prior: 1947 c 79 § .20.15; Rem. Supp. 1947 § 45.20.15.]

Proceeds of disability policy are exempt from creditors: RCW 48.18.400.

48.20.132 Standard provision No. 11—Physical examination and autopsy. There shall be a provision as follows:

PHYSICAL EXAMINATIONS AND AUTOPSY: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law. [1951 c 229 § 14. Prior: 1947 c 79 § .20.12; Rem. Supp. 1947 § 45.20.12.]

48.20.142 Standard provision No. 12—Legal actions. There shall be a provision as follows:

LEGAL ACTIONS: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished. [1951 c 229 § 15. Prior: 1947 c 79 § .20.18; Rem. Supp. 1947 § 45.20.18.]

48.20.152 Standard provision No. 13—Change of beneficiary. There shall be a provision as follows:

CHANGE OF BENEFICIARY: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.) [1951 c 229 § 16. Prior: 1947 c 79 § .20.17; Rem. Supp. 1947 § 45.20.17.]

48.20.162 Optional standard provisions. Except as provided in RCW 48.18.130, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in RCW 48.20.172 to *48.20.272, inclusive, unless such provisions are in the words in which the same appear in the applicable section; except, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the insurer's option, by such appropriate individual or group caption or subcaption as the commissioner may approve. [1951 c 229 § 17. Prior: 1947 c 79 § .20.20; Rem. Supp. 1947 § 45.20.20.]

(2004 Ed.)

*Reviser's note: RCW 48.20.272 was repealed by 2004 c 112 § 6.

48.20.172 Optional standard provision No. 14—Change of occupation. There may be a provision as follows:

CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation. [1951 c 229 § 18.]

48.20.192 Optional standard provision No. 15—Other insurance in this insurer. There may be a provision as follows:

OTHER INSURANCE IN THIS INSURER: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$. (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies. [1951 c 229 § 20. Prior: 1947 c 79 § .20.24; Rem. Supp. 1947 § 45.20.24.]

48.20.202 Optional standard provision No. 16—Insurance with other insurers (Provision of service or expense incurred basis). (1) There may be a provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commence-

ment of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in RCW 48.20.212, there shall be added to the caption of the foregoing provision the phrase ". . . . expense incurred benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage." [1987 c 185 § 26; 1951 c 229 § 21. Prior: 1947 c 79 § .20.22; Rem. Supp. 1947 § 45.20.22.]

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

48.20.212 Optional standard provision No. 17—Insurance with other insurers. (1) There may be a provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in RCW

48.20.202, there shall be added to the caption of the foregoing provision the phrase ". . . . other benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage." [1987 c 185 § 27; 1951 c 229 § 22. Prior: 1947 c 79 § .20.22; Rem. Supp. 1947 § 45.20.22.]

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

48.20.222 Optional standard provision No. 18—Relation of earnings to insurance. (1) There may be a provision as follows:

RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age 50 or, (b) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United

States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations. [1987 c 185 § 28; 1951 c 229 § 23.]

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

48.20.232 Optional standard provision No. 19—Unpaid premium. There may be a provision as follows:

UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom. [1951 c 229 § 24. Prior: 1947 c 79 § .20.23; Rem. Supp. 1947 § 45.20.23.]

48.20.242 Optional standard provision No. 20—Cancellation. There may be a provision as follows:

CANCELLATION: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation. [1951 c 229 § 25. Prior: 1947 c 79 § .20.21; Rem. Supp. 1947 § 45.20.21.]

48.20.252 Optional standard provision No. 21—Conformity with state statutes. There may be a provision as follows:

CONFORMITY WITH STATE STATUTES: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes. [1951 c 229 § 26.]

48.20.262 Optional standard provision No. 22—Illegal occupation. There may be a provision as follows:

ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation. [1951 c 229 § 27. Prior: 1947 c 79 § .20.26; Rem. Supp. 1947 § 45.20.26.]

(2004 Ed.)

48.20.282 Order of certain policy provisions. The provisions which are the subject of RCW 48.20.042 to *48.20.272, inclusive, or any corresponding provisions which are used in lieu thereof in accordance with such sections, shall be printed in the consecutive order of the provisions in such sections or, at the insurer's option, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued. [1951 c 229 § 29.]

*Reviser's note: RCW 48.20.272 was repealed by 2004 c 112 § 6.

48.20.292 Third party ownership. The word "insured," as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein. [1951 c 229 § 30.]

Insurable interest defined, personal insurance, nonprofit organizations:
RCW 48.18.030.

48.20.302 Requirements of other jurisdictions. (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or to the beneficiary than the provisions of this chapter and which is prescribed or required by the laws of the state under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country. [1951 c 229 § 31.]

Domestic insurer may transact insurance in other state as permitted by laws thereof: RCW 48.07.140.

48.20.312 Age limit. If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy. [1951 c 229 § 32. Prior: 1947 c 79 § .20.25; Rem. Supp. 1947 § 45.20.25.]

48.20.322 Effective date of standard provision and certain other sections—Five year period. The provisions contained in RCW 48.20.002 to 48.20.322, inclusive, shall take effect on September 1, 1951. A policy, rider or endorsement, which could have been lawfully used or delivered or issued for delivery to any person in this state immediately

before such effective date may be used or delivered or issued for delivery to any such person during five years after such effective date. [1951 c 229 § 33.]

48.20.340 "Family expense disability insurance" defined. (1) Family expense disability insurance is that covering members of any one family including one or both spouses and dependents provided under a master policy issued to the head of the family.

(2) Any authorized disability insurer may issue family expense disability insurance.

(3) A disability policy providing such family expense coverage, in addition to other provisions required to be contained in disability policies under this chapter, shall contain the following provisions:

(a) A provision that the policy and the application of the head of the family shall constitute the entire contract between the parties.

(b) A provision that to the family group originally insured shall, on notice to the insurer, be added from time to time all new members of the family as they become eligible for insurance in such family group, and on the payment of such additional premium as may be required therefor. [1961 c 194 § 5; 1947 c 79 § .20.34; Rem. Supp. 1947 § 45.20.34.]

48.20.350 "Franchise plan" defined. (1) Disability insurance on a franchise plan is that issued to

(a) five or more employees of a common employer, or to

(b) ten or more members of any bona fide trade or professional association or labor union, which association or union was formed and exists for purposes other than that of obtaining insurance, and under which such employees or members, with or without their dependents, are issued individual policies which may vary as to amounts and kinds of coverage as applied for, under an arrangement whereby the premiums on the policies are to be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association, or by some designated employee or officer of the association acting on behalf of the employer or association members.

(2) An insurer may charge different rates, provide different benefits, or employ different underwriting procedure for individuals insured under a franchise plan, if such rates, benefits, or procedures as used do not discriminate as between franchise plans, and do not discriminate unfairly as between individuals insured under franchise plans and individuals otherwise insured under similar policies. [1947 c 79 § .20.35; Rem. Supp. 1947 § 45.20.35.]

48.20.360 Extended disability benefit. A disability insurance contract which provides a reasonable amount of disability indemnity for both accidental injuries and sickness, other than a contract of group or blanket insurance, may provide a benefit in amount not exceeding two hundred dollars payable in event of death from any causes. Such benefit shall be deemed to constitute the payment of disability benefits beyond the period for which otherwise payable, and shall not be deemed to constitute life insurance. [1947 c 79 § .20.36; Rem. Supp. 1947 § 45.20.36.]

48.20.380 Incontestability after reinstatement. The reinstatement of any policy of noncancellable disability insurance hereafter delivered or issued for delivery in this state shall be contestable only on account of fraud or misrepresentation of facts material to the reinstatement and only for the same period following reinstatement as is provided in the policy with respect to the contestability thereof after the original issuance of the policy. [1947 c 79 § .20.38; Rem. Supp. 1947 § 45.20.38.]

48.20.385 When injury caused by intoxication or use of narcotics. An insurer may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the insured's being intoxicated or under the influence of a narcotic. [2004 c 112 § 2.]

Finding—2004 c 112: "The legislature finds that an alcohol or drug-related injury that requires treatment in an emergency department can be a critical moment in the life of a person with a substance abuse problem. Studies have demonstrated that appropriate interventions by hospital staff at these times can reduce substance abuse and lower future health care costs. The perception among health care providers that they may be penalized by insurers for conducting these interventions prevents many of them from performing interventions which can make all the difference to a person at the crossroads of a substance abuse problem." [2004 c 112 § 1.]

Application—2004 c 112: "This act applies to all contracts issued or renewed on or after June 10, 2004." [2004 c 112 § 7.]

48.20.390 Chiropody. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any medical or surgical service performed by a holder of a license issued pursuant to chapter 18.22 RCW provided that (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW. [1963 c 87 § 1.]

Application—1963 c 87: "This act shall apply to all contracts issued on or after the effective date of this act." [1963 c 87 § 3.]

48.20.391 Diabetes coverage. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, non-insulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All disability insurance contracts providing health care services, delivered or issued for delivery in this state and issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For disability insurance contracts that include pharmacy services, appropriate and medically necessary equip-

ment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all disability insurance contracts providing health care services, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the insurer from restricting patients to seeing only health care providers who have signed participating provider agreements with the insurer or an insuring entity under contract with the insurer.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The insurer need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plan that provides benefits identical to the schedule of services covered by the basic health plan, as required by RCW 48.20.028. [1997 c 276 § 2.]

Effective date—1997 c 276: See note following RCW 41.05.185.

48.20.393 Mammograms—Insurance coverage.

Each disability insurance policy issued or renewed after January 1, 1990, that provides coverage for hospital or medical expenses shall provide coverage for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of an insurer to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 728; 1989 c 338 § 1.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

(2004 Ed.)

48.20.395 Reconstructive breast surgery. (1) Any disability insurance contract providing hospital and medical expenses and health care services delivered or issued in this state after July 24, 1983, shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Any disability insurance contract providing hospital and medical expenses and health care services delivered or issued in this state after January 1, 1986, shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast has been performed. [1985 c 54 § 5; 1983 c 113 § 1.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.20.397 Mastectomy, lumpectomy. No person engaged in the business of insurance under this chapter may refuse to issue any contract of insurance or cancel or decline to renew the contract solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 1.]

Effective date—1985 c 54: "This act shall take effect January 1, 1986." [1985 c 54 § 9.]

48.20.410 Optometry. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any eye care service rendered by a holder of a license issued pursuant to chapter 18.53 RCW, provided, that (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1965 c 149 § 2.]

Construction—1965 c 149: "Sections 1 through 3 of this act shall not apply to contracts in force prior to the effective date of this 1965 act, nor to any renewal of such contracts where there has been no change in any provisions thereof." [1965 c 149 § 4.]

48.20.411 Registered nurses or advanced registered nurses. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license for registered nursing practice or advanced registered nursing practice issued pursuant to chapter 18.79 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1994 sp.s. c 9 § 729; 1973 1st ex.s. c 188 § 3.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.20.412 Chiropractic. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license issued pursuant to chapter 18.25 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1971 ex.s. c 13 § 1.]

48.20.414 Psychological services. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any psychological service rendered by a holder of a license issued pursuant to chapter 18.83 RCW: PROVIDED, That (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1971 ex.s. c 197 § 1.]

Application—1971 ex.s. c 197: "Sections 1 and 2 of this act shall not apply to any contract in force prior to the effective date of this 1971 act, nor to any renewal of such contract where there has been no change in any provision thereof." [1971 ex.s. c 197 § 3.]

48.20.416 Dentistry. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license issued pursuant to chapter 18.32 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service has [had] been performed by a holder of a license issued [pursuant] to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1974 ex.s. c 42 § 1.]

48.20.418 Denturist services. Notwithstanding any provision of any disability insurance contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 21 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.20.420 Dependent child coverage—Continuation for incapacity. Any disability insurance contract providing health care services, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract, shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer by the subscriber within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1985 c 264 § 10; 1969 ex.s. c 128 § 3.]

48.20.430 Dependent child coverage—From moment of birth—Congenital anomalies—Notification of birth. (1) Any disability insurance contract providing hospital and medical expenses and health care services, delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for dependent children of the insured, shall provide coverage for newborn infants of the insured from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of birth. This subsection applies to policies issued or renewed on or after January 1, 1984. [1983 1st ex.s. c 32 § 18; 1974 ex.s. c 139 § 1.]

48.20.450 Standardization and simplification of terms and coverages—Disclosure requirements. The commissioner shall issue regulations to establish specific standards, including standards of full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of individual policies of disability insurance which shall be in addition to and in accordance with applicable laws of this state, including RCW 48.20.450 through 48.20.480, which may cover but shall not be limited to:

- (1) Terms of renewability;
- (2) Initial and subsequent conditions of eligibility;
- (3) Nonduplication of coverage provisions;
- (4) Coverage of dependents;
- (5) Preexisting conditions;
- (6) Termination of insurance;
- (7) Probationary periods;
- (8) Limitations;
- (9) Exceptions;
- (10) Reductions;
- (11) Elimination periods;
- (12) Requirements for replacement;

(13) Recurrent conditions; and

(14) The definition of terms including but not limited to the following: Hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable, and noncancellable. [1985 c 264 § 11; 1975 1st ex.s. c 266 § 16.]

Purpose—1975 1st ex.s. c 266: "The purpose of *sections 14 through 18 of this 1975 amendatory act is to provide reasonable standardization and simplification of terms and coverages of individual disability insurance policies to facilitate public understanding and comparison, to eliminate provisions contained in individual disability insurance policies which may be misleading or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of disability coverages." [1975 1st ex.s. c 266 § 15.]

***Reviser's note:** During the course of passage of 1975 1st ex.s. c 266 [Substitute House Bill No. 198], the section numbering was changed, but the internal references were not changed accordingly. Thus the reference "sections 14 through 18 of this 1975 amendatory act" appears to be erroneous. Reference to "sections 15 through 19," codified herein as this section and RCW 48.20.450 through 48.20.480, was apparently intended.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.20.460 Standardization and simplification—Minimum standards for benefits and coverages. (1) The commissioner shall issue regulations to establish minimum standards for benefits under each of the following categories of coverage in individual policies, other than conversion policies issued pursuant to a contractual conversion privilege under a group policy, of disability insurance:

- (a) Basic hospital expense coverage;
- (b) Basic medical-surgical expense coverage;
- (c) Hospital confinement indemnity coverage;
- (d) Major medical expense coverage;
- (e) Disability income protection coverage;
- (f) Accident only coverage;
- (g) Specified disease or specified accident coverage;
- (h) Medicare supplemental coverage; and
- (i) Limited benefit coverage.

(2) Nothing in this section shall preclude the issuance of any policy which combines two or more of the categories of coverage enumerated in items (a) through (f) of subsection (1) of this section.

(3) No policy shall be delivered or issued for delivery in this state which does not meet the prescribed minimum standards for the categories of coverage listed in items (a) through (i) of subsection (1) of this section, unless the commissioner finds such policy will be in the public interest and such policy meets the requirements set forth in RCW 48.18.110.

(4) The commissioner shall prescribe the method of identification of policies based upon coverages provided. [1981 c 339 § 19; 1975 1st ex.s. c 266 § 17.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.20.470 Standardization and simplification—Outline of coverage—Format and contents. (1) No policy of individual disability insurance shall be delivered or issued for delivery in this state unless an outline of coverage described in subsection (2) of this section is furnished to the applicant in accord with such rules or regulations as the commissioner shall prescribe.

(2) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1) of this section. "Format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(a) A statement identifying the applicable category or categories of coverage provided by the policy as prescribed in RCW 48.20.450;

(b) A description of the principal benefits and coverage provided in the policy;

(c) A statement of the exceptions, reductions and limitations contained in the policy;

(d) A statement of the renewal provisions including any reservation by the insurer of a right to change premiums; and

(e) A statement that the outline is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions. [1985 c 264 § 12; 1975 1st ex.s. c 266 § 18.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.20.480 Standardization and simplification—Simplified application form—Coverage of loss from preexisting health condition. Notwithstanding the provisions of RCW 48.20.052, if an insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history, the policy must cover any loss occurring after twelve months from any preexisting condition not specifically excluded from coverage by terms of the policy, and, except as so provided, the policy shall not include wording that would permit a defense based upon preexisting conditions. [1975 1st ex.s. c 266 § 19.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.20.490 Continuation of coverage by former spouse and dependents. Every policy of disability insurance issued, amended, or renewed after June 12, 1980, for an individual and his/her dependents shall contain provisions to assure that the covered spouse and/or dependents, in the event that any cease to be a qualified family member by reason of termination of marriage or death of the principal insured, shall have the right to continue the policy coverage without a physical examination, statement of health, or other proof of insurability. [1980 c 10 § 1.]

48.20.500 Coverage for adopted children. (1) Any disability insurance contract providing hospital and medical expenses and health care services, delivered or issued for delivery in this state, which provides coverage for dependent children, as defined in the contract of the insured, shall cover adoptive children placed with the insured on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the insurer. The

notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 2.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.20.510 Cancellation of rider. Upon application by an insured, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the insured during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the insured from that condition, such agreement not to be unreasonably withheld. The option of the insured to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 1.]

48.20.520 Phenylketonuria. (1) The legislature finds that:

(a) Phenylketonuria is a rare inherited genetic disorder.

(b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.

(c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.

(d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.

(e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any disability insurance contract delivered or issued for delivery or renewed in this state on or after September 1, 1988, that insures for hospital or medical expenses shall provide coverage for the formulas necessary for the treatment of phenylketonuria. [1988 c 173 § 1.]

48.20.525 Prescriptions—Preapproval of individual claims—Subsequent rejection prohibited—Written record required. Disability insurance companies who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim. [1993 c 253 § 2.]

Findings—1993 c 253: "The legislature finds that many health care insurance entities are initially approving claims as eligible under an identified program, over the telephone, but denying those same claims when they are submitted for payment. The legislature finds this to be an untenable situation for the providers." [1993 c 253 § 1.]

Effective date—1993 c 253: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 253 § 6.]

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48.20.530 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department of health may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs to residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [1991 c 87 § 7.]

Effective date—1991 c 87: See note following RCW 18.64.350.

Chapter 48.21 RCW

GROUP AND BLANKET DISABILITY INSURANCE

Sections

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48.21.010 "Group disability insurance" defined.

Group disability insurance is that form of disability insurance, including stop loss insurance as defined in RCW 48.11.030, provided by a master policy issued to an employer, to a trustee appointed by an employer or employers, or to an association of employers formed for purposes other than obtaining such insurance, covering, with or without their dependents, the employees, or specified categories of the employees, of such employers or their subsidiaries or affiliates, or issued to a labor union, or to an association of employees formed for purposes other than obtaining such insurance, covering, with or without their dependents, the members, or specified categories of the members, of the labor union or association, or issued pursuant to RCW 48.21.030. Group disability insurance shall also include such other groups as qualify for group life insurance under the provisions of this code. [1992 c 226 § 2; 1949 c 190 § 27; 1947 c 79 § .21.01; Rem. Supp. 1949 § 45.21.01.]

Application—1992 c 226: See note following RCW 48.11.030.

48.21.015 "Group stop loss insurance" defined for the purpose of exemption—Scope of application. Group stop loss insurance is exempt from all sections of this chapter and chapter 48.32A RCW except for RCW 48.21.010 and this section. For the purpose of this exemption, group stop loss is further defined as follows:

(1) The policy must be issued to and insure the employer, the trustee or other sponsor of the plan, or the plan itself, but not the employees, members, or participants;

(2) Payment by the insurer must be made to the employer, the trustee, or other sponsor of the plan or the plan itself, but not to the employees, members, participants, or health care providers;

(3) The policy must contain a provision that establishes an aggregate attaching point or retention that is at the minimum one hundred twenty percent of the expected claims; and

(4) The policy may provide for an individual attaching point or retention that is not less than five percent of the expected claims or one hundred thousand dollars, whichever is less. [2000 c 80 § 8; 1992 c 226 § 3.]

Application—1992 c 226: See note following RCW 48.11.030.

48.21.020 "Employees," "employer" defined. The term "employees" as used in this chapter shall be deemed to include as employees of a single employer, the compensated officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. The term "employer" as used in this chapter shall be deemed to include any municipal corporation or governmental unit, agency or department thereof as well as private individuals, firms, corporations and other persons. [1947 c 79 § .21.02; Rem. Supp. 1947 § 45.21.02.]

48.21.030 Health care groups. A policy of group disability insurance may be issued to a corporation, as policyholder, existing primarily for the purpose of assisting individuals who are its subscribers in securing medical, hospital, dental, and other health care services for themselves and their dependents, covering all and not less than five hundred such subscribers and dependents, with respect only to medical, hospital, dental, and other health care services. [1947 c 79 § .21.03; Rem. Supp. 1947 § 45.21.03.]

48.21.040 "Blanket disability insurance" defined. (1) Any policy or contract of disability insurance which conforms with the description and complies with the requirements contained in one of the following six paragraphs shall be deemed a blanket disability insurance policy:

(a) A policy issued to any common carrier of passengers, which carrier shall be deemed the policyholder, covering a group defined as all persons who may become such passengers, and whereby such passengers shall be insured against loss or damage resulting from death or bodily injury either while, or as a result of, being such passengers.

(b) A policy issued in the name of any volunteer fire department, first aid or ambulance squad or volunteer police organization, which shall be deemed the policyholder, and covering all the members of any such organization against loss from accidents resulting from hazards incidental to duties in connection with such organizations.

(c) A policy issued in the name of any established organization whether incorporated or not, having community recognition and operated for the welfare of the community and its members and not for profit, which shall be deemed the policyholder, and covering all volunteer workers who serve without pecuniary compensation and the members of the

organization, against loss from accidents occurring while engaged in the actual performance of duties on behalf of such organization or in the activities thereof.

(d) A policy issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, insuring such employees against death or bodily injury resulting while, or from, being exposed to such exceptional hazards.

(e) A policy covering students or employees issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.

(f) A policy or contract issued to any other substantially similar group, which, in the commissioner's discretion, may be subject to the insurance of a blanket disability policy or contract.

(2) Nothing contained in this section shall be deemed to affect the liability of policyholders for the death of, or injury to, any such members of such group.

(3) Individual applications shall not be required from individuals covered under a blanket disability insurance contract. [1959 c 225 § 7; 1947 c 79 § .21.04; Rem. Supp. 1947 § 45.21.04.]

48.21.045 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers—Definitions. (1)(a) An insurer offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude an insurer from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. An insurer offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142, 48.21.144, 48.21.146, 48.21.160 through 48.21.197, 48.21.200, 48.21.220, 48.21.225, 48.21.230, 48.21.235, 48.21.240, 48.21.244, 48.21.250, 48.21.300, 48.21.310, or 48.21.320.

(2) Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all small groups purchasing coverage. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater

than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by an insurer in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) An insurer shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) An insurer may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) An insurer must offer coverage to all eligible employees of a small employer and their dependents. An insurer may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. An insurer may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(7) As used in this section, "health benefit plan," "small employer," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005. [2004 c 244 § 1; 1995 c 265 § 14; 1990 c 187 § 2.]

Application—2004 c 244: "Sections 1 through 15 of this act apply to all small group health benefit plans issued or renewed on or after June 10, 2004." [2004 c 244 § 17.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—1990 c 187: "The legislature finds that the rising cost of comprehensive group health coverage is exceeding the affordability of many small businesses and their employees. The legislature further finds that certain public policies have an adverse impact on the cost of such coverage. It is therefore the intent of the legislature to reduce costs by authorizing the development of basic hospital and medical coverage for small groups." [1990 c 187 § 1.]

Severability—1990 c 187: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 187 § 6.]

48.21.047 Requirements for plans offered to small employers—Definitions. (1) No insurer shall offer any

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health benefit plan to any small employer without complying with the provisions of *RCW 48.21.045(5).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care shall not be considered small employers and such plans shall not be subject to the provisions of *RCW 48.21.045(5).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [1995 c 265 § 22.]

***Reviser's note:** This reference was inadvertently changed during the bill drafting process. The correct reference should be RCW 48.21.045(3).

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.21.050 Standard provisions required. Every policy of group or blanket disability insurance shall contain in substance the provisions as set forth in RCW 48.21.060 to 48.21.090, inclusive, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder. No such policy of group or blanket disability insurance shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought upon the policy, which in the opinion of the commissioner is less favorable to the individuals insured than would be permitted by the standard provisions required for individual disability insurance policies. [1947 c 79 § .21.05; Rem. Supp. 1947 § 45.21.05.]

48.21.060 The contract—Representations. There shall be a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued; that all statements made by the policyholder or by the individuals insured shall in the absence of fraud be deemed representations and not warranties, and that no statement made by any individual insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such individual or to his beneficiary, if any. [1947 c 79 § .21.06; Rem. Supp. 1947 § 45.21.06.]

48.21.070 Payment of premiums. There shall be a provision that all premiums due under the policy shall be remitted by the employer or employers of the persons insured, by the policyholder, or by some other designated person acting on behalf of the association or group insured, to the insurer on or before the due date thereof with such period of grace as may be specified therein. [1947 c 79 § .21.07; Rem. Supp. 1947 § 45.21.07.]

48.21.075 Payment of premiums by employee in event of suspension of compensation due to labor dispute.

Any employee whose compensation includes group disability or blanket disability insurance providing health care services, the premiums for which are paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the premiums as they become due directly to the policyholder whenever the employee's compensation is suspended or terminated directly or indirectly

the result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the policy provides. During that period of time the policy may not be altered or changed. Nothing in this section shall be deemed to impair the right of the insurer to make normal decreases or increases of the premium rate upon expiration and renewal of the policy, in accordance with the provisions of the policy. Thereafter, if such insurance coverage is no longer available, then the employee shall be given the opportunity to purchase an individual policy at a rate consistent with rates filed by the insurer with the commissioner. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the policyholder in writing, by mail addressed to the address last on record with the policyholder, that the employee may pay the premiums to the policyholder as they become due as provided in this section.

Payment of the premiums must be made when due or the insurance coverage may be terminated by the insurer.

The provisions of any insurance policy contrary to provisions of this section are void and unenforceable after May 29, 1975. [1975 1st ex.s. c 117 § 1.]

Severability—1975 1st ex.s. c 117: "If any provision of this 1975 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 117 § 4.]

48.21.080 Certificates of coverage. In group disability insurance policies there shall be a provision that the insurer shall issue to the employer, the policyholder, or other person or association in whose name such policy is issued, for delivery to each insured employee or member, a certificate setting forth in summary form a statement of the essential features of the insurance coverage, and to whom the benefits thereunder are payable described by name, relationship, or reference to the insurance records of the policyholder or insurer. If family members are insured, only one certificate need be issued for each family. This section shall not apply to blanket disability insurance policies. [1961 c 194 § 6; 1947 c 79 § .21.08; Rem. Supp. 1947 § 45.21.08.]

48.21.090 Age limitations. There shall be a provision specifying the ages, if any there be, to which the insurance provided therein shall be limited; and the ages, if any there be, for which additional restrictions are placed on benefits, and the additional restrictions placed on the benefits at such ages. [1947 c 79 § .21.09; Rem. Supp. 1947 § 45.21.09.]

48.21.100 Examination and autopsy. There may be a provision that the insurer shall have the right and opportunity to examine the person of the insured employee, member or dependent when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law. [1947 c 79 § .21.10; Rem. Supp. 1947 § 45.21.10.]

48.21.110 Payment of benefits. The benefits payable under any policy or contract of group or blanket disability insurance shall be payable to the employee or other insured member of the group or to the beneficiary designated by him,

other than the policyholder, employer or the association or any officer thereof as such, subject to provisions of the policy in the event there is no designated beneficiary as to all or any part of any sum payable at the death of the individual insured.

The policy may provide that any hospital, medical, or surgical benefits thereunder may be made payable jointly to the insured employee or member and the person furnishing such hospital, medical, or surgical services. [1955 c 303 § 17; 1947 c 79 § .21.11; Rem. Supp. 1947 § 45.21.11.]

48.21.120 Readjustment of premiums—Dividends.

Any contract of group disability insurance may provide for the readjustment of the rate of premium based on the experience thereunder at the end of the first year or of any subsequent year of insurance thereunder, and such readjustment may be made retroactive only for such policy year. Any refund under any plan for readjustment of the rate of premium based on the experience under group policies heretofore or hereafter issued, and any dividend paid under such policies may be used to reduce the employer's share of the cost of the coverage, except that if the aggregate refunds or dividends under such group policy and any other group policy or contract issued to the policyholder exceed the aggregate contributions of the employer toward the cost of the coverages, such excess shall be applied by the policyholder for the sole benefit of insured employees. [1947 c 79 § .21.12; Rem. Supp. 1947 § 45.21.12.]

48.21.125 When injury caused by intoxication or use of narcotics. An insurer may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the insured's being intoxicated or under the influence of a narcotic. [2004 c 112 § 3.]

Finding—Application—2004 c 112: See notes following RCW 48.20.385.

48.21.130 Chiropody. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any medical or surgical service performed by a holder of a license issued pursuant to chapter 18.22 RCW provided that (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW. [1963 c 87 § 2.]

Application—1963 c 87: Nonapplicability to prior contracts and certain renewals, see note following RCW 48.20.390.

48.21.140 Optometry. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any eye care service rendered by a holder of a license issued pursuant to chapter 18.53 RCW, provided, that (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1965 c 149 § 3.]

Construction—1965 c 149: Nonapplicability to prior contracts and certain renewals, see note following RCW 48.20.410.

48.21.141 Registered nurses or advanced registered nurses. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license for registered nursing practice or advanced registered nursing practice issued pursuant to chapter 18.79 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1994 sp.s. c 9 § 730; 1973 1st ex.s. c 188 § 4.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.21.142 Chiropractic. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.25 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1971 ex.s. c 13 § 2.]

48.21.143 Diabetes coverage—Definitions. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, non-insulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All group disability insurance contracts and blanket disability insurance contracts providing health care services, issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For group disability insurance contracts and blanket disability insurance contracts that include coverage for phar-

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macy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all group disability insurance contracts and blanket disability insurance contracts providing health care services, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the insurer from restricting patients to seeing only health care providers who have signed participating provider agreements with the insurer or an insuring entity under contract with the insurer.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The insurer need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plan that provides benefits identical to the schedule of services covered by the basic health plan. [2004 c 244 § 10; 1997 c 276 § 3.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—1997 c 276: See note following RCW 41.05.185.

48.21.144 Psychological services. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any psychological service rendered by a holder of a license issued pursuant to chapter 18.83 RCW: PROVIDED, That (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1971 ex.s. c 197 § 2.]

Application—1971 ex.s. c 197: See note following RCW 48.20.414.

48.21.146 Dentistry. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.32 RCW if (1) the service performed was within the law-

ful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1974 ex.s. c 42 § 2.]

48.21.148 Denturist services. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 22 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.21.150 Dependent child coverage—Continuation for incapacity. Any group disability insurance contract or blanket disability insurance contract, providing health care services, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer, but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1977 ex.s. c 80 § 32; 1969 ex.s. c 128 § 4.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

48.21.155 Dependent child coverage—From moment of birth—Congenital anomalies—Notification of birth. (1) Any group disability insurance contract except blanket disability insurance contract, providing hospital and medical expenses and health care services, renewed, delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for the dependent children of persons in the insured group, shall provide coverage for newborn infant children of persons in the insured group from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of birth. This subsection applies to policies issued or renewed on or after January 1, 1984. [1983 1st ex.s. c 32 § 20; 1974 ex.s. c 139 § 2.]

48.21.160 Chemical dependency benefits—Legislative declaration. The legislature recognizes that chemical dependency is a disease and, as such, warrants the same attention from the health care industry as other similarly serious diseases warrant; the legislature further recognizes that health insurance contracts and contracts for health care services include inconsistent provisions providing benefits for the treatment of chemical dependency. In order to assist the many citizens of this state who suffer from the disease of chemical dependency, and who are presently effectively precluded from obtaining adequate coverage for medical assistance under the terms of their health insurance contract or health care service contract, the legislature hereby declares that provisions providing benefits for the treatment of chemical dependency shall be included in new contracts and that this section, RCW 48.21.180, 48.21.190, 48.44.240, 48.46.350, and RCW 48.21.195, 48.44.245, and 48.46.355 are necessary for the protection of the public health and safety. Nothing in this section, RCW 48.21.180, 48.21.190, 48.44.240, 48.46.350, and RCW 48.21.195, 48.44.245, and 48.46.355 shall be construed to relieve any person of any civil or criminal liability for any act or omission that is the result of a chemical dependency or to grant any person with a chemical dependency any special right, privilege, or status under the law against discrimination, chapter 49.60 RCW. [1987 c 458 § 13; 1974 ex.s. c 119 § 1.]

Effective date—1987 c 458 §§ 13-20: "Sections 13 through 20 of this act shall take effect on January 1, 1988." [1987 c 458 § 24.]

Severability—1987 c 458: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 458 § 25.]

48.21.180 Chemical dependency benefits—Contracts issued or renewed after January 1, 1988. Each group disability insurance contract which is delivered or issued for delivery or renewed, on or after January 1, 1988, and which insures for hospital or medical care must contain provisions providing benefits for the treatment of chemical dependency rendered to the insured by a provider which is an "approved treatment program" under RCW 70.96A.020(3). [2003 c 248 § 9; 1990 1st ex.s. c 3 § 7; 1987 c 458 § 14; 1974 ex.s. c 119 § 3.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

48.21.190 Chemical dependency benefits—RCW 48.21.160 through 48.21.190, 48.44.240 inapplicable, when. RCW 48.21.160 through 48.21.190 and 48.44.240 as now or hereafter amended shall not apply to the renewal of a contract in force prior to the pertinent date provided for such contract under RCW 48.21.160 through 48.21.190 and

48.44.240 as now or hereafter amended where there exists a right of renewal on the part of the insured or subscriber without any change in any provision of the contract: PROVIDED FURTHER, That RCW 48.21.160 through 48.21.190 and 48.44.240 as now or hereafter amended shall not apply to contracts which provide only accident coverage, nor to any contract written as supplemental coverage to any federal or state programs of health care including, but not limited to, Title XVIII health insurance for the aged (commonly referred to as Medicare, Parts A and B), and amendments thereto. [1975 1st ex.s. c 266 § 10; 1974 ex.s. c 119 § 5.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.21.195 "Chemical dependency" defined. For the purposes of RCW 48.21.160 and 48.21.180 "chemical dependency" means an illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. [1987 c 458 § 15.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

48.21.197 Chemical dependency benefits—Rules. By September 1, 1987, the insurance commissioner shall adopt rules governing benefits for treatment of chemical dependency under medical plans issued under chapters 48.21, 48.44, and 48.46 RCW. These rules shall recognize that many persons are dependent on both alcohol and drugs; they shall prohibit the stacking of benefits and shall require that benefits for chemical dependency be equivalent to benefits previously required for alcoholism. [1987 c 458 § 21.]

Severability—1987 c 458: See note following RCW 48.21.160.

48.21.200 Group disability, health care service contract, health maintenance agreement—Reduction or refusal of benefits on basis of other existing coverages. (1) No individual or group disability insurance policy, health care service contract, or health maintenance agreement which provides benefits for hospital, medical, or surgical expenses shall be delivered or issued for delivery in this state which contains any provision whereby the insurer, contractor, or health maintenance organization may reduce or refuse to pay such benefits otherwise payable thereunder solely on account of the existence of similar benefits provided under any disability insurance policy, health care service contract, or health maintenance agreement.

(2) No individual or group disability insurance policy, health care service contract, or health maintenance agreement providing hospital, medical or surgical expense benefits and which contains a provision for the reduction of benefits otherwise payable or available thereunder on the basis of other existing coverages, shall provide that such reduction will

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operate to reduce total benefits payable below an amount equal to one hundred percent of total allowable expenses exclusive of copayments, deductibles, and other similar cost-sharing arrangements.

(3) The commissioner shall by rule establish guidelines for the application of this section, including:

(a) The procedures by which persons covered under such policies, contracts, and agreements are to be made aware of the existence of such a provision;

(b) The benefits which may be subject to such a provision;

(c) The effect of such a provision on the benefits provided;

(d) Establishment of the order of benefit determination;

(e) Exceptions necessary to preserve policy, contract, or agreement requirements for use of particular health care facilities or providers; and

(f) Reasonable claim administration procedures to expedite claim payments and prevent duplication of payments or benefits under such a provision. [1993 c 492 § 282. Prior: 1983 c 202 § 16; 1983 c 106 § 24; 1975 1st ex.s. c 266 § 20.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservations of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.21.220 Home health care, hospice care, optional coverage required—Standards, limitations, restrictions—Rules—Medicare supplemental contracts excluded. (1) Every insurer entering into or renewing group or blanket disability insurance policies governed by this chapter shall offer optional coverage for home health care and hospice care for persons who are homebound and would otherwise require hospitalization. Such optional coverage need only be offered in conjunction with a policy that provides payment for hospitalization as a part of health care coverage.

(2) Home health care and hospice care coverage offered under subsection (1) of this section shall conform to the following standards, limitations, and restrictions in addition to those set forth in chapter 70.126 RCW:

(a) The coverage may include reasonable deductibles, coinsurance provisions, and internal maximums;

(b) The coverage should be structured to create incentives for the use of home health care and hospice care as an alternative to hospitalization;

(c) The coverage may contain provisions for utilization review and quality assurance;

(d) The coverage may require that home health agencies and hospices have written treatment plans approved by a physician licensed under chapter 18.57 or 18.71 RCW, and may require such treatment plans to be reviewed at designated intervals;

(e) The coverage shall provide benefits for, and restrict benefits to, services rendered by home health and hospice agencies licensed by the department of social and health services;

(f) Hospice care coverage shall provide benefits for terminally ill patients for an initial period of care of not less than

six months and may provide benefits for an additional six months of care in cases where the patient is facing imminent death or is entering remission if certified in writing by the attending physician;

(g) Home health care coverage shall provide benefits for a minimum of one hundred thirty health care visits per calendar year. However, a visit of any duration by an employee of a home health agency for the purpose of providing services under the plan of treatment constitutes one visit;

(h) The coverage may be structured so that services or supplies included in the primary contract are not duplicated in the optional home health and hospice coverage.

(3) The insurance commissioner shall adopt any rules necessary to implement this section.

(4) The requirements of this section shall not apply to contracts or policies governed by chapter 48.66 RCW.

(5) An insurer, as a condition of reimbursement, may require compliance with home health and hospice certification regulations established by the United States department of health and human services. [1988 c 245 § 31; 1984 c 22 § 1; 1983 c 249 § 1.]

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: "This act shall take effect July 1, 1984." [1984 c 22 § 8.]

Effective date—1983 c 249: See note following RCW 70.126.001.

Home health care, hospice care, rules: Chapter 70.126 RCW.

48.21.225 Mammograms—Insurance coverage.

Each group disability insurance policy issued or renewed after January 1, 1990, that provides coverage for hospital or medical expenses shall provide coverage for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the nursing care quality assurance commission pursuant to chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of an insurer to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 731; 1989 c 338 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

48.21.230 Reconstructive breast surgery. (1) Each group disability insurance contract issued or renewed after July 24, 1983, which insures for hospital or medical care shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Each group disability insurance contract issued or renewed after January 1, 1986, which insures for hospital or medical care shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive

reconstructive surgery on the diseased breast has been performed. [1985 c 54 § 6; 1983 c 113 § 2.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.21.235 Mastectomy, lumpectomy. No person engaged in the business of insurance under this chapter may refuse to issue any contract of insurance or cancel or decline to renew the contract solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 2.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.21.240 Mental health treatment, optional supplemental coverage—Waiver. (1) Each group insurer providing disability insurance coverage in this state for hospital or medical care under contracts which are issued, delivered, or renewed in this state on or after July 1, 1986, shall offer optional supplemental coverage for mental health treatment for the insured and the insured's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by: (a) A physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83 RCW; (c) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (d) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer, health care service contractor, or health maintenance organization providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW.

(3) The group disability insurance contract may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the insurer.

(4) This section shall not apply to a group disability insurance contract that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987. [1987 c 283 § 3; 1986 c 184 § 2; 1983 c 35 § 1.]

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Legislative intent—1986 c 184: "It is the intent of the legislature that all insurers, health care service contractors, and health maintenance organizations that provide health care coverage in the state shall offer the option of including mental health treatment in their health benefit plans. Further it is the intent of the legislature that all mental health care benefit plans shall provide reimbursement for mental health treatment by every type of provider listed as follows: Physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health agencies licensed under chapter 71.24 RCW." [1986 c 184 § 1.]

Effective date—1986 c 184: "This act shall take effect March 1, 1987." [1986 c 184 § 5.]

Severability—1986 c 184: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 184 § 6.]

Effective date—1983 c 35: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 c 35 § 5.]

Severability—1983 c 35: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 35 § 4.]

48.21.242 Mental health treatment—Waiver of pre-authorization for persons involuntarily committed. An insurer providing group disability insurance coverage for health care in this state shall waive a preauthorization requirement from the insurer before an insured or the insured's covered dependents receive mental health care and treatment rendered by a state hospital if the insured or any of the insured's covered dependents are involuntarily committed to a state hospital as defined in RCW 72.23.010. [1993 c 272 § 3.]

Savings—Severability—1993 c 272: See notes following RCW 43.20B.347.

48.21.244 Benefits for prenatal diagnosis of congenital disorders—Contracts entered into or renewed on or after January 1, 1990. On or after January 1, 1990, every group disability contract entered into or renewed that covers hospital, medical, or surgical expenses on a group basis, and which provides benefits for pregnancy, childbirth, or related medical conditions to enrollees of such groups, shall offer benefits for prenatal diagnosis of congenital disorders of the fetus by means of screening and diagnostic procedures during pregnancy to such enrollees when those services are determined to be medically necessary by the disability contractor in accord with standards set in rule by the board of health. Every group disability contractor shall communicate the availability of such coverage to all group disability contract holders and to all groups with whom they are negotiating. [1988 c 276 § 6.]

Prenatal testing—Limitation on changes to coverage: RCW 48.42.090.

48.21.250 Continuation option to be offered. Every insurer that issues policies providing group coverage for hospital or medical expense shall offer the policyholder an option to include a policy provision granting a person who becomes ineligible for coverage under the group policy, the right to continue the group benefits for a period of time and at a rate agreed upon. The policy provision shall provide that when such coverage terminates, the covered person may con-

vert to a policy as provided in RCW 48.21.260. [1984 c 190 § 2.]

Legislative intent—1984 c 190: "The legislature recognizes that when people covered by a group health insurance policy lose their group insurance benefits because they are no longer eligible, they need time to obtain a suitable form of replacement coverage or time to complete a reasonable course of medical treatment for a health condition that existed when the group benefits ended.

Spouses and dependents can lose their group insurance and may not have any other health insurance when one spouse covered under a group policy dies, obtains a divorce, or becomes unemployed. Often the cost of an individual policy prevents these persons from obtaining any other health insurance.

The intent of this act is to require insurers, health care service contractors, and health maintenance organizations to:

(1) Offer to the contract holder the option to continue health and medical benefits for employees, members, spouses, or dependents whose eligibility for coverage under a group policy, contract, or agreement is terminated; and

(2) Provide a conversion policy, contract, or agreement to employees, members, spouses, or dependents whose eligibility for coverage under a group policy, contract, or agreement is terminated." [1984 c 190 § 1.]

Application—1984 c 190 §§ 2, 5, and 8: "Sections 2, 5, and 8 of this act shall apply to any policy, contract, or agreement issued, renewed, or amended on or after January 1, 1985." [1984 c 190 § 12.]

Severability—1984 c 190: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 190 § 13.]

48.21.260 Conversion policy to be offered—Exceptions, conditions. (1) Except as otherwise provided by this section, any group disability insurance policy issued, renewed, or amended on or after January 1, 1985, that provides benefits for hospital or medical expenses shall contain a provision granting a person covered by the group policy the right to obtain a conversion policy from the insurer upon termination of the person's eligibility for coverage under the group policy.

(2) An insurer need not offer a conversion policy to:

(a) A person whose coverage under the group policy ended when the person's employment or membership was terminated for misconduct: PROVIDED, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal Medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion policy, a person must submit a written application and the first premium payment for the conversion policy not later than thirty-one days after the date the person's group coverage terminates. The conversion policy shall become effective, without lapse of coverage, immediately following termination of coverage under the group policy.

(4) If an insurer or group policyholder does not renew, cancels, or otherwise terminates the group policy, the insurer shall offer a conversion policy to any person who was cov-

ered under the terminated policy unless the person is eligible to obtain group hospital or medical expense coverage within thirty-one days after such nonrenewal, cancellation, or termination of the group policy.

(5) The insurer shall determine the premium for the conversion policy in accordance with the insurer's table of premium rates applicable to the age and class of risk of each person to be covered under the policy and the type and amount of benefits provided. [1984 c 190 § 3.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.21.270 Conversion policy—Restrictions and requirements. (1) An insurer shall not require proof of insurability as a condition for issuance of the conversion policy.

(2) A conversion policy may not contain an exclusion for preexisting conditions except to the extent that a waiting period for a preexisting condition has not been satisfied under the group policy.

(3) An insurer must offer at least three policy benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible and a lifetime benefit maximum of two hundred fifty thousand dollars per person;

(b) A comprehensive medical plan with a five hundred dollar deductible and a lifetime benefit maximum of five hundred thousand dollars per person; and

(c) A basic medical plan with a one thousand dollar deductible and a lifetime maximum of seventy-five thousand dollars per person.

(4) The insurance commissioner may revise the deductibles and lifetime benefit amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion policies.

(6) The commissioner shall adopt rules to establish specific standards for conversion policy provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms. [1984 c 190 § 4.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.21.280 Coverage for adopted children. (1) Any group disability insurance contract, except a blanket disability insurance contract, providing hospital and medical expenses and health care services, delivered or issued for delivery in this state, which provides coverage for dependent children, as defined in the contract of the insured, shall cover adoptive children placed with the insured on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 3.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.21.290 Cancellation of rider. Upon application by an insured, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the insured during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the insured from that condition, such agreement not to be unreasonably withheld. The option of the insured to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 2.]

48.21.300 Phenylketonuria. (1) The legislature finds that:

(a) Phenylketonuria is a rare inherited genetic disorder.

(b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.

(c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.

(d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.

(e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any group disability insurance contract delivered or issued for delivery or renewed in this state on or after September 1, 1988, that insures for hospital or medical expenses shall provide coverage for the formulas necessary for the treatment of phenylketonuria. [1988 c 173 § 2.]

48.21.310 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each employer-sponsored group policy for comprehensive health insurance which is entered into, or renewed, on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. Nothing in this section shall prohibit an insurer from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the insurer. Benefits shall be payable for services for the maintenance of an insured in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be payable to restore and improve function.

(4) It is the intent of this section that employers purchasing comprehensive health insurance, including the benefits required by this section, together with the insurer, retain authority to design and employ utilization and cost controls. Therefore, benefits delivered under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the employer purchasing insurance and the insurer. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available or may limit the number of services delivered as agreed by the employer purchasing insurance and the insurer. [1989 c 345 § 2.]

48.21.320 Temporomandibular joint disorders—Insurance coverage. (1) Except as provided in this section, a group disability policy entered into or renewed after December 31, 1989, shall offer optional coverage for the treatment of temporomandibular joint disorders.

(a) Insurers offering medical coverage only may limit benefits in such coverages to medical services related to treatment of temporomandibular joint disorders. Insurers offering dental coverage only may limit benefits in such coverage to dental services related to treatment of temporomandibular joint disorders. No insurer offering medical coverage only may define all temporomandibular joint disorders as purely dental in nature, and no insurer offering dental coverage only may define all temporomandibular joint disorders as purely medical in nature.

(b) Insurers offering optional temporomandibular joint disorder coverage as provided in this section may, but are not required to, offer lesser or no temporomandibular joint disorder coverage as part of their basic group disability contract.

(c) Benefits and coverage offered under this section may be subject to negotiation to promote broad flexibility in potential benefit coverage. This flexibility shall apply to services to be reimbursed, determination of treatments to be considered medically necessary, systems through which services are to be provided, including referral systems and use of other providers, and related issues.

(2) Unless otherwise directed by law, the insurance commissioner shall adopt rules, to be implemented on January 1, 1993, establishing minimum benefits, terms, definitions, conditions, limitations, and provisions for the use of reasonable deductibles and copayments.

(3) An insurer need not make the offer of coverage required by this section to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefit statutes under Title 48 RCW that does not provide coverage for temporomandibular joint disorders. [1989 c 331 § 2.]

Legislative finding—1989 c 331: "The legislature finds that:

(1) Temporomandibular joint disorders are conditions for which treatment often is not covered in medical and dental group insurance contracts;

(2) Individuals with temporomandibular joint disorders experience substantial pain and financial hardship;

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(3) Public awareness is needed concerning temporomandibular joint disorders and would be promoted by a mandated offering of temporomandibular joint disorders coverage to group purchasers; and

(4) A mandated offering of temporomandibular joint disorders coverage shall not prescribe minimum initial benefits so that the insurers and the purchasers are allowed broad flexibility in benefit design and application." [1989 c 331 § 1.]

Effective date—1989 c 331: "This act shall take effect January 1, 1990, but the insurance commissioner may immediately take such steps as are necessary to ensure that this act is fully implemented on its effective date." [1989 c 331 § 6.]

48.21.325 Prescriptions—Preapproval of individual claims—Subsequent rejection prohibited—Written record required. Group disability insurance companies who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim. [1993 c 253 § 3.]

Findings—Effective date—1993 c 253: See notes following RCW 48.20.525.

48.21.330 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [1991 c 87 § 8.]

Effective date—1991 c 87: See note following RCW 18.64.350.

Chapter 48.21A RCW

DISABILITY INSURANCE—EXTENDED HEALTH

Sections

48.21A.010 Declaration of purpose.

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- 48.21A.080 Remedies.
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Refusal to renew or cancellation of disability insurance: RCW 48.18.298, 48.18.299.

48.21A.010 Declaration of purpose. It is the purpose of this chapter to provide a means of more adequately meeting the needs of persons who are sixty-five years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended. [1965 ex.s. c 70 § 27.]

48.21A.020 Definitions. Wherever used in this chapter, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association of insurers formed for the purpose of enabling cooperative action to provide disability insurance in accordance with this chapter in this or any other state having legislation enabling the issuance of insurance of the type provided in this chapter.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this chapter. [1965 ex.s. c 70 § 28.]

48.21A.030 Insurers may join—Policyholder—Reduced benefit provision—Master group policy—Offering—Cancellation. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is sixty-five years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than one hundred percent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical

benefits to persons sixty-five years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurances described in this section shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Washington to all persons sixty-five and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled. [1965 ex.s. c 70 § 29.]

48.21A.040 Agents, brokers, and solicitors. Notwithstanding the provisions of RCW 48.17.200, any person licensed to transact disability insurance as an agent, broker or solicitor may transact extended health insurance and may be paid a commission thereon. [1965 ex.s. c 70 § 30.]

48.21A.050 Powers and duties of associations. Any association formed for the purposes of this chapter may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of RCW 48.03.010 through 48.03.070, inclusive, either separately or concurrently with examination of any of its member insurers. [1983 c 3 § 151; 1965 ex.s. c 70 § 31.]

48.21A.060 Commissioner's powers—Forms—Rates—Standard provisions—Withdrawal of approval—Federal, state benefits—Annual reports. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or thirty days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms of such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumption excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other

relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this chapter, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than ninety days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Washington, the extended health insurance benefits provided by policies issued under this chapter shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this chapter and the calendar year experience applicable to such insurance offered under this chapter, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report. [1965 ex.s. c 70 § 32.]

48.21A.070 Documents to be filed—Deceptive name or advertising. The articles of association of any association formed in accordance with this chapter, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this chapter shall not be such as to mislead or deceive the public. [1965 ex.s. c 70 § 33.]

48.21A.080 Remedies. No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance. [1965 ex.s. c 70 § 34.]

48.21A.090 Home health care, hospice care, optional coverage required—Standards, limitations, restric-

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tions—Rules—Medicare supplemental contracts excluded. (1) Every insurer entering into or renewing extended health insurance governed by this chapter shall offer optional coverage for home health care and hospice care for persons who are homebound and would otherwise require hospitalization. Such optional coverage need only be offered in conjunction with a policy that provides payment for hospitalization as a part of health care coverage.

(2) Home health care and hospice care coverage offered under subsection (1) of this section shall conform to the following standards, limitations, and restrictions in addition to those set forth in chapters 70.126 and 70.127 RCW:

(a) The coverage may include reasonable deductibles, coinsurance provisions, and internal maximums;

(b) The coverage should be structured to create incentives for the use of home health care and hospice care as an alternative to hospitalization;

(c) The coverage may contain provisions for utilization review and quality assurance;

(d) The coverage may require that home health agencies and hospices have written treatment plans approved by a physician licensed under chapter 18.57 or 18.71 RCW, and may require such treatment plans to be reviewed at designated intervals;

(e) The coverage shall provide benefits for, and restrict benefits to, services rendered by home health and hospice agencies licensed under chapter 70.127 RCW;

(f) Hospice care coverage shall provide benefits for terminally ill patients for an initial period of care of not less than six months and may provide benefits for an additional six months of care in cases where the patient is facing imminent death or is entering remission if certified in writing by the attending physician;

(g) Home health care coverage shall provide benefits for a minimum of one hundred thirty health care visits per calendar year. However, a visit of any duration by an employee of a home health agency for the purpose of providing services under the plan of treatment constitutes one visit;

(h) The coverage may be structured so that services or supplies included in the primary contract are not duplicated in the optional home health and hospice coverage.

(3) The insurance commissioner shall adopt any rules necessary to implement this section.

(4) The requirements of this section shall not apply to contracts or policies governed by chapter 48.66 RCW.

(5) An insurer, as a condition of reimbursement, may require compliance with home health and hospice certification regulations established by the United States department of health and human services. [1989 1st ex.s. c 9 § 220; 1988 c 245 § 32; 1984 c 22 § 2; 1983 c 249 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

Home health care, hospice care, rules: Chapter 70.126 RCW.

Chapter 48.22 RCW
CASUALTY INSURANCE

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Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.22.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Automobile" means a passenger car as defined in RCW 46.04.382 registered or principally garaged in this state other than:

- (a) A farm-type tractor or other self-propelled equipment designed for use principally off public roads;
- (b) A vehicle operated on rails or crawler-treads;
- (c) A vehicle located for use as a residence;
- (d) A motor home as defined in RCW 46.04.305; or
- (e) A moped as defined in RCW 46.04.304.

(2) "Bodily injury" means bodily injury, sickness, or disease, including death at any time resulting from the injury, sickness, or disease.

(3) "Income continuation benefits" means payments for the insured's loss of income from work, because of bodily injury sustained by the insured in an automobile accident, less income earned during the benefit payment period. The combined weekly payment an insured may receive under personal injury protection coverage, worker's compensation, disability insurance, or other income continuation benefits may not exceed eighty-five percent of the insured's weekly

income from work. The benefit payment period begins fourteen days after the date of the automobile accident and ends at the earliest of the following:

(a) The date on which the insured is reasonably able to perform the duties of his or her usual occupation;

(b) Fifty-four weeks from the date of the automobile accident; or

(c) The date of the insured's death.

(4) "Insured automobile" means an automobile described on the declarations page of the policy.

(5) "Insured" means:

(a) The named insured or a person who is a resident of the named insured's household and is either related to the named insured by blood, marriage, or adoption, or is the named insured's ward, foster child, or stepchild; or

(b) A person who sustains bodily injury caused by accident while: (i) Occupying or using the insured automobile with the permission of the named insured; or (ii) a pedestrian accidentally struck by the insured automobile.

(6) "Loss of services benefits" means reimbursement for payment to others, not members of the insured's household, for expenses reasonably incurred for services in lieu of those the insured would usually have performed for his or her household without compensation, provided the services are actually rendered. The maximum benefit is forty dollars per day. Reimbursement for loss of services ends the earliest of the following:

(a) The date on which the insured person is reasonably able to perform those services;

(b) Fifty-two weeks from the date of the automobile accident; or

(c) The date of the insured's death.

(7) "Medical and hospital benefits" means payments for all reasonable and necessary expenses incurred by or on behalf of the insured for injuries sustained as a result of an automobile accident for health care services provided by persons licensed under Title 18 RCW, including pharmaceuticals, prosthetic devices and eye glasses, and necessary ambulance, hospital, and professional nursing service. Medical and hospital benefits are payable for expenses incurred within three years from the date of the automobile accident.

(8) "Automobile liability insurance policy" means a policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage suffered by any person and arising out of the ownership, maintenance, or use of an insured automobile. An automobile liability policy does not include:

(a) Vendors single interest or collateral protection coverage;

(b) General liability insurance; or

(c) Excess liability insurance, commonly known as an umbrella policy, where coverage applies only as excess to an underlying automobile policy.

(9) "Named insured" means the individual named in the declarations of the policy and includes his or her spouse if a resident of the same household.

(10) "Occupying" means in or upon or entering into or alighting from.

(11) "Pedestrian" means a natural person not occupying a motor vehicle as defined in RCW 46.04.320.

(12) "Personal injury protection" means the benefits described in this section and RCW 48.22.085 through 48.22.100. Payments made under personal injury protection coverage are limited to the actual amount of loss or expense incurred. [2003 c 115 § 1; 1993 c 242 § 1.]

Severability—1993 c 242: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 242 § 7.]

Effective date—1993 c 242: "Sections 1 through 5 of this act shall take effect July 1, 1994." [1993 c 242 § 8.]

48.22.020 Assigned risk plans. The commissioner shall after consultation with the insurers licensed to write motor vehicle liability insurance in this state, approve a reasonable plan or plans for the equitable apportionment among such insurers of applicants for such insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods and, when such plan has been approved, all such insurers shall subscribe thereto and shall participate therein. Any applicant for such insurance, any person insured under such plan and any insurer affected may appeal to the commissioner from any ruling or decision of the manager or committee designated to operate such plan. [1947 c 79 § .22.02; Rem. Supp. 1947 § 45.22.02.]

Rate modifications for assigned risks: RCW 48.19.400.

48.22.030 Underinsured, hit-and-run, phantom vehicle coverage to be provided—Exceptions—Conditions—Deductibles—Information on motorcycle or motor-driven cycle coverage. (1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

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(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7)(a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

(9) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide information to prospective insureds about the coverage. [2004 c 90 § 1; 1985 c 328 § 1; 1983 c 182 § 1; 1981 c 150 § 1; 1980 c 117 § 1; 1967 c 150 § 27.]

Severability—1983 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 182 § 3.]

Effective date—1981 c 150: "This act shall take effect on September 1, 1981." [1981 c 150 § 3.]

Effective date—1980 c 117: "This act shall take effect on September 1, 1980." [1980 c 117 § 8.]

48.22.040 Underinsured motor vehicle coverage where liability insurer is insolvent—Extent of coverage—Rights of insurer upon making payment. (1) The term "underinsured motor vehicles" with reference to coverage offered under any insurance policy regulated under this chapter shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(2) An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's underinsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.

(3) In the event of payment to an insured under the coverage required by this chapter and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such insured against any person or organization legally responsible for the bodily injury, death, or property damage for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer. Whenever an insurer shall make payment under the coverage required by this section and which payment is occasioned by an insolvency, such insurer's right of recovery or reimbursement shall not include any rights against the insured of said insolvent insurer for any amounts which would have been paid by the insolvent insurer. Such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had, if the insured of the insolvent insurer had personally made the payment. [1983 c 182 § 2; 1980 c 117 § 2; 1967 ex.s. c 95 § 3.]

Severability—1983 c 182: See note following RCW 48.22.030.

Effective date—1980 c 117: See note following RCW 48.22.030.

48.22.050 Market assistance plans. The commissioner shall by regulation require insurers authorized to write casualty insurance in this state to form a market assistance plan to assist persons and other entities unable to purchase casualty insurance in an adequate amount from either the admitted market or nonadmitted market.

For the purpose of this section, a market assistance plan means a voluntary mechanism by insurers writing casualty insurance in this state in either the admitted or nonadmitted market to provide casualty insurance for a class of insurance designated in writing to the plan by the commissioner.

The bylaws and method of operation of any market assistance plan shall be approved by the commissioner prior to its operation.

A market assistance plan shall have a minimum of twenty-five insurers willing to insure risks within the class designated by the commissioner. If twenty-five insurers do not voluntarily agree to participate, the commissioner may require casualty insurers to participate in a market assistance plan as a condition of continuing to do business in this state. The commissioner shall make such a requirement to fulfill the quota of at least twenty-five insurers. The commissioner shall make his or her designation on the basis of the insurer's premium volume of casualty insurance in this state. [1986 c 305 § 906.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

48.22.060 Debt and financing coverage. Every insurer that writes collision and comprehensive coverage for loss or damage to "private passenger automobiles" or "motor homes," as those terms are defined in RCW 48.18.297 and 46.04.305, respectively, shall provide, upon the insured's request, coverage that will pay, in the event of total loss, an amount, in excess of the actual cash value of the vehicle, sufficient to satisfy any outstanding indebtedness secured by and incurred in conjunction with the financing of the purchase of a new private passenger automobile or motor home.

Nothing in this section prohibits an insurer from denying or excluding such coverage where the insured or someone acting on the insured's behalf acts in a fraudulent manner to obtain or file a claim under such coverage. [1988 c 248 § 16; 1987 c 240 § 1.]

Effective date—1987 c 240: "The effective date of this act is January 1, 1988." [1987 c 240 § 2.]

48.22.070 Longshoreman's and harbor worker's compensation coverage—Rules—Plan creation. (1) The commissioner shall adopt rules establishing a reasonable plan to insure that workers' compensation coverage as required by the United States longshore and harbor workers' compensation act, 33 U.S.C. Secs. 901 through 950, and maritime employer's liability coverage incidental to the workers' compensation coverage is available to those unable to purchase it through the normal insurance market. This plan shall require the participation of all authorized insurers writing primary or excess United States longshore and harbor workers' compensation insurance in the state of Washington and the Washington state industrial insurance fund as defined in RCW 51.08.175 which is authorized to participate in the plan and to make payments in support of the plan in accordance with this section. Any underwriting losses or surpluses incurred by the plan shall be determined by the governing committee of the plan and shall be shared by plan participants in accordance with the following ratios: The state industrial insurance fund, fifty percent; and authorized insurers writing primary or excess United States longshore and harbor workers' compensation insurance, fifty percent.

(2) The Washington state industrial insurance fund may obtain or provide reinsurance coverage for the plan created under subsection (1) of this section the terms of which shall be negotiated between the state fund and the plan. This cov-

erage shall not be obtained or provided if the commissioner determines that the premium to be charged would result in unaffordable rates for coverage provided by the plan. In considering whether excess of loss coverage premiums would result in unaffordable rates for workers' compensation coverage provided by the plan, the commissioner shall compare the resulting plan rates to those provided under any similar pool or plan of other states.

(3) An applicant for plan insurance, a person insured under the plan, or an insurer, affected by a ruling or decision of the manager or committee designated to operate the plan may appeal to the commissioner for resolution of a dispute. In adopting rules under this section, the commissioner shall require that the plan use generally accepted actuarial principles for rate making. [1997 c 110 § 1; 1993 c 177 § 1; 1992 c 209 § 2.]

Effective date—1997 c 110: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 110 § 3.]

Effective date—1993 c 177: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 177 § 4.]

Finding—Declaration—1992 c 209: "The legislature finds and declares that the continued existence of a strong and healthy maritime industry in this state is threatened by the unavailability and excessive cost of workers' compensation coverage required by the United States longshoreman's and harbor worker's compensation act. The legislature, therefore, acting under its authority to protect industry and employment in this state hereby establishes a commission to devise and implement both a near and long-term solution to this problem, for the purpose of maintaining employment for Washington workers and a vigorous maritime industry." [1992 c 209 § 1.]

48.22.080 Health care liability risk management training program. Effective July 1, 1994, a casualty insurer's issuance of a new medical malpractice policy or renewal of an existing medical malpractice policy to a physician or other independent health care practitioner shall be conditioned upon that practitioner's participation in, and completion of, an insurer-designed health care liability risk management training program once every three years. Completion of said training program during 1994 shall satisfy the first three-year training requirement. The risk management training shall provide information related to avoiding adverse health outcomes resulting from substandard practice and minimizing damages associated with the adverse health outcomes that do occur. For purposes of this section, "independent health care practitioners" means those health care practitioner licensing classifications designated by the department of health in rule pursuant to *RCW 18.130.330. [1994 c 102 § 2; 1993 c 492 § 413.]

***Reviser's note:** RCW 18.130.330 was repealed by 1995 c 265 § 27, effective July 1, 1995.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.22.085 Automobile liability insurance policy—Optional coverage for personal injury protection—Rejection by insured. (1) No new automobile liability insurance policy or renewal of such an existing policy may be issued

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unless personal injury protection coverage is offered as an optional coverage.

(2) A named insured may reject, in writing, personal injury protection coverage and the requirements of subsection (1) of this section shall not apply. If a named insured rejects personal injury protection coverage:

(a) That rejection is valid and binding as to all levels of coverage and on all persons who might have otherwise been insured under such coverage; and

(b) The insurer is not required to include personal injury protection coverage in any supplemental, renewal, or replacement policy unless a named insured subsequently requests such coverage in writing. [2003 c 115 § 2; 1993 c 242 § 2.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.090 Personal injury protection coverage—Exceptions. An insurer is not required to provide personal injury protection coverage to or on behalf of:

(1) A person who intentionally causes injury to himself or herself;

(2) A person who is injured while participating in a pre-arranged or organized racing or speed contest or in practice or preparation for such a contest;

(3) A person whose bodily injury is due to war, whether or not declared, or to an act or condition incident to such circumstances;

(4) A person whose bodily injury results from the radioactive, toxic, explosive, or other hazardous properties of nuclear material;

(5) The named insured or a relative while occupying a motor vehicle owned by the named insured or furnished for the named insured's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made;

(6) A relative while occupying a motor vehicle owned by the relative or furnished for the relative's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made; or

(7) An insured whose bodily injury results or arises from the insured's use of an automobile in the commission of a felony. [2003 c 115 § 3; 1993 c 242 § 3.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.095 Automobile insurance policies—Minimum personal injury protection coverage. Insurers providing automobile insurance policies must offer minimum personal injury protection coverage for each insured with benefit limits as follows:

(1) Medical and hospital benefits of ten thousand dollars;

(2) A funeral expense benefit of two thousand dollars;

(3) Income continuation benefits of ten thousand dollars, subject to a limit of two hundred dollars per week; and

(4) Loss of services benefits of five thousand dollars, subject to a limit of two hundred dollars per week. [2003 c 115 § 4; 1993 c 242 § 4.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.100 Automobile insurance policies—Personal injury protection coverage—Request by named insured—Benefit limits. If requested by a named insured, an insurer providing automobile liability insurance policies must offer personal injury protection coverage for each insured with benefit limits as follows:

- (1) Medical and hospital benefits of thirty-five thousand dollars;
- (2) A funeral expense benefit of two thousand dollars;
- (3) Income continuation benefits of thirty-five thousand dollars, subject to a limit of seven hundred dollars per week; and
- (4) Loss of services benefits of fourteen thousand six hundred dollars. [2003 c 115 § 5; 1993 c 242 § 5.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.105 Rule making. The commissioner may adopt such rules as are necessary to implement RCW 48.22.005 and 48.22.085 through 48.22.100. [1993 c 242 § 9.]

Severability—1993 c 242: See note following RCW 48.22.005.

48.22.110 Vendor single-interest or collateral protection coverage—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 48.22.115 through 48.22.135.

(1) "Borrower" means a person who receives a loan or enters into a retail installment contract under chapter 63.14 RCW to purchase a motor vehicle or vessel in which the secured party holds an interest.

(2) "Motor vehicle" means a motor vehicle in this state subject to registration under chapter 46.16 RCW, except motor vehicles governed by RCW 46.16.020 or registered with the Washington utilities and transportation commission as common or contract carriers.

(3) "Secured party" means a person, corporation, association, partnership, or venture that possesses a bona fide security interest in a motor vehicle or vessel.

(4) "Vendor single-interest" or "collateral protection coverage" means insurance coverage insuring primarily or solely the interest of a secured party but which may include the interest of the borrower in a motor vehicle or vessel serving as collateral and obtained by the secured party or its agent after the borrower has failed to obtain or maintain insurance coverage required by the financing agreement for the motor vehicle or vessel. Vendor single-interest or collateral protection coverage does not include insurance coverage purchased by a secured party for which the borrower is not charged.

(5) "Vessel" means a vessel as defined in RCW 88.02.010 and includes personal watercraft as defined in RCW 79A.60.010. [2003 c 248 § 10; 1994 c 186 § 1.]

Effective date—1994 c 186 §§ 1-5: "Sections 1 through 5 of this act take effect January 1, 1995." [1994 c 186 § 8.]

48.22.115 Vendor single-interest or collateral protection coverage—Warning. In a contract or loan agreement, or on a separate document accompanying the contract or loan agreement and signed by the borrower, that provides financing for a motor vehicle or vessel and authorizes a secured party to purchase vendor single interest or collateral protec-

tion coverage, the following or substantially similar warning must be set forth in ten-point print:

WARNING

UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPER COVERAGE ELSEWHERE.

YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR LOAN BALANCE. IF THE COST IS ADDED TO THE LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN AND MAY NOT SATISFY WASHINGTON'S MANDATORY LIABILITY INSURANCE LAWS.

[1994 c 186 § 2.]

Effective date—1994 c 186 §§ 1-5: See note following RCW 48.22.110.

48.22.120 Vendor single-interest or collateral protection coverage—Final notice and warning—No requirement to purchase—Effective date of coverage. (1) A secured party shall not impose charges, that may include but are not limited to interest, finance, and premium charges, on a borrower for vendor single interest or collateral protection coverage for the motor vehicle or vessel as provided in subsection (2) of this section until the following or a substantially similar warning printed in ten-point type is sent to the borrower:

FINAL NOTICE AND WARNING

UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR LOAN AGREEMENT WITHIN FIVE DAYS AFTER THE POSTMARK ON THIS LETTER, WE WILL PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR

INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPER COVERAGE ELSEWHERE OR HAVE PAID OFF THE LOAN ON THE COLLATERAL IN ITS ENTIRETY.

YOU ARE RESPONSIBLE FOR THE COST OF THE INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR LOAN BALANCE. IF THE COST IS ADDED TO THE LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE WILL COST YOU A TOTAL OF APPROXIMATELY \$ (PLUS INTEREST) AND MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN.

The final notice and warning shall identify whether the coverage to be purchased is vendor single interest or collateral protection coverage and disclose the extent of the borrower's coverage, if any, including a statement of whether the coverage satisfies Washington's mandatory liability insurance laws.

(2) If reasonable efforts to provide the borrower with the notice required under subsection (1) of this section fail to produce evidence of the required insurance, the secured party may proceed to impose charges for vendor single interest or collateral protection coverage no sooner than eight days after giving notice as required under this chapter. Reasonable efforts to provide notice under this section means:

(a) Within thirty days before the secured party is required to send the final notice and warning in compliance with subsection (1) of this section, the secured party shall mail a notice by first class mail to the borrower's last known address as contained in the secured party's records. The notice shall state that the secured party intends to charge the borrower for vendor single interest or collateral protection coverage on the collateral if the borrower fails to provide evidence of proper insurance to the lender; and

(b) The secured party shall send the final notice and warning notice in compliance with subsection (1) of this section by certified mail to the borrower's last known address as contained in the secured party's records at least eight days before the insurance is charged to the borrower by the insurer.

(3) The secured party is responsible for complying with subsection (2)(a) and (b) of this section. However, a secured party may seek the services of other entities to fulfill the requirements of subsection (2)(a) and (b) of this section.

(4) Nothing contained in this chapter, or a secured party's compliance with or failure to comply with this chapter, shall

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be construed to require the secured party to purchase vendor single interest or collateral protection coverage, and the secured party shall not be liable to the borrower or any third party as a result of its failure to purchase vendor single interest or collateral protection coverage.

(5) Substantial compliance by a secured party with RCW 48.22.110 through 48.22.130 constitutes a complete defense to any claim arising under the laws of this state challenging the secured party's placement of vendor single interest or collateral protection coverage.

(6) The effective date of vendor single interest or collateral protection coverage placed under this chapter shall be either the date that the borrower's prior coverage lapsed or the date that the borrower failed to provide proof of coverage on the vehicle or vessel as required under the contract or loan agreement. Premiums for vendor single interest or collateral protection coverage placed under this chapter shall be calculated on a basis that does not exceed the outstanding credit balance as of the effective date of the coverage even though the coverage may limit liability to the outstanding balance, actual cash value, or cost of repair.

(7) If the secured party has purchased the contract or loan agreement relating to the motor vehicle or vessel from the seller of the motor vehicle or vessel under an agreement that the seller must repurchase the contract or loan agreement in the event of a default by the borrower, the secured party shall send a copy of the notice provided under subsection (2)(a) of this section by first class mail to the seller at the seller's last known address on file with the secured party when such notice is sent to the borrower under subsection (2)(a) of this section. [1994 c 186 § 3.]

Effective date—1994 c 186 §§ 1-5: See note following RCW 48.22.110.

48.22.125 Vendor single-interest or collateral protection coverage—Cancellation when borrower has obtained insurance—Interest rate for financing. (1) The secured party shall cancel vendor single interest or collateral protection coverage charged to the borrower effective the date of receipt of proper evidence from the borrower that the borrower has obtained insurance to protect the secured party's interest. Proper evidence includes an insurance binder that is no older than ninety days from the date of issuance and that contains physical damage coverage as provided in the borrower's loan agreement with respect to the motor vehicle or vessel.

(2) If the underlying loan or extension of credit for the underlying loan is satisfied, the secured party may not require the borrower to maintain vendor single interest or collateral protection coverage that has been purchased.

(3) The interest rate for financing the cost of vendor single interest or collateral protection coverage may not exceed the interest rate applied to the underlying loan obligation. [1994 c 186 § 4.]

Effective date—1994 c 186 §§ 1-5: See note following RCW 48.22.110.

48.22.130 Vendor single-interest or collateral protection coverage—Canceled or discontinued—Premium refund. If vendor single interest or collateral protection coverage is canceled or discontinued under RCW 48.22.125 (1)

or (2), the amount of unearned premium must be refunded to the borrower. At the option of the secured party, this refund may take the form of a credit against the borrower's obligation to the secured party. If the refund is taken as a credit against the borrower's obligation to the secured party, the secured party shall provide the borrower with an itemized statement that indicates the amount of the credit and where the credit has been applied. [1994 c 186 § 5.]

Effective date—1994 c 186 §§ 1-5: See note following RCW 48.22.110.

48.22.135 Vendor single-interest or collateral protection coverage—Application. The failure of a secured party prior to January 1, 1995, to provide notice as contemplated in this chapter, or otherwise to administer a vendor single interest or collateral protection coverage program in a manner similar to that required under this chapter, shall not be admissible in any court or arbitration proceeding or otherwise used to prove that a secured party's actions with respect to vendor single interest or collateral protection coverage or similar coverage were unlawful or otherwise improper. A secured party shall not be liable to the borrower or any other party for placing vendor single interest or collateral protection coverage in accordance with the terms of an otherwise legal loan or other written agreement with the borrower entered prior to January 1, 1995. The provisions of this section shall be applicable with respect to actions pending or commenced on or after June 9, 1994. [1994 c 186 § 7.]

48.22.140 Driver's license suspension for nonpayment of child support—Exclusion of unlicensed driver from insurance coverage not applicable—Notation in driving record. In the event that the department of licensing suspends a driver's license solely for the nonpayment of child support as provided in chapter 74.20A RCW or for noncompliance with a residential or visitation order as provided in *chapter 26.09 RCW, any provision in the driver's motor vehicle liability insurance policy excluding insurance coverage for an unlicensed driver shall not apply to the driver for ninety days from the date of suspension. When a driver's license is suspended under chapter 74.20A RCW, the driving record for the suspended driver shall include a notation that explains the reason for the suspension. [1997 c 58 § 808.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Chapter 48.23 RCW

LIFE INSURANCE AND ANNUITIES

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48.23.010 Scope of chapter. The provisions of this chapter apply to contracts of life insurance and annuities other than group life insurance, group annuities, and, except for RCW 48.23.260, 48.23.270, 48.23.340, and *48.23.350, other than industrial life insurance: PROVIDED, That the provisions of Title 48 RCW shall not apply to charitable gift annuities issued by a board of a state university, regional uni-

versity, or a state college, nor to the issuance thereof. [1979 c 130 § 2; 1947 c 79 § .23.01; Rem. Supp. 1947 § 45.23.01.]

***Reviser's note:** RCW 48.23.350 was repealed by 1982 1st ex.s. c 9 § 36; later enactment, see chapter 48.76 RCW.

Severability—1979 c 130: See note following RCW 28B.10.485.

48.23.020 Standard provisions required—Life insurance. (1) No policy of life insurance other than industrial, group and pure endowments with or without return of premiums or of premiums and interest, shall be delivered or issued for delivery in this state unless it contains in substance all of the provisions required by RCW 48.23.030 to 48.23.130, inclusive. This provision shall not apply to annuity contracts.

(2) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein. [1947 c 79 § .23.02; Rem. Supp. 1947 § 45.23.02.]

48.23.030 Grace period. There shall be a provision that the insured is entitled to a grace period of one month, but not less than thirty days, within which the payment of any premium after the first may be made, subject at the option of the insurer to an interest charge not in excess of six percent per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in force, but in case the policy becomes a claim during the grace period before the overdue premium is paid, or the deferred premiums of the current policy year, if any, are paid, the amount of such premium or premiums with interest thereon may be deducted in any settlement under the policy. [1947 c 79 § .23.03; Rem. Supp. 1947 § 45.23.03.]

48.23.040 Entire contract—Representations. In all such policies other than those containing a clause making the policy incontestable from date of issue, there shall be a provision that the policy and the application therefor, if a copy thereof has been endorsed upon or attached to the policy at issue and made a part thereof, shall constitute the entire contract between the parties, and that all statements made by the applicant or by the insured, shall, in the absence of fraud, be deemed representations and not warranties. [1947 c 79 § .23.04; Rem. Supp. 1947 § 45.23.04.]

48.23.050 Incontestability. There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from its date of issue, except for nonpayment of premiums and except, at the option of the insurer, as to provisions relative to benefits in event of total and permanent disability and as to provisions which grant additional insurance specifically against accidental death. [1947 c 79 § .23.05; Rem. Supp. 1947 § 45.23.05.]

48.23.060 Misstatement of age. There shall be a provision that if it is found that the age of the insured (or the age of any other individual considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age or ages, according to the insurer's rate at date of issue. [1947 c 79 § .23.06; Rem. Supp. 1947 § 45.23.06.]

48.23.070 Participation in surplus. (1) In all policies which provide for participation in the insurer's surplus, there shall be a provision that the policy shall so participate annually in the insurer's divisible surplus as apportioned by the insurer, beginning not later than the end of the third policy year. Any policy containing provision for annual participation beginning at the end of the first policy year, may also provide that each dividend shall be paid subject to the payment of the premiums for the next ensuing year. The insured under any annual dividend policy shall have the right each year to have the current dividend arising from such participation either paid in cash, or applied in accordance with such other dividend option as may be specified in the policy and elected by the insured. The policy shall further provide which of the options shall be effective if the insured shall fail to notify the insurer in writing of his election within the period of grace allowed for the payment of premium.

(2) This section shall not apply to paid-up nonforfeiture benefits nor paid-up policies issued on default in payment of premiums. [1947 c 79 § .23.07; Rem. Supp. 1947 § 45.23.07.]

48.23.075 Participation in surplus—Requirements for forms. (1) Life insurance and annuity policy forms of the following types shall be defined and designated as participating forms of insurance only if they contain a provision for participation in the insurer's surplus, and shall be defined and designated as nonparticipating forms if they do not contain a provision for participation in the insurer's surplus:

(a) Forms which provide that the premium or consideration at the time of issue and subsequent premiums or considerations will be established by the insurer based on current, or then current, projected assumptions for such factors as interest, mortality, persistency, expense, or other factors, subject to a maximum guaranteed premium or premiums set forth in the policy; and

(b) Forms (except those for variable life insurance and variable annuity plans which are subject to chapter 48.18A RCW) which provide that their premiums or considerations are credited to an account to which interest is credited, and from which the cost of any life insurance or annuity benefits or other benefits or specified expenses are deducted.

(2) The commissioner may by regulation further clarify the definitions and requirements contained in subsection (1) of this section, and may classify any other types of forms as participating or nonparticipating, consistent therewith. [1982 c 181 § 19.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.23.080 Policy loan. (1) There shall be a provision that after three full years' premiums have been paid thereon, the insurer at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a rate of interest provided in this chapter as now or hereafter amended, a sum to be determined as follows:

(a) If such policy is issued prior to the operative date of *RCW 48.23.350, the sum, including any interest paid in advance but not beyond the end of the current policy year, shall be equal to or at the option of the owner of the policy less than, the reserve at the end of the current policy year on

the policy and on any dividend additions thereto, less a sum not more than two and one-half percent of the amount insured by the policy and of any dividend additions thereto. The policy may contain a provision by which the insurer reserves the right to defer the making of the loan, except when made to pay premiums, for a period not exceeding six months after the date of application therefor.

(b) If such policy is issued on or after such operative date, the sum, including any interest to the end of the current policy year shall not exceed the cash surrender value at the end of the current policy year, as required by *RCW 48.23.350.

(c)(i) The policy shall contain (A) a provision that policy loans shall bear interest at a specified rate not exceeding six percent per annum, or (B) a provision that policy loans shall bear interest at a variable of not less than four nor more than eight percent per annum.

(ii) The variable rate shall not be changed more frequently than once per year and no change may exceed one percent per annum except reductions. The insurer shall give at least thirty days' notice to the policy owner or the owner's designee of any changes in the interest rate.

(iii) The provisions of (c)(i) and (c)(ii) of this subsection shall apply only in policies in existence prior to August 1, 1981.

(2) Such policy shall further provide that the insurer may deduct from such loan value any existing indebtedness on the policy (unless such indebtedness has already been deducted in determining the cash surrender value) and any unpaid balance of the premium for the current policy year; and that if the loan is made or repaid on a date other than the anniversary of the policy, the insurer shall be entitled to interest for the portion of the current policy year at the rate of interest specified in the policy.

(3) Such policy may further provide that if the interest on the loan is not paid when due, it shall be added to the existing indebtedness and shall bear interest at the same rate; and that if and when the total indebtedness on the policy, including interest due or accruing, equals or exceeds the amount of the loan value thereof which would otherwise exist at such time, the policy shall terminate in full settlement of such indebtedness and become void; except, that it shall be stipulated in the policy that no such termination shall be effective prior to the expiration of at least thirty days after notice of the pendency of the termination was mailed by the insurer to the insured and the assignee, if any, at their respective addresses last of record with the insurer.

(4) The insurer shall provide in any policy issued on or after the operative date of *RCW 48.23.350 that the making of any loan, other than a loan to pay premiums, may be deferred for not exceeding six months after the application for the loan has been received by it. [1981 c 247 § 3; 1977 ex.s. c 250 § 1; 1947 c 79 § .23.08; Rem. Supp. 1947 § 45.23.08.]

***Reviser's note:** RCW 48.23.350 was repealed by 1982 1st ex.s. c 9 § 36; later enactment, see chapter 48.76 RCW.

Purpose—Effective date—1981 c 247: See notes following RCW 48.23.085.

Construction—1977 ex.s. c 250: "This 1977 amendatory act shall not impair the terms and conditions of any policy of life insurance in force prior to the effective date of this 1977 amendatory act." [1977 ex.s. c 250 § 2.]

48.23.085 Policy loan interest rates. (1) As used in this section, "published monthly average" means:

(a) The "Moody's Corporate Bond Yield Average - Monthly Average Corporates" as published by Moody's Investors Service, Incorporated or any successor thereto; or

(b) If the "Moody's Corporate Bond Yield Average - Monthly Average Corporates" is no longer published, a substantially similar average, established by rule issued by the commissioner.

(2) Policies issued on or after August 1, 1981, shall provide for policy loan interest rates by containing:

(a) A provision permitting a maximum interest rate of not more than eight percent per annum; or

(b) A provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law.

(3) The rate of interest charged on a policy loan made under (2)(b) of this section shall not exceed the higher of the following:

(a) The published monthly average for the calendar month ending two months before the date on which the rate is determined; or

(b) The rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum.

(4) If the maximum rate of interest is determined pursuant to (2)(b) of this section, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(5) The maximum rate for each policy shall be determined at regular intervals at least once every twelve months, but not more frequently than once in any three-month period. At the intervals specified in the policy:

(a) The rate being charged may be increased whenever such increase as determined under subsection (3) of this section would increase that rate by one-half of one percent or more per annum; and

(b) The rate being charged shall be reduced whenever such reduction as determined under subsection (3) of this section would decrease that rate by one-half of one percent or more per annum.

(6) The life insurer shall:

(a) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

(b) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in (c) of this subsection;

(c) Send to policyholders with loans reasonable advance notice of any increase in the rate; and

(d) Include in the notices required in this subsection the substance of the pertinent provisions of subsections (2) and (4) of this section.

(7) The substance of the pertinent provisions of subsections (2) and (4) of this section shall be set forth in the policies to which they apply.

(8) The loan value of the policy shall be determined in accordance with RCW 48.23.080, but no policy shall terminate in a policy year as the sole result of change in the interest

rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

(9) For purposes of this section:

(a) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy;

(b) The term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due;

(c) The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer; and

(d) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

(10) No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates. [1981 c 247 § 2.]

Purpose—1981 c 247: "The purpose of this act is to permit and set guidelines for life insurers to include in life insurance policies issued after the effective date of this act a provision for periodic adjustment of policy loan interest rates." [1981 c 247 § 1.]

Effective date—1981 c 247: "This act shall take effect August 1, 1981, and shall not apply to any insurance contract before that date." [1981 c 247 § 5.]

48.23.090 Table of values and options. There shall be a table showing in figures the loan value, if any, and any options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy, or for its life if maturity or expiry occurs in less than twenty years. [1947 c 79 § .23.09; Rem. Supp. 1947 § 45.23.09.]

48.23.100 Nonforfeiture options. There shall be a provision specifying the option to which the policyholder is automatically entitled in the absence of the election of other nonforfeiture options upon default in premium payment after nonforfeiture values become available. [1947 c 79 § .23.10; Rem. Supp. 1947 § 45.23.10.]

48.23.110 Table of installments. If the policy provides for payment of its proceeds in installments or as an annuity, a table showing the amount and period of such installments or annuity shall be included in the policy. Except, that if in the judgment of the commissioner it is not practical to include certain tables in the policy, the requirements of this section may be met as to such policy by the insurer filing such tables with the commissioner. [1947 c 79 § .23.11; Rem. Supp. 1947 § 45.23.11.]

48.23.120 Reinstatement. There shall be a provision that the policy may be reinstated at any time within three years after the date of default in the payment of any premium, unless the policy has been surrendered for its cash value, or the period of any extended insurance provided by the policy has expired, upon evidence of insurability satisfactory to the insurer and the payment of all overdue premiums, and pay-

ment (or, within the limits permitted by the then cash values of the policy, reinstatement) of any other indebtedness to the insurer upon the policy with interest as to premiums at a rate not exceeding six percent per annum compounded annually. [1981 c 247 § 4; 1947 c 79 § .23.12; Rem. Supp. 1947 § 45.23.12.]

Purpose—Effective date—1981 c 247: See notes following RCW 48.23.085.

48.23.130 Settlement on proof of death. There shall be a provision that when a policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and surrender of the policy. [1947 c 79 § .23.13; Rem. Supp. 1947 § 45.23.13.]

48.23.140 Standard provisions—Annuities, pure endowment contracts. No annuity or pure endowment contract, other than reversionary annuities, or survivorship annuities, or group annuities, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in RCW 48.23.150 to 48.23.210 inclusive. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

This section shall not apply to contracts for deferred annuities included in, or upon the lives of beneficiaries under, life insurance policies. [1947 c 79 § .23.14; Rem. Supp. 1947 § 45.23.14.]

48.23.150 Grace period—Annuities, pure endowments. In such contracts, there shall be a provision that there shall be a period of grace of one month, but not less than thirty days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer, to an interest charge thereon at a rate to be specified in the contract but not exceeding six percent per annum for the number of days of grace elapsing before such payment, during which period of grace, the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer of the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement. [1947 c 79 § .23.15; Rem. Supp. 1947 § 45.23.15.]

48.23.160 Incontestability—Annuities, pure endowments. If any statements, other than those relating to age, sex, and identity, are required as a condition to issuing such an annuity or pure endowment contract, and subject to RCW 48.23.180, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of two years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer, such contract may also except any provisions relative to benefits in the event of total and permanent disability and any provisions which grant

insurance specifically against death by accident. [1947 c 79 § .23.16; Rem. Supp. 1947 § 45.23.16.]

48.23.170 Entire contract—Annuities, pure endowments. In such contracts there shall be a provision that the contract shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties. [1947 c 79 § .23.17; Rem. Supp. 1947 § 45.23.17.]

48.23.180 Misstatement of age or sex—Annuities, pure endowments. In such contracts there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or if any of them has been misstated, the amount payable or benefit accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex; and that if the insurer shall make or has made any underpayment or underpayments or any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding six percent per annum, shall, in the case of underpayment, be paid the insured or, in the case of overpayment, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract. [1982 c 181 § 12; 1947 c 79 § .23.18; Rem. Supp. 1947 § 45.23.18.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.23.190 Dividends—Annuities, pure endowments. If such contract is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract. [1947 c 79 § .23.19; Rem. Supp. 1947 § 45.23.19.]

48.23.200 Nonforfeiture benefits—Annuities, pure endowments. Such contracts issued after the operative date of RCW 48.23.360 and individual deferred annuities issued before the operative date of RCW 48.23.420 through 48.23.520 shall contain:

(1) A provision that in the event of default in any stipulated payment, the insurer will grant a paid-up nonforfeiture benefit on a plan stipulated in the contract, effective as of such date, of such value as is hereinafter specified.

(2) A statement of the mortality table and interest rate used in calculating the paid-up nonforfeiture benefit available under the contract.

(3) An explanation of the manner in which the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the contract or any indebtedness to the insurer on the contract. [1982 1st ex.s. c 9 § 34; 1979 c 157 § 3; 1947 c 79 § .23.20; Rem. Supp. 1947 § 45.23.20.]

48.23.210 Reinstatement—Annuities, pure endowments. In such contracts there shall be a provision that the contract may be reinstated at any time within one year from the date of default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all

overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated, with interest thereon at a rate to be specified in the contract but not exceeding six percent per annum payable annually, and in cases where applicable, the insurer may also include a requirement of evidence of insurability satisfactory to the insurer. [1947 c 79 § .23.21; Rem. Supp. 1947 § 45.23.21.]

48.23.220 Standard provisions—Reversionary annuities. No contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in RCW 48.23.230 and 48.23.240. Any of such provisions not applicable to single premium annuities shall not, to that extent, be incorporated therein.

This section shall not apply to group annuities or to annuities included in life insurance policies. [1947 c 79 § .23.22; Rem. Supp. 1947 § 45.23.22.]

48.23.230 Sections applicable. Any such reversionary annuity contract shall contain the provisions specified in RCW 48.23.150 to 48.23.190, inclusive, except that under RCW 48.23.150 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue or deferred payment in lieu of providing for a deduction of such payments from an amount payable upon a settlement under the contract. [1947 c 79 § .23.23; Rem. Supp. 1947 § 45.23.23.]

48.23.240 Reinstatement—Reversionary annuities. In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer, and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid, or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding six percent per annum compounded annually. [1947 c 79 § .23.24; Rem. Supp. 1947 § 45.23.24.]

48.23.250 Supplemental benefits. The commissioner may make reasonable rules and regulations concerning the conditions in provisions granting additional benefits in event of the insured's accidental death, or in event the insured becomes totally and permanently disabled, which are a part of or supplemental to life insurance contracts. [1947 c 79 § .23.25; Rem. Supp. 1947 § 45.23.25.]

48.23.260 Limitation of liability. (1) The insurer may in any life insurance policy or annuity or pure endowment contract limit its liability to a determinable amount not less than the full reserve of the policy and of dividend additions thereto in event only of death occurring:

(a) As a result of war, or any act of war, declared or undeclared, or of service in the military, naval or air forces or in civilian forces auxiliary thereto, or from any cause while a

member of any such military, naval or air forces of any country at war, declared or undeclared.

(b) As a result of suicide of the insured, whether sane or insane, within two years from date of issue of the policy.

(c) As a result of aviation under conditions specified in the policy.

(2) An insurer may specify conditions pertaining to the items of subsection (1) of this section which in the commissioner's opinion are more favorable to the policyholder. [1947 c 79 § .23.26; Rem. Supp. 1947 § 45.23.26.]

48.23.270 Incontestability after reinstatement. The reinstatement of any policy of life insurance or contract of annuity hereafter delivered or issued for delivery in this state may be contestable on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement as the policy provides with respect to contestability after original issuance. [1947 c 79 § .23.27; Rem. Supp. 1947 § 45.23.27.]

48.23.290 Premium deposits. (1) A life insurer may, under such policy provisions or agreements as have been approved by the commissioner consistent with this section, contract for and accept premium deposits in addition to the regular premiums specified in the policy, for the purpose of paying future premiums, or to facilitate conversion of the policy, or to increase the benefits thereof.

(2) The unused accumulation from such deposits shall be held and accounted for as a premium deposit fund, and the policy or agreement shall provide for the manner of application of the premium deposit fund to the payment of premiums otherwise in default and for the disposition of the fund if it is not sufficient to pay the next premium.

(3) Such fund shall:

(a) Be available upon surrender of the policy, in addition to the cash surrender value; and

(b) be payable upon the insured's death or upon maturity of the policy; and

(c) be paid to the insured whenever the cash surrender value together with the premium deposit fund equals or exceeds the amount of insurance provided by the policy, unless the amount of the deposit does not exceed that which may be required to facilitate conversion of the policy to another plan in accordance with its terms.

(4) No part of the premium deposit fund shall be paid to the insured during the continuance of the policy except at such times and in such amounts as is specified in the policy or in the deposit agreement. [1947 c 79 § .23.29; Rem. Supp. 1947 § 45.23.29.]

48.23.300 Policy settlements—Interest. Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries, and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agree-

ment with the beneficiaries. The insurer shall not be required to segregate funds so held but may hold them as part of its general assets.

An insurer shall pay interest on death benefits payable under the terms of a life insurance policy insuring the life of any person who was a resident of this state at the time of death. Such interest shall accrue commencing on the date of death at the rate then paid by the insurer on other withdrawable policy proceeds left with the company, but not less than eight percent. Benefits payable that have not been tendered to the beneficiary within ninety days of the receipt of proof of death shall accrue interest, commencing on the ninety-first day, at the aforementioned rate plus three percent. This section applies to death of insureds that occur on or after September 1, 1985. [1985 c 264 § 23; 1983 1st ex.s. c 32 § 21; 1947 c 79 § .23.30; Rem. Supp. 1947 § 45.23.30.]

48.23.310 Deduction of indebtedness. In determining the amount due under any life insurance policy heretofore or hereafter issued, deduction may be made of

(1) any unpaid premiums or installments thereof for the current policy year due under the terms of the policy, and of

(2) the amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid, such principal increased by unpaid interest and compounded as provided in this chapter. [1947 c 79 § .23.31; Rem. Supp. 1947 § 45.23.31.]

48.23.320 Miscellaneous proceeds. Upon the death of the insured and except as is otherwise expressly provided by the policy or premium deposit agreement, a life insurer may pay to the surviving spouse, children, beneficiary, or other person other than the insured's estate, appearing to the insurer to be equitably entitled thereto, sums held by it and comprising:

(1) Premiums paid in advance, and which premiums did not fall due prior to such death, or funds held on deposit for the payment of future premiums.

(2) Dividends theretofore declared on the policy and held by the insurer under the insured's option.

(3) Dividends becoming payable on or after the death of the insured. [1947 c 79 § .23.32; Rem. Supp. 1947 § 45.23.32.]

48.23.330 Trafficking in dividend rights. No life insurer nor any of its representatives, agents, or affiliates, shall buy, take by assignment other than in connection with policy loans, or otherwise deal or traffic in any rights to dividends existing under participating life insurance policies issued by the insurer. [1947 c 79 § .23.33; Rem. Supp. 1947 § 45.23.33.]

48.23.340 Prohibited policy plans. No life insurer shall hereafter issue for delivery or deliver in this state any life insurance policy:

(1) Issued under any plan for the segregation of policyholders into mathematical groups and providing benefits for a surviving policyholder of a group arising out of the death of another policyholder of such group, or under any other similar plan.

(2) Providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise. [1947 c 79 § .23.34; Rem. Supp. 1947 § 45.23.34.]

48.23.345 Juvenile life insurance—Speculative or fraudulent purposes. Life insurers shall develop and implement underwriting standards and procedures designed to detect and prevent the purchase of juvenile life insurance for speculative or fraudulent purposes. These standards and procedures shall be made available for review by the commissioner.

Life insurers shall maintain records of underwriting rejections of applications for life insurance on juvenile lives for a period of ten years. [2001 c 197 § 1.]

Effective date—2001 c 197: "This act takes effect August 1, 2001." [2001 c 197 § 2.]

48.23.360 Calculation of nonforfeiture benefits under annuities. (1) Nonforfeiture benefits: Any paid-up nonforfeiture benefit available under any annuity or pure endowment contract pursuant to RCW 48.23.200, in the event of default in a consideration due on any contract anniversary shall be such that its present value as of such anniversary shall be not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits (excluding any total disability benefits attached to such contracts) which would have been provided for by the contract including any existing paid-up additions, if there had been no default, over the sum of (a) the then present value of the net consideration defined in subsection (2) of this section corresponding to considerations which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the contract, including interest due or accrued. In determining the benefits referred to in this section and in calculating the net consideration referred to in such subsection (2), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional dates, the annuity payments shall be deemed to commence at the latest date permitted by the contract for the commencement of such payments and the considerations shall be deemed to be payable until such date, which, however, shall not be later than the contract anniversary nearest the annuitant's seventieth birthday.

(2) Net considerations: The net considerations for any annuity or pure endowment contract referred to in subsection (1) of this section shall be calculated on an annual basis, shall be such that the present value thereof at date of issue of the annuity shall equal the then present value of the future benefits thereunder (excluding any total disability benefits attached to such contracts) and shall be not less than the following percentages of the respective considerations specified in the contracts for the respective contract years:

- First year. fifty percent
- Second and subsequent years. ninety percent

PROVIDED, That in the case of participating annuity contracts the percentages hereinbefore specified may be decreased by five.

(3) Basis of calculation: All net considerations and present values for such contracts referred to in this section

shall be calculated on the basis of the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner, and the rate of interest, not exceeding three and one-half percent per annum, specified in the contract for calculating cash surrender values, if any, and paid-up nonforfeiture benefits; except that with respect to annuity and pure endowment contracts issued on or after the operative date of *RCW 48.12.150(3)(b)(ii) for such contracts, such rate of interest may be as high as four percent per annum: PROVIDED, That if such rate of interest exceeds three and one-half percent per annum, all net considerations and present values for such contracts referred to in this section shall be calculated on the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner.

(4) Calculations on default: Any cash surrender value and any paid-up nonforfeiture benefit, available under any such contract in the event of default in the payment of any consideration due at any time other than on the contract anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional considerations beyond the last preceding contract anniversary. All values herein referred to may be calculated upon the assumption that any death benefit is payable at the end of the contract year of death.

(5) Deferment of payment: If an insurer provides for the payment of a cash surrender value, it shall reserve the right to defer the payment of such value for a period of six months after demand therefor with surrender of the contract.

(6) Lump sum in lieu: Notwithstanding the requirements of this section, any deferred annuity contract may provide that if the annuity allowed under any paid-up nonforfeiture benefit would be less than one hundred twenty dollars annually, the insurer may at its option grant a cash surrender value in lieu of such paid-up nonforfeiture benefit of such amount as may be required by subsection (3) of this section.

(7) Operative date: If no election is made by an insurer for an operative date prior to July 1, 1948, such date shall be the operative date for this section. [1973 1st ex.s. c 162 § 6; 1951 c 190 § 1; 1947 c 79 § .23.36; Rem. Supp. 1947 § 45.23.36.]

***Reviser's note:** RCW 48.12.150 was repealed by 1982 1st ex.s. c 9 § 36; later enactment, see chapter 48.74 RCW.

48.23.370 Duties of insurer issuing both participating and nonparticipating policies—Rules. (1) A life insurer issuing both participating and nonparticipating policies shall maintain records which segregate the participating from the nonparticipating business and clearly show the profits and losses upon each such category of business.

(2) For the purposes of such accounting the insurer shall make a reasonable allocation as between the respective such categories of the expenses of such general operations or functions as are jointly shared. Any allocation of expense as between the respective categories shall be made upon a reasonable basis, to the end that each category shall bear a just portion of joint expense involved in the administration of the business of such category.

(3) No policy hereafter delivered or issued for delivery in this state shall provide for, and no life insurer or representa-

tive shall hereafter knowingly offer or promise payment, credit or distribution of participating "dividends," "earnings," "profits," or "savings," by whatever name called, to participating policies out of such profits, earnings or savings on nonparticipating policies.

(4) The commissioner may promulgate rules for the purpose of assuring the equitable treatment of all policyholders so that one group of policyholders shall not support or be supported by another group of policyholders. [1982 c 181 § 13; 1965 ex.s. c 70 § 22.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.23.380 Return of policy and refund of premium—Grace period—Notice—Effect. Every individual life insurance policy issued after September 1, 1977, shall have printed on its face or attached thereto a notice stating in substance that the policy owner shall be permitted to return the policy within ten days after it is received by the policy owner and to have the premium paid refunded if, after examination of the policy, the policy owner is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policy owner pursuant to such notice, returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued.

This section shall not apply to individual life insurance policies issued in connection with a credit transaction or issued under a contractual policy change or conversion privilege provision contained in a policy. [1983 1st ex.s. c 32 § 10; 1977 c 60 § 1.]

48.23.410 Short title. RCW 48.23.420 through 48.23.520 shall be known as the standard nonforfeiture law for individual deferred annuities. [1982 1st ex.s. c 9 § 21.]

48.23.420 Inapplicability of enumerated sections to certain policies. RCW 48.23.420 through 48.23.520 do not apply to any reinsurance; group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended; premium deposit fund; variable annuity; investment annuity; immediate annuity; any deferred annuity contract after annuity payments have commenced; or reversionary annuity; nor to any contract which is delivered outside this state through an agent or other representative of the company issuing the contract. [1982 1st ex.s. c 9 § 22.]

48.23.430 Paid-up annuity and cash surrender provisions required. In the case of contracts issued on or after the operative date of this section as defined in RCW 48.23.520, no contract of annuity, except as stated in RCW 48.23.420, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corre-

sponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500;

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or before the commencement of any annuity payments, the company shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in RCW 48.23.450, 48.23.460, 48.23.480, and 48.23.500. The company may reserve the right to defer the payment of such cash surrender benefit for a period not to exceed six months after demand therefor with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and

(4) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid before such period would be less than twenty dollars monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment is relieved of any further obligation under such contract. [2004 c 91 § 1; 1982 1st ex.s. c 9 § 23.]

Effective date—2004 c 91: "This act takes effect July 1, 2004." [2004 c 91 § 3.]

48.23.440 Minimum nonforfeiture amounts. The minimum values as specified in RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments is equal to an accumulation up to such time at rates of interest as indicated in subsection (2) of this section of the net consider-

ations, as defined in this subsection, paid prior to such time, decreased by the sum of the following:

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subsection (2) of this section;

(b) An annual contract charge of fifty dollars, accumulated at rates of interest as indicated in subsection (2) of this section;

(c) Any premium tax paid by the insurer for the contract, accumulated at rates of interest as indicated in subsection (2) of this section; and

(d) The amount of any indebtedness to the company on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year.

(2) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(a) The five-year constant maturity treasury rate reported by the federal reserve as of a date certain, or averaged over a period, rounded to the nearest one-twentieth of one percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date under (d) of this subsection;

(b) Reduced by one hundred twenty-five basis points;

(c) Where the resulting interest rate is not less than one percent; and

(d) The interest rate shall apply to an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

(3) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (2)(b) of this section by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. If a demonstration is not acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

(4) The commissioner may adopt rules to implement subsection (3) of this section and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other policies that the commissioner determines justify an adjustment.

(5) Before January 1, 2006, an insurer may issue an annuity policy under this section as in effect on December 31, 2003; or issue an annuity policy under this section as in effect on July 1, 2004. On or after January 1, 2006, an insurer must

issue an annuity policy under this section as in effect on or after July 1, 2004. [2004 c 91 § 2; 1982 1st ex.s. c 9 § 24.]

Effective date—2004 c 91: See note following RCW 48.23.430.

48.23.450 Minimum present value of paid-up annuity benefit. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract. [1982 1st ex.s. c 9 § 25.]

48.23.460 Minimum cash surrender benefits—Death benefit. For contracts which provide cash surrender benefits, such cash surrender benefits available before maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event may any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit. [1982 1st ex.s. c 9 § 26.]

48.23.470 Contracts without cash surrender, death benefits—Minimum present value of paid-up annuity benefits. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid before the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event may the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time. [1982 1st ex.s. c 9 § 27.]

48.23.480 Optional maturity dates. For the purpose of determining the benefits calculated under RCW 48.23.460

and 48.23.470, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election is permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later. [1982 1st ex.s. c 9 § 28.]

48.23.490 Statement required in contract without cash surrender or death benefits. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided. [1982 1st ex.s. c 9 § 29.]

48.23.500 Calculation of benefits available other than on contract anniversary. Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs. [1982 1st ex.s. c 9 § 30.]

48.23.510 Additional benefits. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500, additional benefits payable (1) in the event of total and permanent disability, (2) as reversionary annuity or deferred reversionary annuity benefits, or (3) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, or cash surrender and death benefits that may be required by RCW 48.23.410 through 48.23.520. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, or cash surrender and death benefits. [1982 1st ex.s. c 9 § 31.]

48.23.520 Operative date of RCW 48.23.410 through 48.23.520. After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provisions of RCW 48.23.410 through 48.23.520 after a specified date before the second anniversary of July 10, 1982. After the filing of such notice, then upon such specified date, which shall be the operative date of RCW 48.23.410 through 48.23.520 for such company, RCW

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48.23.410 through 48.23.520 shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of RCW 48.23.410 through 48.23.520 for such company shall be the second anniversary of July 10, 1982. [1982 1st ex.s. c 9 § 32.]

Chapter 48.23A RCW

LIFE INSURANCE POLICY ILLUSTRATIONS

Sections

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- 48.23A.090 Violations—RCW 48.30.010(1).
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- 48.23A.901 Effective date—Application—1997 c 313.

48.23A.005 Purpose—Standards for life insurance policy illustrations. The purpose of this chapter is to provide standards for life insurance policy illustrations that will protect consumers and foster consumer education by providing illustration formats, prescribing standards to be followed when illustrations are used, and specifying the disclosures that are required in connection with illustrations. The goals of these standards are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveates and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed. [1997 c 313 § 1.]

48.23A.010 Scope of chapter—Exceptions. This chapter applies to all group and individual life insurance policies and certificates except:

- (1) Variable life insurance;
- (2) Individual and group annuity contracts;
- (3) Credit life insurance; or
- (4) Life insurance policies with no illustrated death benefits on any individual exceeding ten thousand dollars. [1997 c 313 § 2.]

48.23A.015 Definitions. The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Actuarial standards board" means the board established by the American academy of actuaries to develop and adopt standards of actuarial practice.

(2) "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

(3) "Currently payable scale" means a scale of nonguaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next ninety-five days.

(4) "Disciplined current scale" means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the actuarial standards board may be relied upon if the standards:

(a) Are consistent with all provisions of this chapter;

(b) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;

(c) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and

(d) Do not permit assumed expenses to be less than minimum assumed expenses.

(5) "Generic name" means a short title descriptive of the policy being illustrated, such as whole life, term life, or flexible premium adjustable life.

(6) "Guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy of life insurance that are guaranteed and determined at issue.

(7) "Nonguaranteed elements" means the premiums, benefits, values, credits, or charges under a policy of life insurance that are not guaranteed or not determined at issue.

(8) "Illustrated scale" means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

(a) The disciplined current scale; or

(b) The currently payable scale.

(9) "Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:

(a) "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements.

(b) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this chapter, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.

(c) "In-force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

(10) "Illustration actuary" means an actuary meeting the requirements of RCW 48.23A.080 who certifies to illustrations based on the standard of practice adopted by the actuarial standards board.

(11) "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting, as defined in this section, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and one hundred percent policy persistency thereafter.

(a) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

(i) Fully allocated expenses;

(ii) Marginal expenses; and

(iii) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the national association of insurance commissioners.

(b) Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(12) "Nonterm group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(a) Every plan of coverage was selected by the employer or other group representative;

(b) Some portion of the premium is paid by the group or through payroll deduction; and

(c) Group underwriting or simplified underwriting is used.

(13) "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

(14) "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

(15) "Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies, or upon policy expiration if sooner, the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election. [1997 c 313 § 3.]

48.23A.020 Marketing with or without an illustration—Notice to commissioner—Conditions—Availability.

(1) Each insurer marketing policies to which this chapter is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on January 1, 1998, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after January 1, 1998, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

(2) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for

any policy using that form prior to the first policy anniversary is prohibited.

(3) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this chapter is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(4) Potential enrollees of nonterm group life subject to this chapter shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation is not considered an illustration for purposes of this chapter, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for nonterm group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any nonterm group life enrollee who requests it. [1997 c 313 § 4.]

48.23A.030 Illustration used in sale—Label—Required basic information—Prohibitions—Use of interest rate. (1) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this chapter, be clearly labeled "life insurance illustration," and contain the following basic information:

- (a) Name of insurer;
- (b) Name and business address of producer or insurer's authorized representative, if any;
- (c) Name, age, and sex of proposed insured, except where a composite illustration is permitted under this chapter;
- (d) Underwriting or rating classification upon which the illustration is based;
- (e) Generic name of policy, the company product name, if different, and form number;
- (f) Initial death benefit; and
- (g) Dividend option election or application of nonguaranteed elements, if applicable.

(2) When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives shall not:

- (a) Represent the policy as anything other than life insurance policy;
- (b) Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
- (c) State or imply that the payment or amount of nonguaranteed elements is guaranteed;
- (d) Use an illustration that does not comply with the requirements of this chapter;
- (e) Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than

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that produced by the illustrated scale of the insurer whose policy is being illustrated;

- (f) Provide an applicant with an incomplete illustration;
 - (g) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
 - (h) Use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;
 - (i) Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
 - (j) Use an illustration that is not "self-supporting."
- (3) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale. [1997 c 313 § 5.]

48.23A.040 Basic illustration—Conforming requirements—Brief descriptions—Numeric summaries—Required statements. (1) A basic illustration shall conform with the following requirements:

- (a) The illustration shall be labeled with the date on which it was prepared.
- (b) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (for example, the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").
- (c) The assumed dates of payment receipt and benefit payout within a policy year shall be clearly identified.
- (d) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.
- (e) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.
- (f) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.
- (g) If the illustration shows any nonguaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.
- (h) The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (for example, "see page one for guaranteed elements").
- (i) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.
- (j) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable.

(k) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

(l) Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

(i) The benefits and values are not guaranteed;

(ii) The assumptions on which they are based are subject to change by the insurer; and

(iii) Actual results may be more or less favorable.

(m) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(n) If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

(2) A basic illustration shall include the following:

(a) A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(b) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the internal revenue code;

(c) A brief description of any policy features, riders, or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(d) Identification and a brief definition of column headings and key terms used in the illustration; and

(e) A statement containing in substance the following: "This illustration assumes that the currently illustrated, nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(3)(a) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years five, ten, and twenty and at age seventy, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years five, ten, twenty, and thirty.

(i) Policy guarantees;

(ii) Insurer's illustrated scale;

(iii) Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

(A) Dividends at fifty percent of the dividends contained in the illustrated scale used;

(B) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(C) All nonguaranteed charges, including but not limited to, term insurance charges and mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(b) In addition, if coverage would cease prior to policy maturity or age one hundred, the year in which coverage ceases shall be identified for each of the three bases.

(4) Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this chapter.

(a) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

(b) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(5)(a) A basic illustration shall include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age one hundred, policy maturity, or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(i) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(ii) The corresponding guaranteed death benefit, as provided in the policy; and

(iii) The corresponding guaranteed value available upon surrender, as provided in the policy.

(b) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(c) Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any nonguaranteed elements are shown, they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column. [1997 c 313 § 6.]

48.23A.050 Supplemental illustration—Conditions for use—Reference to basic illustration. (1) A supplemental illustration may be provided so long as:

(a) It is appended to, accompanied by, or preceded by a basic illustration that complies with this chapter;

(b) The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

(c) It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and

(d) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(2) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information. [1997 c 313 § 7.]

48.23A.060 Illustration used or not used during sale—Signed copy of illustration or acknowledgment of no use—Computer screen—Retained copies. (1)(a) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this chapter, shall be submitted to the insurer at the time of policy application. A copy shall also be provided to the applicant.

(b) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this chapter, be labeled "revised illustration," and be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(2)(a) If no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy, or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(b) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(3)(a) Where a computer screen illustration is used that cannot be printed out during use, the producer shall certify in writing on a form provided by the insurer that a computer screen illustration was displayed. Such form shall require the producer to provide, as applicable, the generic name of the policy and any riders illustrated, the guaranteed and nonguaranteed interest rates illustrated, the number of policy years illustrated, the initial death benefit, the premium amount illustrated, and the assumed number of years of premiums. On the same form the applicant shall acknowledge that an illustration matching that which was displayed on the computer screen will be provided no later than the time of policy

delivery. A copy of this signed form shall be provided to the applicant at the time it is signed.

(b) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner and retained by the insurer.

(c) If a computer screen illustration is used that can be printed during use, a copy of that illustration, signed in accordance with this chapter, shall be submitted to the insurer at the time of policy application. A copy shall also be provided to the applicant.

(d) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection is satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed, postage prepaid envelope with instructions for the return of the signed numeric summary page.

(4) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued. [1997 c 313 § 8.]

48.23A.070 Policy designated for use of illustrations—Annual report—Required information—In-force illustrations—Notice of adverse changes. (1) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:

(a) For universal life policies, the report shall include the following:

(i) The beginning and end date of the current report period;

(ii) The policy value at the end of the previous report period and at the end of the current report period;

(iii) The total amounts that have been credited or debited to the policy value during the current report period, identifying each type, such as interest, mortality, expense, and riders;

(iv) The current death benefit at the end of the current report period on each life covered by the policy;

(v) The net cash surrender value of the policy as of the end of the current report period;

(vi) The amount of outstanding loans, if any, as of the end of the current report period; and

(vii) For fixed premium policies: If, assuming guaranteed interest, mortality, and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(viii) For flexible premium policies: If, assuming guaranteed interest, mortality, and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(b) For all other policies, where applicable:

- (i) Current death benefit;
- (ii) Annual contract premium;
- (iii) Current cash surrender value;
- (iv) Current dividend;
- (v) Application of current dividend; and
- (vi) Amount of outstanding loan.

(c) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

(2) If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer's phone number), writing to (insurer's name) at (insurer's address) or contacting your agent. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in-force illustration.

(3) Upon the request of the policy owner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of RCW 48.23A.030 (1) and (2) and 48.23A.040 (1) and (5). No signature or other acknowledgment of receipt of this illustration shall be required.

(4) If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed. [1997 c 313 § 9.]

48.23A.080 Illustration actuaries—Conditions for appointment—Duties—Certifications—Disclosures to commissioner. (1) The board of directors of each insurer shall appoint one or more illustration actuaries.

(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the actuarial standard of practice for compliance with the national association of insurance commissioners model regulation on life insurance illustrations adopted by the actuarial standards board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this chapter.

(3) The illustration actuary shall:

(a) Be a member in good standing of the American academy of actuaries;

(b) Be familiar with the standard of practice regarding life insurance policy illustrations;

(c) Not have been found by the commissioner, following appropriate notice and hearing to have:

(i) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

(ii) Been found guilty of fraudulent or dishonest practices;

(iii) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(iv) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

(d) Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under (c) of this subsection;

(e) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged, or credited to the same or similar forms, this must be disclosed in the annual certification; and

(f) Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(i) Fully allocated expenses;

(ii) Marginal expenses; or

(iii) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the national association of insurance commissioners.

(4)(a) The illustration actuary shall file a certification with the board of directors and with the commissioner:

(i) Annually for all policy forms for which illustrations are used; and

(ii) Before a new policy form is illustrated.

(b) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

(5) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.

(6) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(a) That the illustration formats meet the requirements of this chapter and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(b) That the company has provided its agents with information about the expense allocation method used by the com-

pany in its illustrations and disclosed as required in subsection (3)(f) of this section.

(7) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

(8) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change. [1997 c 313 § 10.]

48.23A.090 Violations—RCW 48.30.010(1). In addition to any other penalties provided by law, an insurer or producer that violates a requirement of this chapter is guilty of a violation of RCW 48.30.010(1). [1997 c 313 § 11.]

48.23A.900 Severability—1997 c 313. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 313 § 12.]

48.23A.901 Effective date—Application—1997 c 313. This act takes effect January 1, 1998, and applies to policies sold on or after January 1, 1998. [1997 c 313 § 13.]

Chapter 48.24 RCW

GROUP LIFE AND ANNUITIES

Sections

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Policy dividends are payable to real party in interest: RCW 48.18.340.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

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48.24.010 Group requirements. (1) No contract of life insurance shall hereafter be delivered or issued for delivery in this state insuring the lives of more than one individual unless to one of the groups as provided for in this chapter, and unless in compliance with the other provisions of this chapter.

(2) Subsection (1) of this section shall not apply to contracts of life insurance

(a) insuring only individuals related by marriage, by blood, or by legal adoption; or

(b) insuring only individuals having a common interest through ownership of a business enterprise, or of a substantial legal interest or equity therein, and who are actively engaged in the management thereof; or

(c) insuring the lives of employees and retirees under contracts executed with the state health care authority under the provisions of chapter 41.05 RCW. [1988 c 107 § 22; 1973 1st ex.s. c 147 § 11; 1947 c 79 § .24.01; Rem. Supp. 1947 § 45.24.01.]

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Effective date—Effect of veto—Savings—Severability—1973 1st ex.s. c 147: See notes following RCW 41.05.050.

48.24.020 Employee groups. The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee is deemed the policyholder, insuring employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least ten employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. [1955 c 303 § 29; 1947 c 79 § .24.02; Rem. Supp. 1947 § 45.24.02.]

48.24.025 Payment of premium by employee when compensation suspended due to labor dispute. Any employee whose compensation includes group life insurance, the premiums for which are paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the premiums as they become due directly to the policyholder whenever the employee's compensation is suspended or terminated directly or indirectly as the result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the policy provides. During that period of time the policy may not be altered or changed. Nothing in this section shall be deemed to impair the right of the insurer to make normal decreases or increases of the premium rate upon expiration and renewal of the policy, in accordance with the provisions of the policy. Thereafter, if such insurance coverage is no longer available, then the employee shall be given the opportunity to purchase an individual policy at a rate consistent with rates filed by the insurer with the commissioner. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the policyholder in writing, by mail addressed to the address last on record with the policyholder, that the employee may pay the premiums to the policyholder as they become due as provided in this section.

Payment of the premiums must be made when due or the insurance coverage may be terminated by the insurer.

The provisions of any insurance policy contrary to provisions of this section are void and unenforceable after May 29, 1975. [1975 1st ex.s. c 117 § 2.]

Severability—1975 1st ex.s. c 117: See note following RCW 48.21.075.

48.24.030 Dependents of employees or members of certain groups. (1) Insurance under any group life insurance policy issued pursuant to RCW 48.24.020, or 48.24.050, or 48.24.060, or 48.24.070 or 48.24.090 may, if seventy-five percent of the then insured employees or labor union members or public employee association members or members of the Washington state patrol elect, be extended to insure the spouse and dependent children, or any class or classes thereof, of each such insured employee or member who so elects, in amounts in accordance with a plan which precludes individual selection by the employees or members or by the employer or labor union or trustee, and which insurance on the life of any one family member including a spouse shall not be in excess of fifty percent of the insurance on the life of the insured employee or member.

Premiums for the insurance on such family members shall be paid by the policyholder, either from the employer's funds or funds contributed by him, trustee's funds, or labor union funds, and/or from funds contributed by the insured employees or members, or from both.

(2) Such a spouse insured pursuant to this section shall have the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter. [1993 c 132 § 1; 1975 1st ex.s. c 266 § 11; 1965 ex.s. c 70 § 23; 1963 c 192 § 1; 1953 c 197 § 10; 1947 c 79 § .24.03; Rem. Supp. 1947 § 45.24.03.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.24.035 Credit union groups. The lives of a group of individuals may be insured under a policy issued to a credit union, which shall be deemed the policyholder, to insure eligible members of such credit union for the benefit of persons other than the credit union or its officials, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of a credit union, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer, or all of any class or classes thereof determined by conditions pertaining to their age or membership in the credit union or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the credit union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued for which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance.

(3) The policy must cover at least twenty-five members at the date of issue.

(4) The amount of insurance under the policy shall not exceed the amount of the total shares and deposits of the member.

(5) As used herein, "credit union" means a credit union organized and operating under the federal credit union act of 1934 or chapter 31.12 RCW. [1982 c 181 § 14; 1961 c 194 § 8.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.24.040 Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditors, subject to the provisions of the insurance code relating to credit life insurance and credit accident and health insurance and to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness, except that nothing in this section shall preclude an insurer from excluding from the classes eligible for insurance classes of debtors determined by age. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges

collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

(4) Payment by the debtor insured under any such group life insurance contract of the premium charged the creditor by the insurer for such insurance pertaining to the debtor, shall not be deemed to constitute a charge upon a loan in violation of any usury law. [1967 c 150 § 28; 1961 c 194 § 9; 1955 c 303 § 18; 1947 c 79 § .24.04; Rem. Supp. 1947 § 45.24.04.]

48.24.045 Certain associations as groups. The lives of a group of individuals may be insured under a policy issued to an association which has been in active existence for at least one year, which has a constitution and bylaws, and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance. Under this group life insurance policy, the association shall be deemed the policyholder. The policy may insure association employees, members, or their employees. Beneficiaries under the policy shall be persons other than the association or its officers or trustees. The term "employees" as used in this section may include retired employees. [1979 ex.s. c 44 § 1.]

48.24.050 Labor union groups. The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued of which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which the premium is to be derived in part from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five percent of the then eligible members, excluding any as to whom evidence of individual insur-

ability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least twenty-five members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. [1955 c 303 § 19; 1947 c 79 § .24.05; Rem. Supp. 1947 § 45.24.05.]

48.24.060 Public employee associations. The lives of a group of public employees may be insured under a policy issued to the departmental head or to a trustee, or issued to an association of public employees formed for purposes other than obtaining insurance and having, when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five percent of the number of employees eligible for membership in such classes, which department head or trustee or association shall be deemed the policyholder, to insure such employees for the benefit of persons other than the policyholder or any of its officials, subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be all of the employees of the department or members of the association, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the association, or both.

(2) The premium for the policy shall be paid by the policyholder, in whole or in part either from salary deductions authorized by, or charges collected from, the insured employees or members specifically for the insurance, or from the association's own funds, or from both. Any such deductions from salary may be paid by the employer to the association or directly to the insurer. No policy may be placed in force unless and until at least seventy-five percent of the then eligible employees or association members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have authorized their employer to make any required deductions from salary.

(3) The rate of charges to the insured employees or members specifically for the insurance, and the dues of the association if they include the cost of insurance, shall be determined according to each attained age or in not less than four reasonably spaced attained age groups. In no event shall the rate of such dues or charges be level for all members regardless of attained age.

(4) The policy must cover at least twenty-five persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or members or by the association.

As used herein, "public employees" means employees of the United States government, or of any state, or of any political subdivision or instrumentality of any of them. [1989 c 10 § 9. Prior: 1973 1st ex.s. c 163 § 8; 1973 1st ex.s. c 152 § 5; 1963 c 195 § 21; 1955 c 303 § 20; 1953 c 197 § 11; 1947 c 79 § .24.06; Rem. Supp. 1947 § 45.24.06.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.24.070 Trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by two or more employer members of an employers' association, or by one or more labor unions, or by one or more employers and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees or members for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) If the policy is issued to two or more employer members of an employers' association, such policy may be issued only if (a) the association has been in existence for at least five years and was formed for purposes other than obtaining insurance and (b) the participating employers, meaning such employer members whose employees are to be insured, constitute at date of issue at least fifty percent of the total employers eligible to participate, unless the number of persons covered at date of issue exceeds six hundred, in which event such participating employers must constitute at least twenty-five percent of such total employers in either case omitting from consideration any employer whose employees are already covered for group life insurance.

(2) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

(3) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent of the then eligible persons, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at least fifty persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. [1973 1st ex.s. c 163 § 9; 1963 c 86 § 1; 1959 c 225 § 9; 1955 c 303 § 21; 1953 c 197 § 12; 1947 c 79 § .24.07; Rem. Supp. 1947 § 45.24.07.]

48.24.080 Agent groups. The lives of a group of individuals may be insured under a policy issued to a principal, or if such principal is a life insurer, by or to such principal, covering when issued not less than twenty-five agents of such principal, subject to the following requirements:

(1) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for such principal for a commission or other fixed or ascertainable compensation.

(2) The policy must insure either all of the agents or all of any class or classes thereof, determined by conditions pertaining to the services to be rendered by such agents, except that if a policy is intended to insure several such classes it may be issued to insure any such class of which seventy-five percent are covered and extended to other classes as seventy-five percent thereof express the desire to be covered.

(3) The premium on the policy shall be paid by the principal or by the principal and the agents jointly. When the premium is paid by the principal and agents jointly and the benefits of the policy are offered to all eligible agents, the policy, when issued, must insure not less than seventy-five percent of such agents.

(4) The amounts of insurance shall be based upon some plan which will preclude individual selection.

(5) The insurance shall be for the benefit of persons other than the principal.

(6) Such policy shall terminate if, subsequent to issue, the number of agents insured falls below twenty-five lives or seventy-five percent of the number eligible and the contribution of the agents, if the premiums are on a renewable term insurance basis, exceed one dollar per month per one thousand dollars of insurance coverage plus any additional premium per one thousand dollars of insurance coverage charged to cover one or more hazardous occupations.

(7) For the purposes of this section "agents" shall be deemed to include agents, subagents, solicitors, and salesmen. [1949 c 190 § 33; Rem. Supp. 1949 § 45.24.08.]

48.24.090 Washington state patrol. The lives of a group of individuals may be insured under a policy issued to the commanding officer, which commanding officer shall be deemed the policyholder, to insure not less than twenty-five of the members of the Washington state patrol. Such policy shall be for the benefit of beneficiaries as designated by the individuals so insured, and the premium thereon may be paid by such members. Not less than seventy-five percent of all eligible members of such Washington state patrol, or of any unit thereof determined by conditions pertaining to their employment, may be so insured. [1947 c 79 § .24.09; Rem. Supp. 1947 § 45.24.09.]

48.24.095 Financial institutions. The lives of a group of individuals may be insured under a policy issued to a state or federally regulated financial institution, which financial institution shall be deemed the policyholder. The purpose of the policy shall be to insure the depositors or depositor members of the financial institution for the benefit of persons other than the financial institution or its officers. The issuance of the policy shall be subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be the depositors or deposit members of such financial institution, except any as to whom evidence of individual insurability is not satisfactory to the insurer, or any class or classes thereof determined by conditions of age.

(2) The policy must cover at least one hundred persons at the date of issue.

(3) The amount of insurance under the policy shall not exceed the amount of the deposit account of the insured person or five thousand dollars whichever is less.

(4) Financial institutions referred to herein must be authorized to do business in the state of Washington and have their depositors' or members' deposit accounts insured against loss to the amount of at least fifteen thousand dollars by a corporate agency of the federal government. [1967 ex.s. c 95 § 15.]

48.24.100 Standard provisions. No policy of group life insurance shall be delivered or issued for delivery in this state unless it contains in substance the standard provisions as required by RCW 48.24.110 to 48.24.200, inclusive, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder; except that:

(1) Provisions set forth in RCW 48.24.160 to 48.24.200, inclusive, shall not apply to policies issued to a creditor to insure its debtors.

(2) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but such nonforfeiture benefits are not required to be the same as those required for individual life insurance policies. [1947 c 79 § .24.10; Rem. Supp. 1947 § 45.24.10.]

48.24.110 Grace period. There shall be a provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period. [1947 c 79 § .24.11; Rem. Supp. 1947 § 45.24.11.]

48.24.120 Incontestability. There shall be a provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by an individual insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such individual's lifetime nor unless it is contained in a written instrument signed by him. [1947 c 79 § 24.12; Rem. Supp. 1947 § 45.24.12.]

(2004 Ed.)

48.24.130 The contract—Representations. There shall be a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued and become a part of the contract; that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary. [1947 c 79 § .24.13; Rem. Supp. 1947 § 45.24.13.]

48.24.140 Insurability. There shall be a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage. [1947 c 79 § .24.14; Rem. Supp. 1947 § 45.24.14.]

48.24.150 Misstatement of age or sex. There shall be a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age or sex of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used. [1983 1st ex.s. c 32 § 22; 1947 c 79 § .24.15; Rem. Supp. 1947 § 45.24.15.]

48.24.160 Beneficiary—Funeral, last illness expenses. There shall be a provision that any sum becoming due by reason of the death of the individual insured shall be payable to the beneficiary designated by such individual, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the individual insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding ten percent of such amount or one thousand dollars, whichever is greater, to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the individual insured. [1981 c 333 § 1; 1979 ex.s. c 199 § 9; 1955 c 303 § 23; 1947 c 79 § .24.16; Rem. Supp. 1947 § 45.24.16.]

48.24.170 Certificates. There shall be a provision that the insurer will issue to the policyholder for delivery to each individual insured a certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, described by name, relationship, or reference to the insurance records of the policyholder or insurer, and the rights and conditions set forth in RCW 48.24.180, 48.24.190 and 48.24.200, following. [1961 c 194 § 10; 1947 c 79 § .24.17; Rem. Supp. 1947 § 45.24.17.]

48.24.180 Conversion on termination of eligibility. There shall be a provision that if the insurance, or any portion of it, on an individual covered under the policy, other than a child insured pursuant to RCW 48.24.030, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such individual shall be entitled to have issued to him by the insurer, without

evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that,

(1) the individual policy shall, at the option of such individual, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(2) the individual policy shall be in an amount not in any event in excess of the amount of life insurance which ceases because of such termination nor less than one thousand dollars unless a smaller amount of coverage was provided for such individual under the group policy: PROVIDED, That any amount of insurance which matures on the date of such termination or has matured prior thereto under the group policy as an endowment payable to the individual insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(3) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such individual then belongs, and to his age attained on the effective date of the individual policy. [1955 c 303 § 24; 1947 c 79 § .24.18; Rem. Supp. 1947 § 45.24.18.]

48.24.190 Conversion on termination of policy.

There shall be a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured individuals, every individual insured thereunder at the date of such termination, other than a child insured pursuant to RCW 48.24.030, whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by RCW 48.24.180, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the individual's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days of such termination and (b) two thousand dollars. [1953 c 197 § 13; 1947 c 79 § .24.19; Rem. Supp. 1947 § 45.24.19.]

48.24.200 Death pending conversion. There shall be a provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with RCW 48.24.180 and 48.24.190, and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. [1947 c 79 § .24.20; Rem. Supp. 1947 § 45.24.20.]

48.24.210 Limitation of liability. (1) The insurer may in any group life insurance contract provide that it is not liable, or is liable only in a reduced amount, for losses resulting:

(a) From war or any act of war, declared or undeclared, or of service in the military, naval or air forces or in civilian forces auxiliary thereto, or from any cause while a member of any such military, naval or air forces, of any country at war, declared or undeclared.

(b) From aviation under conditions specified in the policy.

(2) The insurer may in any such contract provide that any amount of insurance in excess of one thousand dollars on an individual life may be reduced to one thousand dollars or to any greater amount upon attainment of any age not less than age sixty-five or upon the anniversary of the policy nearest attainment of such age. [1947 c 79 § .24.21; Rem. Supp. 1947 § 45.24.21.]

48.24.240 Readjustment of premium. Any group life insurance contract may provide for a readjustment of the premium rate based on experience under that contract, at the end of the first or of any subsequent year of insurance, and which readjustment may be made retroactive for such policy year only. [1947 c 79 § .24.24; Rem. Supp. 1947 § 45.24.24.]

48.24.260 Application of dividends or rate reductions. Any policy dividends hereafter declared, or reduction in rate of premiums hereafter made or continued for the first or any subsequent year of insurance, under any policy of group life insurance heretofore or hereafter issued to any policyholder may be applied to reduce the policyholder's part of the cost of such insurance, except that if the aggregate dividends or refunds or credits under such group policy and any other group policy or contract issued to the policyholder exceed the aggregate contributions of the policyholder toward the cost of the coverages, such excess shall be applied by the policyholder for the sole benefit of insured individuals. [1947 c 79 § .24.26; Rem. Supp. 1947 § 45.24.26.]

Chapter 48.25 RCW

INDUSTRIAL LIFE INSURANCE

Sections

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48.25.010 Scope of chapter. The provisions of this chapter apply only to industrial life insurance contracts. [1947 c 79 § .25.01; Rem. Supp. 1947 § 45.25.01.]

48.25.020 Industrial life insurance defined. "Industrial" life insurance is any life insurance provided by an individual insurance contract issued in face amount of less than one thousand dollars, under which premiums are payable monthly or oftener, and bearing the words "industrial policy" printed upon the policy as a part of the descriptive matter. [1947 c 79 § .25.02; Rem. Supp. 1947 § 45.25.02.]

48.25.030 Compliance enjoined. No policy of industrial life insurance shall be delivered or be issued for delivery in this state after January 1, 1948, except in compliance with the provisions of this chapter and with other applicable provisions of this code. [1947 c 79 § .25.03; Rem. Supp. 1947 § 45.25.03.]

48.25.040 Standard provisions. No such policy shall be so issued or delivered unless it contains in substance the provisions as required by this chapter, or provisions which in the opinion of the commissioner are more favorable to the policyholder. [1947 c 79 § .25.04; Rem. Supp. 1947 § 45.25.04.]

48.25.050 Grace period. There shall be a provision that the insured is entitled to a grace period of four weeks within which the payment of any premium after the first may be made, except that in policies the premiums for which are payable monthly, the period of grace shall be one month but not less than thirty days; and that during the period of grace the policy shall continue in full force, but if during the grace period the policy becomes a claim, then any overdue and unpaid premiums may be deducted from any settlement under the policy. [1947 c 79 § .25.05; Rem. Supp. 1947 § 45.25.05.]

48.25.060 Entire contract. There shall be a provision that the policy shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the policy when issued, a provision that the policy and the application therefor shall constitute the entire contract. If the application is so made a part of the contract, the policy shall also provide that all statements made by the applicant in such application shall, in the absence of fraud, be deemed to be representations and not warranties. [1947 c 79 § .25.06; Rem. Supp. 1947 § 45.25.06.]

48.25.070 Incontestability. There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years

from its date of issue except for nonpayment of premiums, and except, at the option of the insurer, as to supplemental provisions providing benefits for total and permanent disability or specifically for accidental death. [1947 c 79 § .25.07; Rem. Supp. 1947 § 45.25.07.]

48.25.080 Misstatement of age. There shall be a provision that if it is found that the age of the individual insured, or the age of any other individual considered in determining the premium, has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages. [1947 c 79 § .25.08; Rem. Supp. 1947 § 45.25.08.]

48.25.090 Dividends. If a participating policy, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy, and that dividends arising from such apportionment shall be credited annually beginning not later than the fifth contract year. This provision shall not prohibit the payment of additional dividends on default of payment of premiums or termination of the policy. [1947 c 79 § .25.09; Rem. Supp. 1947 § 45.25.09.]

48.25.100 Nonforfeiture benefits. There shall be a provision for nonforfeiture benefits as required by chapter 48.76 RCW. [1983 c 3 § 152; 1947 c 79 § .25.10; Rem. Supp. 1947 § 45.25.10.]

48.25.110 Cash surrender value. There shall be a provision for a cash surrender value as required by chapter 48.76 RCW. [1983 c 3 § 153; 1947 c 79 § .25.11; Rem. Supp. 1947 § 45.25.11.]

48.25.120 Reinstatement. There shall be a provision that the policy may be reinstated at any time within two years from the due date of the premium in default unless the cash surrender value has been paid, or the extension period expired, upon the production of evidence of insurability satisfactory to the insurer and the payment of all overdue premiums and payment or reinstatement of any unpaid loans or advances made by the insurer against the policy with interest at a rate not exceeding six percent per annum and payable annually. [1947 c 79 § .25.12; Rem. Supp. 1947 § 45.25.12.]

48.25.130 Settlement. There shall be a provision that when the policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death or after a specified period not exceeding two months after receipt of such proof. [1947 c 79 § .25.13; Rem. Supp. 1947 § 45.25.13.]

48.25.140 Authority to alter policy. There shall be a provision that no agent shall have the power or authority to waive, change or alter any of the terms or conditions of any policy; except that, at the option of the insurer, the terms or conditions may be changed by an endorsement signed by a duly authorized officer of the insurer. [1947 c 79 § .25.14; Rem. Supp. 1947 § 45.25.14.]

48.25.150 Beneficiary. (1) Each such policy shall have a space on the front or back page of the policy for the name of the beneficiary designated with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(2) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured. [1947 c 79 § .25.15; Rem. Supp. 1947 § 45.25.15.]

48.25.160 Facility of payment clause. Such a policy may also provide that if the beneficiary designated in the policy does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than thirty days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor, or dies before the insured or is not legally competent to give a valid release, then the insurer may make payment thereunder to the executor or administrator of the insured, or to any of the insured's relatives by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary, or by reason of having incurred expense for the maintenance, medical attention or burial of the insured. Such policy may also include a similar provision applicable to any other payment due under the policy. [1947 c 79 § .25.16; Rem. Supp. 1947 § 45.25.16.]

48.25.170 Payment of premiums direct. In the case of weekly premium policies, there may be a provision that upon proper notice to the insurer while premiums on the policy are not in default beyond the grace period, of the intention to pay future premiums directly to the insurer at its home office or any office designated by the insurer for the purpose, the insurer will, at the end of each period of a year from the due date of the first premium so paid, for which period such premiums are so paid continuously without default beyond the grace period, refund a stated percentage of the premiums in an amount which fairly represents the savings in collection expense. [1947 c 79 § .25.17; Rem. Supp. 1947 § 45.25.17.]

48.25.180 Conversion—Weekly premium policies. There shall be a provision in the case of weekly premium policies granting, upon proper written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting his weekly premium industrial insurance to any form of life insurance with less frequent premium payments regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversion need be granted only if the insurer's weekly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of such insurance with less frequent premium payments issued by the insurer at the age of the insured on the plan of industrial or ordinary

insurance desired. [1947 c 79 § .25.18; Rem. Supp. 1947 § 45.25.18.]

48.25.190 Conversion—Monthly premium policies.

There shall be a provision, in the case of monthly premium industrial policies, granting, upon proper written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting his monthly premium industrial insurance to any form of ordinary life insurance regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversions need be granted only if the insurer's monthly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of ordinary insurance issued by the insurer at the age of the insured on the plan of ordinary insurance desired. [1947 c 79 § .25.19; Rem. Supp. 1947 § 45.25.19.]

48.25.200 Title on policy. There shall be a title on the face of each such policy briefly describing its form. [1947 c 79 § .25.20; Rem. Supp. 1947 § 45.25.20.]

48.25.210 Application to term and specified insurance. Any of the provisions required by this chapter or any portion thereof which are not applicable to single premium or term policies or to policies issued or granted pursuant to non-forfeiture provisions, shall to that extent not be incorporated therein. [1947 c 79 § .25.21; Rem. Supp. 1947 § 45.25.21.]

48.25.220 Prohibited provisions. No such policy shall contain:

(1) A provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer.

(2) A provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within two years prior to the issuance of the policy, received institutional, hospital, medical or surgical treatment or attention and if the insured or claimant under the policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk.

(3) A provision giving the insurer the right to declare the policy void because the insured had been rejected for insurance, unless such right be conditioned upon a showing by the insurer, that knowledge of such rejection would have led to a refusal by the insurer to make such contract. [1947 c 79 § .25.22; Rem. Supp. 1947 § 45.25.22.]

48.25.230 Limitation of liability. The insurer may in any such policy limit its liability for the same causes and to the same extent as is provided in RCW 48.23.260 for other

life insurance contracts. [1947 c 79 § .25.23; Rem. Supp. 1947 § 45.25.23.]

Chapter 48.25A RCW

LIFE INSURANCE—PROFIT-SHARING, CHARTER, FOUNDERS, AND COUPON POLICIES

Sections

- 48.25A.010 Definitions.
 48.25A.020 Certain policies not to be issued or delivered after September 1, 1967.
 48.25A.030 Coupon policies—Approval by commissioner.
 48.25A.040 Coupon policies—Requirements.
 48.25A.050 Revocation of certificates of authority and licenses for violation of chapter.

48.25A.010 Definitions. As used in this chapter:

(1) "Profit-sharing policy" means:

(a) A life insurance policy which by its terms expressly provides that the policyholder will participate in the distribution of earnings or surplus other than earnings or surplus attributable, by reasonable and nondiscriminatory standards, to the participating policies of the company and allocated to the policyholder on reasonable and nondiscriminatory standards; or

(b) A life insurance policy the provisions of which, through sales material or oral presentations, are interpreted by the company to prospective policyholders as entitling the policyholder to the benefits described in subsection (a) of this section.

(2) "Charter policy" or "founders policy" means:

(a) A life insurance policy which by its terms expressly provides that the policyholder will receive some preferential or discriminatory advantage or benefit not available to persons who purchase insurance from the company at future dates or under other circumstances; or

(b) A life insurance policy the provisions of which, through sales material or oral presentations, are interpreted by the company to prospective policyholders as entitling the policyholder to the benefits described in subsection (a) of this section.

(3) "Coupon policy" means a life insurance policy which provides a series of pure endowments maturing periodically in amounts not exceeding the gross annual policy premiums. The term "pure endowment" or "endowment" is used in its accepted actuarial sense, meaning a benefit becoming payable at a specific future date if the insured person is then living. [1967 ex.s. c 95 § 5.]

48.25A.020 Certain policies not to be issued or delivered after September 1, 1967. No profit-sharing, charter, or founders policy shall be issued or delivered in this state after September 1, 1967. [1967 ex.s. c 95 § 6.]

48.25A.030 Coupon policies—Approval by commissioner. No coupon policy shall be issued or delivered in this state until the form of the same has been filed with and approved by the commissioner. [1967 ex.s. c 95 § 7.]

48.25A.040 Coupon policies—Requirements. Coupon policies issued or delivered in this state shall be subject to the following provisions:

(1) No detachable coupons or certificates or passbooks may be used. No other device may be used which tends to emphasize the periodic endowment benefits or which tends to create the impression that the endowments represent interest earnings or anything other than benefits which have been purchased by part of the policyholder's premium payments.

(2) Each endowment benefit must have a fixed maturity date and payment of the endowment benefit shall not be contingent upon the payment of any premium becoming due on or after such maturity date.

(3) The endowment benefits must be expressed in dollar amounts rather than as percentages of other quantities or in other ways, both in the policy itself and in the sale thereof.

(4) A separate premium for the periodic endowment benefits must be shown in the policy adjacent to the rest of the policy premium information and must be given the same emphasis in the policy and in the sale thereof as that given the rest of the policy premium information. This premium shall be calculated with mortality, interest and expense factors which are consistent with those for the basic policy premium. [1967 ex.s. c 95 § 8.]

48.25A.050 Revocation of certificates of authority and licenses for violation of chapter. The commissioner may revoke all certificates of authority and licenses granted to any insurance company, its officers or agents violating any provision of this chapter. [1967 ex.s. c 95 § 9.]

Chapter 48.26 RCW

MARINE AND TRANSPORTATION INSURANCE (RESERVED)

Chapter 48.27 RCW

PROPERTY INSURANCE

Sections

- 48.27.010 Over-insurance prohibited.
 48.27.020 Replacement insurance.

Binders: RCW 48.18.230.

Insurable interest, property insurance, nonprofit organizations: RCW 48.18.040.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

Rates: Chapter 48.19 RCW.

Standard form of fire policy: RCW 48.18.120.

48.27.010 Over-insurance prohibited. (1) Over-insurance shall be deemed to exist if property or an insurable interest therein is insured by one or more insurance contracts against the same hazard in any amount in excess of the fair value of the property or of such interest, as determined as of the effective date of the insurance or of any renewal thereof, or in those instances when insured value is for improvements and land.

(2) For the purposes of this section only the term "fair value" means the cost of replacement less such depreciation as is properly applicable to the subject insured.

(3) No person shall knowingly require, request, issue, place, procure, or accept any insurance contract which would result in over-insurance of the property or interest therein

proposed to be insured, except as is provided in RCW 48.27.020.

(4) No person shall compel an insured or applicant for insurance to procure property insurance in an amount in excess of the amount which could reasonably be expected to be paid under the policy (or combination of policies) in the event of a loss, whether such insurance is required in connection with a loan or otherwise.

(5) Each violation of this section shall subject the violator to the penalties provided by this code. [1984 c 6 § 1; 1947 c 79 § .27.01; Rem. Supp. 1947 § 45.27.01.]

48.27.020 Replacement insurance. By any contract of insurance of property or of any insurable interest therein, the insurer may in connection with a special provision or endorsement made a part of the policy insure the cost of repair or replacement of such property, if damaged or destroyed by a hazard insured against, and without deduction of depreciation, subject to such reasonable rules and regulations as may be made by the commissioner. [1951 c 194 § 1; 1947 c 79 § .27.02; formerly Rem. Supp. 1947 § 45.27.02.]

Chapter 48.28 RCW SURETY INSURANCE

Sections

48.28.010	Requirements deemed met by surety insurer.
48.28.020	Fiduciary bonds—Premium as lawful expense.
48.28.030	Judicial bonds—Premium as part of recoverable costs.
48.28.040	Official bonds—Payment of premiums.
48.28.050	Release from liability.

Binders: RCW 48.18.230.

Official bonds in general: Chapter 42.08 RCW.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.28.010 Requirements deemed met by surety insurer. Whenever by law or by rule of any court, public official, or public body, any surety bond, recognizance, obligation, stipulation or undertaking is required or is permitted to be given, any such bond, recognizance, obligation, stipulation, or undertaking which is otherwise proper and the conditions of which are guaranteed by an authorized surety insurer, or by an unauthorized surety insurer as a surplus line pursuant to chapter 48.15 RCW of this code, shall be approved and accepted and shall be deemed to fulfill all requirements as to number of sureties, residence or status of sureties, and other similar requirements, and no justification by such surety shall be necessary. [1947 c 79 § .28.01; Rem. Supp. 1947 § 45.28.01.]

48.28.020 Fiduciary bonds—Premium as lawful expense. Any fiduciary required by law to give bonds, may include as part of his lawful expense to be allowed by the court or official by whom he was appointed, the reasonable amount paid as premium for such bonds to the authorized surety insurer or to the surplus line surety insurer which issued or guaranteed such bonds. [1955 c 30 § 1. Prior: 1947 c 79 § .28.02; Rem. Supp. 1947 § 45.28.02.]

48.28.030 Judicial bonds—Premium as part of recoverable costs. In any proceeding the party entitled to

recover costs may include therein such reasonable sum as was paid to such surety insurer as premium for any bond or undertaking required therein, and as may be allowed by the court having jurisdiction of such proceeding. [1955 c 30 § 2. Prior: 1947 c 79 § .28.03; Rem. Supp. 1947 § 45.28.03.]

Rules of court: *Cf. RAP 14.3, 18.22.*

48.28.040 Official bonds—Payment of premiums. The premium for bonds given by such surety insurers for appointive or elective public officers and for such of their deputies or employees as are required to give bond shall be paid by the state, political subdivision, or public body so served. [1955 c 30 § 3. Prior: 1947 c 79 § .28.04; Rem. Supp. 1947 § 45.28.04.]

48.28.050 Release from liability. A surety insurer may be released from its liability on the same terms and conditions as are provided by law for the release of individuals as sureties. [1947 c 79 § .28.05; Rem. Supp. 1947 § 45.28.05.]

Chapter 48.29 RCW TITLE INSURERS

Sections

48.29.010	Scope of chapter—Definitions.
48.29.020	Qualifications—Guaranty fund deposit.
48.29.030	Amount of deposit.
48.29.040	May do business in two or more counties—Restrictions.
48.29.060	Impairment of deposit.
48.29.070	Levy of execution against deposit.
48.29.090	Purpose of deposit.
48.29.100	Termination of deposit.
48.29.110	Release of securities.
48.29.120	Special reserve fund.
48.29.130	Investments.
48.29.140	Premium rates.
48.29.150	Taxation of title insurers.
48.29.155	Agent license—Financial responsibility—Definitions.
48.29.160	Agents—County tract indexes required.
48.29.170	Agents—Separate licenses for individuals not required.
48.29.180	Disclosure of energy conservation payment obligations— Informational note—Liability.
48.29.190	Conducting business as escrow agent—Requirements— Violation, penalties.
48.29.200	Prohibited practices.

48.29.010 Scope of chapter—Definitions. (1) This chapter relates only to title insurers.

(2) None of the provisions of this code shall be deemed to apply to persons engaged in the business of preparing and issuing abstracts of title to property and certifying to the correctness thereof so long as such persons do not guarantee or insure such titles.

(3) For purposes of this chapter, unless the context clearly requires otherwise:

(a) "Title policy" means any written instrument, contract, or guarantee by means of which title insurance liability is assumed.

(b) "Abstract of title" means a written representation, provided pursuant to contract, whether written or oral, intended to be relied upon by the person who has contracted for the receipt of such representation, listing all recorded conveyances, instruments, or documents which, under the laws of the state of Washington, impart constructive notice with respect to the chain of title to the real property described. An

abstract of title is not a title policy as defined in this subsection.

(c) "Preliminary report," "commitment," or "binder" means reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions set forth in the reports, the conditions and stipulations of the report and the issued policy, and such other matters as may be incorporated by reference. The reports are not abstracts of title, nor are any of the rights, duties, or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report. Any such report shall not be construed as, nor constitute, a representation as to the condition of the title to real property, but shall constitute a statement of terms and conditions upon which the issuer is willing to issue its title policy, if such offer is accepted. [1997 c 14 § 1; 1947 c 79 § .29.01; Rem. Supp. 1947 § 45.29.01.]

48.29.020 Qualifications—Guaranty fund deposit. A title insurer shall not be entitled to have a certificate of authority unless it otherwise qualifies therefor, nor unless:

(1) It is a stock corporation.

(2) It owns or leases and maintains a complete set of tract indexes of the county in which its principal office within this state is located.

(3) It deposits and keeps on deposit with the commissioner a guaranty fund in amount as set forth in RCW 48.29.030 and comprised of cash or public obligations as specified in RCW 48.13.040. [1990 c 76 § 1; 1955 c 86 § 12; 1947 c 79 § .29.02; Rem. Supp. 1947 § 45.29.02.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.030 Amount of deposit. (1) The amount of the required guaranty fund deposit shall be determined by the population, as at last official United States or official state census, of the county within which the insurer is to be authorized to transact its business, as follows:

County population		Amount of guaranty fund deposit required
More than	but not more than	
0	15,000	\$ 10,000.00
15,000	35,000	\$ 15,000.00
35,000	60,000	\$ 25,000.00
60,000	100,000	\$ 50,000.00
100,000	150,000	\$ 75,000.00
150,000	300,000	\$100,000.00
300,000	500,000	\$150,000.00
500,000		\$200,000.00

(2) For authority to transact business in two or more counties, the insurer must have a guaranty fund deposit in amount not less than the amount required under subsection (1) as to that one of the counties in which business is to be so transacted for which the largest amount is so required. [1957 c 193 § 16; 1947 c 79 § .29.03; Rem. Supp. 1947 § 45.29.03.]

48.29.040 May do business in two or more counties—Restrictions. (1) Subject to the deposit requirements of (2004 Ed.)

RCW 48.29.030, a title insurer having its principal offices in one county may be authorized to transact business in only such additional counties as to which it owns or leases and maintains, or has a duly authorized agent that owns or leases and maintains, a complete set of tract indexes.

(2) A title insurer not authorized to transact business in a certain county may purchase a title policy on property located therein from another title insurer which is so authorized in that county. The first title insurer may thereafter issue its own policy of title insurance to the owner of such property. The first title insurer may combine the insurance on the title of such property in a single policy which also insures the title of one or more other pieces of property. The first title insurer must pay the full premium based on filed rates for the policy, and must charge the precise same amount to its own customer for the insurance as to the title of such property. A title insurer using the authority granted by this subsection in a transaction must so notify its customer. [1990 c 76 § 2; 1957 c 193 § 17; 1947 c 79 § .29.04; Rem. Supp. 1947 § 45.29.04.]

48.29.060 Impairment of deposit. If an insurer's guaranty fund deposit becomes impaired for any cause, the commissioner shall forthwith give notice thereof to the insurer, requiring that the impairment be cured within thirty days after the date of the notice. If the impairment is not so cured, the commissioner shall forthwith revoke the insurer's certificate of authority. [1947 c 79 § .29.06; Rem. Supp. 1947 § 45.29.06.]

48.29.070 Levy of execution against deposit. If an insurer fails to satisfy any judgment against it arising out of its liability under any title insurance policy or certificate of title issued, insured, or assumed by it, within thirty days after the finality of the judgment became fixed, the judgment may be enforced against the insurer's guaranty fund deposit through the following procedure:

(1) The judgment creditor shall petition the court wherein the judgment is entered and as part of the same cause, truthfully setting forth the facts regarding the insurer's failure to satisfy the judgment as required by this section.

(2) Upon such petition the court shall direct issuance of a special execution directed to the sheriff of Thurston county, requiring that the sheriff sell so much of the securities on deposit as may be required to satisfy the judgment and pay the costs of the levy.

(3) The court's order for issuance of the special execution shall also direct that a copy of the judgment and of the petition be served upon the commissioner within five days after the date of the order.

(4) Upon issuance of such special execution and upon such service upon the commissioner, the commissioner shall deliver to such sheriff sufficient of such securities as may be required for sale to satisfy the judgment and to pay such costs. [1955 c 86 § 14; 1947 c 79 § .29.07; Rem. Supp. 1947 § 45.29.07.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.090 Purpose of deposit. (1) The securities comprising the guaranty fund deposit shall be held by the com-

missioner as a special guaranty fund securing the faithful performance by the insurer of all its undertakings and liabilities as to any title guaranteed or insured by it.

(2) Such deposit shall not be subject to any other liabilities of the insurer until after all its liabilities named in subsection (1) of this section have been discharged. [1955 c 86 § 16; 1947 c 79 § .29.09; Rem. Supp. 1947 § 45.29.09.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.100 Termination of deposit. (1) A guaranty fund deposit shall be terminated only upon the existence of any of the following conditions:

(a) Upon termination of all liabilities of the insurer, other than through reinsurance, under all guaranties or insurances of titles made, issued, or assumed by it.

(b) Upon reinsurance of all such liabilities of the insurer, with the commissioner's approval, in another insurer holding a certificate of authority as a title insurer in this state.

(2) For the purposes of this section only, all liability of the insurer with regard to a title guaranteed or insured by it shall be deemed terminated upon the expiration of twenty-one years from the date of the guaranty or insurance, unless prior thereto a claim of loss has been made with reference thereto and settlement of such loss then remains pending. [1947 c 79 § .29.10; Rem. Supp. 1947 § 45.29.10.]

48.29.110 Release of securities. (1) Upon any termination of the guaranty fund deposit, the commissioner shall release the securities comprising it to the insurer after the following conditions have been complied with:

(a) The insurer shall make written application for such release, verified by the oaths of its president and secretary.

(b) The commissioner shall in due course following upon such application make such examination of the records of the insurer, and of the insurer's officers under oath, as he deems reasonably necessary to determine that the conditions for termination of the deposit have been met.

(2) Upon release of the securities, the commissioner shall revoke the insurer's certificate of authority. [1955 c 86 § 17; 1947 c 79 § .29.11; Rem. Supp. 1947 § 45.29.11.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.120 Special reserve fund. (1) Each title insurer shall annually apportion to a special reserve fund an amount determined by applying the rate of twenty-five cents for each one thousand dollars of net increase of insurance it has in force as at the end of such year. Such apportionment shall be continued or resumed as needed to maintain the special reserve fund at an amount equal to not less than the guaranty fund deposit required of the insurer.

(2) The special reserve fund shall be held by the insurer as an additional guaranty fund, and shall be used only for the payment of losses after the insurer's liquid resources available for the payment of losses, other than such special reserve fund or the guaranty fund deposit, have been exhausted.

(3) For the purposes of computing the special reserve fund as provided in subsection (1) of this section, net increase of insurance in force resulting from reinsurance of the risks of another title insurer shall not be included to the extent that a

like special reserve fund on such insurance is maintained by the ceding insurer. [1947 c 79 § .29.12; Rem. Supp. 1947 § 45.29.12.]

48.29.130 Investments. The funds of a domestic title insurer, other than those representing its guaranty fund deposit, shall be invested as follows:

(1) Funds in amount not less than its required special reserve shall be kept invested in investments eligible for domestic life insurers.

(2) Other funds may be invested in:

(a) The insurer's plant and equipment, up to a maximum of fifty percent of capital plus surplus.

(b) Stocks and bonds of abstract companies when approved by the commissioner.

(c) Investments eligible for the investment of funds of any domestic insurer. [1967 c 150 § 30; 1947 c 79 § .29.13; Rem. Supp. 1947 § 45.29.13.]

48.29.140 Premium rates. (1) Premium rates for the insuring or guaranteeing of titles shall not be excessive, inadequate, or unfairly discriminatory.

(2) Each title insurer shall forthwith file with the commissioner a schedule showing the premium rates to be charged by it. Every addition to or modification of such schedule or of any rate therein contained shall likewise be filed with the commissioner, and no such addition or modification shall be effective until expiration of fifteen days after date of such filing.

(3) The commissioner may order the modification of any premium rate or schedule of premium rates found by him after a hearing to be excessive, or inadequate, or unfairly discriminatory. No such order shall require retroactive modification. [1947 c 79 § .29.14; Rem. Supp. 1947 § 45.29.14.]

48.29.150 Taxation of title insurers. Title insurers and their property shall be taxed by this state in accordance with the general laws relating to taxation, and not otherwise. [1947 c 79 § .29.15; Rem. Supp. 1947 § 45.29.15.]

48.29.155 Agent license—Financial responsibility—Definitions. (1) At the time of filing an application for a title insurance agent license, or any renewal or reinstatement of a title insurance agent license, the applicant shall provide satisfactory evidence to the commissioner of having obtained the following as evidence of financial responsibility:

(a) A fidelity bond or fidelity insurance providing coverage in the aggregate amount of two hundred thousand dollars with a deductible no greater than ten thousand dollars covering the applicant and each corporate officer, partner, escrow officer, and employee of the applicant conducting the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under RCW 18.44.021(6); and

(b) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, or some other security approved by the commissioner, unless the fidelity bond or fidelity insurance obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. The bond shall run to the state of

Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the commissioner of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the commissioner. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond is not liable for any penalties imposed on the licensee, including but not limited to any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For the purposes of this section, a "fidelity bond" means a primary commercial blanket bond or its equivalent satisfactory to the commissioner and written by an insurer authorized to transact this line of business in the state of Washington. The bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the bond, acting alone or in collusion with others. The bond shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the title insurance agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(3) For the purposes of this section, "fidelity insurance" means employee dishonesty insurance or its equivalent satisfactory to the commissioner and written by an insurer authorized to transact this line of business in the state of Washington. The insurance shall provide coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the policy of insurance, acting alone or in collusion with others. The insurance shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the insurance company be liable under the insurance to any other party. The insurance shall name the title insurance agent as the named insured and shall protect the named insured against the loss of money or other real or personal property belonging to the named insured, or in which the named insured has a pecuniary interest, or for which the named insured is legally liable or held by the named insured in any capacity, whether the named insured is legally liable therefor or not. The insurance coverage may be canceled by the insurer upon delivery

of thirty days' written notice to the commissioner and to the title insurance agent.

(4) The fidelity bond or fidelity insurance, and the surety bond or other form of security approved by the commissioner, shall be kept in full force and effect as a condition precedent to the title insurance agent's authority to transact business in this state, and the title insurance agent shall supply the commissioner with satisfactory evidence thereof upon request. [2003 c 202 § 1.]

48.29.160 Agents—County tract indexes required.

To be licensed as [an] agent of a title insurer, the applicant must own or lease and maintain a complete set of tract indexes of the county or counties in which such agent will do business. [1981 c 223 § 1.]

48.29.170 Agents—Separate licenses for individuals not required. Title insurance agents shall be exempt from the provisions of *RCW 48.17.090(2) and 48.17.180(1) which otherwise require that each individual empowered to exercise the authority of a licensed firm or corporation must be separately licensed. [1981 c 223 § 2.]

***Reviser's note:** RCW 48.17.090 was amended by 1981 c 339 § 10 which deleted subsection (2).

48.29.180 Disclosure of energy conservation payment obligations—Informational note—Liability. The existence of notices of payment obligations in RCW 80.28.065 may be disclosed as an informational note to a preliminary commitment for policy of title insurance. Neither the inclusion nor the exclusion of any such informational note shall create any liability against such title insurer under any preliminary commitment for title insurance, policy or otherwise. [1993 c 245 § 4.]

Findings—Intent—1993 c 245: See note following RCW 80.28.065.

48.29.190 Conducting business as escrow agent—Requirements—Violation, penalties. (1) Every title insurance company and title insurance agent conducting the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under RCW 18.44.021(6) shall:

(a) Keep adequate records, as determined by rule by the insurance commissioner, of all transactions handled by the title insurance company or title insurance agent, including itemization of all receipts and disbursements of each transaction. These records shall be maintained in this state, unless otherwise approved by the insurance commissioner, for a period of six years from completion of the transaction. These records shall be open to inspection by the insurance commissioner or his or her authorized representatives;

(b) Keep separate escrow fund account or accounts in a recognized Washington state depository or depositories authorized to receive funds, in which shall be kept separate and apart and segregated from the title insurance company or title insurance agent's own funds, all funds or moneys of clients which are being held by the title insurance company or title insurance agent pending the closing of a transaction and such funds shall be deposited not later than the first banking day following receipt thereof; and

(c) Not make disbursements on any escrow account without first receiving deposits directly relating to the account in amounts at least equal to the disbursements. A title insurance company or title insurance agent shall not make disbursements until the next business day after the business day on which the funds are deposited unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made. The deposits shall be in one of the following forms:

- (i) Cash;
- (ii) Interbank electronic transfers such that the funds are unconditionally received by the title insurance company or the title insurance agent or the title insurance company or title insurance agent's depository;
- (iii) Checks, negotiable orders of withdrawal, money orders, cashier's checks, and certified checks that are payable in Washington state and drawn on financial institutions located in Washington state;
- (iv) Checks, negotiable orders of withdrawal, money orders, and any other item that has been finally paid as described in RCW 62A.4-213 before any disbursement; or
- (v) Any depository check, including any cashier's check, certified check, or teller's check, which is governed by the provisions of the federal expedited funds availability act, 12 U.S.C. Sec. 4001 et seq.

(2) For purposes of this section, "item" means any instrument for the payment of money even though it is not negotiable, but does not include money.

(3) Violation of this section shall subject a title insurance company or title insurance agent to penalties as prescribed in Title 9A RCW and remedies as provided in chapter 19.86 RCW and shall constitute grounds for suspension or revocation of the certificate of authority of a title insurance company or the license of a title insurance agent. In addition, a violation of this section may subject a title insurance company or a title insurance agent to penalties as prescribed in this title. [1999 c 30 § 34.]

48.29.200 Prohibited practices. It is a violation of this chapter for any title insurance company and title insurance agent in the conduct of the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under RCW 18.44.021(6) to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Directly or indirectly engage in any unfair or deceptive act or practice toward any person;
- (3) Directly or indirectly obtain property by fraud or misrepresentation;
- (4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;
- (5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter, and with intent to defraud, omit to make, or cause or direct to be made, a full and true entry thereof in the books and accounts of the title insurance company or title insurance agent;

(6) Make or concur in making any false entry, or omit or concur in omitting to make any material entry, in its books or accounts;

(7) Knowingly make or publish, or concur in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein;

(8) Willfully fail to make any proper entry in the books of the escrow business as required by law;

(9) Fail to disclose in a timely manner to the other officers, directors, controlling persons, or employees the receipt of service of a notice of an application for an injunction or other legal process affecting the property or business of a title insurance company or title insurance agent conducting an escrow business, including an order to cease and desist or other order of the insurance commissioner; or

(10) Fail to make any report or statement lawfully required by the insurance commissioner or other public official. [1999 c 30 § 35.]

Chapter 48.30 RCW

UNFAIR PRACTICES AND FRAUDS

Sections

- 48.30.010 Unfair practices in general—Remedies and penalties.
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- 48.30.330 Immunity from libel or slander.

Discrimination prohibited: RCW 48.18.480.

48.30.010 Unfair practices in general—Remedies and penalties. (1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such

business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

(3)(a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.

(b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).

(c) Upon appeal the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

(4) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(5) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(6) If any such regulation is violated, the commissioner may take such other or additional action as is permitted under the insurance code for violation of a regulation. [1997 c 409 § 107; 1985 c 264 § 13; 1973 1st ex.s. c 152 § 6; 1965 ex.s. c 70 § 24; 1947 c 79 § .30.01; Rem. Supp. 1947 § 45.30.01.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.30.020 Anticomcompact law. (1) No person shall either within or outside of this state enter into any contract, understanding or combination with any other person to do jointly or severally any act or engage in any practice for the purpose of

(a) controlling the rates to be charged for insuring any risk or any class of risks in this state; or

(b) unfairly discriminating against any person in this state by reason of his plan or method of transacting insurance,

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or by reason of his affiliation or nonaffiliation with any insurance organization; or

(c) establishing or perpetuating any condition in this state detrimental to free competition in the business of insurance or injurious to the insuring public.

(2) This section shall not apply relative to ocean marine and foreign trade insurances.

(3) This section shall not be deemed to prohibit the doing of things permitted to be done in accordance with the provisions of chapter 48.19 RCW of this code.

(4) Whenever the commissioner has knowledge of any violation of this section he shall forthwith order the offending person to discontinue such practice immediately or show cause to the satisfaction of the commissioner why such order should not be complied with. If the offender is an insurer or a licensee under this code and fails to comply with such order within thirty days after receipt thereof, the commissioner may forthwith revoke the offender's certificate of authority or licenses. [1947 c 79 § .30.02; Rem. Supp. 1947 § 45.30.02.]

48.30.030 False financial statements. No person shall knowingly file with any public official nor knowingly make, publish, or disseminate any financial statement of an insurer which does not accurately state the insurer's financial condition. [1947 c 79 § .30.03; Rem. Supp. 1947 § 45.30.03.]

48.30.040 False information and advertising. No person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein. [1947 c 79 § .30.04; Rem. Supp. 1947 § 45.30.04.]

48.30.050 Advertising must show name and domicile. Every advertisement of, by, or on behalf of an insurer shall set forth the name in full of the insurer and the location of its home office or principal office, if any, in the United States (if an alien insurer). [1947 c 79 § .30.05; Rem. Supp. 1947 § 45.30.05.]

48.30.060 Insurer name—Deceptive use prohibited. No person who is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer. [1947 c 79 § .30.06; Rem. Supp. 1947 § 45.30.06.]

48.30.070 Advertising of financial condition. (1) Every advertisement by or on behalf of any insurer purporting to show its financial condition may be in a condensed form but shall in substance correspond with the insurer's last verified statement filed with the commissioner.

(2) No insurer or person in its behalf shall advertise assets except those actually owned and possessed by the insurer in its own exclusive right, available for the payment of losses and claims, and held for the protection of its policyholders and creditors. [1947 c 79 § .30.07; Rem. Supp. 1947 § 45.30.07.]

48.30.075 Using existence of insurance guaranty associations in advertising, etc., to sell insurance. No person shall make, publish, disseminate, circulate, or place

before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Washington Insurance Guaranty Association or the Washington Life and Disability Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Washington Insurance Guaranty Association Act or the Washington Life and Disability Insurance Guaranty Association Act. [1975-'76 2nd ex.s. c 109 § 9.]

48.30.080 Defamation of insurer. No person shall make, publish, or disseminate, or aid, abet or encourage the making, publishing, or dissemination of any information or statement which is false or maliciously critical and which is designed to injure in its reputation or business any authorized insurer or any domestic corporation or reciprocal being formed pursuant to this code for the purpose of becoming an insurer. [1947 c 79 § .30.08; Rem. Supp. 1947 § 45.30.08.]

48.30.090 Misrepresentation of policies. No person shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any policy or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or use any name or title of any policy or class of policies misrepresenting the nature thereof. [1947 c 79 § .30.09; Rem. Supp. 1947 § 45.30.09.]

48.30.100 Dividends not to be guaranteed. No insurer, agent, broker, solicitor, or other person, shall guarantee or agree to the payment of future dividends or future refunds of unused premiums or savings in any specific or approximate amounts or percentages on account of any insurance contract. [1947 c 79 § .30.10; Rem. Supp. 1947 § 45.30.10.]

48.30.110 Contributions to candidates for insurance commissioner. (1) No insurer or fraternal benefit society doing business in this state shall directly or indirectly pay or use, or offer, consent, or agree to pay or use any money or thing of value for or in aid of any candidate for the office of insurance commissioner; nor for reimbursement or indemnification of any person for money or property so used.

(2) Any individual who violates any provision of this section, or who participates in, aids, abets, advises, or consents to any such violation, or who solicits or knowingly receives any money or thing of value in violation of this section, shall be guilty of a gross misdemeanor and shall be liable to the insurer or society for the amount so contributed or received. [1982 c 181 § 18; 1947 c 79 § .30.11; Rem. Supp. 1947 § 45.30.11.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.30.120 Misconduct of officers, employees. No director, officer, agent, attorney in fact, or employee of an insurer shall:

(1) Knowingly receive or possess himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omit to make or to cause or direct to be made, a full and true entry thereof in its books and accounts; nor

(2) Make or concur in making any false entry, or concur in omitting to make any material entry, in its books or accounts; nor

(3) Knowingly concur in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein; nor

(4) Having the custody or control of its books, wilfully fail to make any proper entry in the books of the insurer as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; nor

(5) If a notice of an application for an injunction or other legal process affecting or involving the property or business of the insurer is served upon him, fail to disclose the fact of such service and the time and place of such application to the other directors, officers, and managers thereof; nor

(6) Fail to make any report or statement lawfully required by a public officer. [1947 c 79 § .30.12; Rem. Supp. 1947 § 45.30.12.]

48.30.130 Presumption of knowledge of director. A director of an insurer is deemed to have such knowledge of its affairs as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of any provision of this chapter. If present at a meeting of directors at which any act, proceeding, or omission of its directors which is a violation of any such provision occurs, he must be deemed to have concurred therein unless at the time he causes or in writing requires his dissent therefrom to be entered on the minutes of the directors.

If absent from such meeting, he must be deemed to have concurred in any such violation if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the insurer for six months thereafter without causing or in writing requiring his dissent from such violation to be entered upon such record or minutes. [1947 c 79 § .30.13; Rem. Supp. 1947 § 45.30.13.]

48.30.140 Rebating. (1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, general agent, agent, broker, or solicitor shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed agent, general agent, broker, or solicitor for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, agents, or brokers whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to a broker as provided in RCW 48.17.270. [1994 c 203 § 3; 1990 1st ex.s. c 3 § 8; 1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

48.30.150 Illegal inducements. No insurer, general agent, agent, broker, solicitor, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold. [1990 1st ex.s. c 3 § 9; 1975-'76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

48.30.155 Life or disability insurers—Insurance as inducement to purchase of goods, etc. No life or disability insurer shall directly or indirectly participate in any plan to offer or effect any kind or kinds of insurance in this state as an inducement to the purchase by the public of any goods, securities, commodities, services or subscriptions to publications. This section shall not apply to group or blanket insurance issued pursuant to this code. [1957 c 193 § 19.]

48.30.157 Charges for extra services. Notwithstanding the provisions of RCW 48.30.140, 48.30.150, and

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48.30.155, the commissioner may permit an agent or broker to enter into reasonable arrangements with insureds and prospective insureds to charge a reduced fee in situations where services that are charged for are provided beyond the scope of services customarily provided in connection with the solicitation and procurement of insurance, so that an overall charge to an insured or prospective insured is reasonable taking into account receipt of commissions and fees and their relation, proportionally, to the value of the total work performed. [1988 c 248 § 17; 1983 c 3 § 154; 1979 ex.s. c 199 § 10.]

48.30.170 Rebate—Acceptance prohibited. (1) No insured person shall receive or accept, directly or indirectly, any rebate of premium or part thereof, or any favor, advantage, share in dividends, or other benefits, or any valuable consideration or inducement not specified or provided for in the policy, or any commission on any insurance policy to which he or she is not lawfully entitled as a licensed agent, broker, or solicitor. The retention by the nominal policyholder in any group life insurance contract of any part of any dividend or reduction of premium thereon contrary to the provisions of RCW 48.24.260, shall be deemed the acceptance and receipt of a rebate and shall be punishable as provided by this code.

(2) The amount of insurance whereon the insured has so received or accepted any such rebate or any such commission, other than as to life or disability insurances, shall be reduced in the proportion that the amount or value of the rebate or commission bears to the premium for such insurance. In addition to such reduction of insurance, if any, any such insured shall be liable to a fine of not more than two hundred dollars.

(3) This section shall not apply to an offset or reimbursement of all or part of a fee paid to a broker as provided in RCW 48.17.270. [1994 c 203 § 4; 1947 c 79 § .30.17; Rem. Supp. 1947 § 45.30.17.]

48.30.180 "Twisting" prohibited. No person shall by misrepresentations or by misleading comparisons, induce or tend to induce any insured to lapse, terminate, forfeit, surrender, retain, or convert any insurance policy. [1947 c 79 § .30.18; Rem. Supp. 1947 § 45.30.18.]

48.30.190 Illegal dealing in premiums. (1) No person shall wilfully collect any sum as premium for insurance, which insurance is not then provided or is not in due course to be provided by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall wilfully collect as premium for insurance any sum in excess of the amount actually expended or in due course is to be expended for insurance applicable to the subject on account of which the premium was collected.

(3) No person shall wilfully or knowingly fail to return to the person entitled thereto within a reasonable length of time any sum collected as premium for insurance in excess of the amount actually expended for insurance applicable to the subject on account of which the premium was collected.

(4) Each violation of this section which does not amount to a felony shall constitute a misdemeanor. [1947 c 79 § .30.19; Rem. Supp. 1947 § 45.30.19.]

48.30.200 Hypothecation of premium notes. It shall be unlawful for any insurer or its representative, or any agent or broker, to hypothecate, sell, or dispose of any promissory note, received in payment for any premium or part thereof on any contract of life insurance or of disability insurance applied for, prior to delivery of the policy to the applicant. [1947 c 79 § .30.20; Rem. Supp. 1947 § 45.30.20.]

48.30.210 Misrepresentation in application for insurance. A person who knowingly makes a false or misleading statement or impersonation, or who willfully fails to reveal a material fact, in or relative to an application for insurance to an insurer, is guilty of a gross misdemeanor, and the license of any such person may be revoked. [1995 c 285 § 18; 1990 1st ex.s. c 3 § 10; 1947 c 79 § .30.21; Rem. Supp. 1947 § 45.30.21.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.30.220 Destruction, injury, secretion, etc., of property. Any person, who, with intent to defraud or prejudice the insurer thereof, burns or in any manner injures, destroys, secretes, abandons, or disposes of any property which is insured at the time against loss or damage by fire, theft, embezzlement, or any other casualty, whether the same be the property of or in the possession of such person or any other person, under circumstances not making the offense arson in the first degree, is guilty of a class C felony. [1995 c 285 § 19; 1965 ex.s. c 70 § 25; 1947 c 79 § .30.22; Rem. Supp. 1947 § 45.30.22.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.30.230 False claims or proof—Penalty. (1) It is unlawful for any person, knowing it to be such, to:

(a) Present, or cause to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss under a contract of insurance; or

(b) Prepare, make, or subscribe any false or fraudulent account, certificate, affidavit, or proof of loss, or other document or writing, with intent that it be presented or used in support of such a claim.

(2)(a) Except as provided in (b) of this subsection, a violation of this section is a gross misdemeanor.

(b) If the claim is in excess of one thousand five hundred dollars, the violation is a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 270; 1990 1st ex.s. c 3 § 11; 1947 c 79 § .30.23; Rem. Supp. 1947 § 45.30.23.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

48.30.240 Rate wars prohibited. (1) Any insurer which precipitates, or aids in precipitating or conducting a rate war and by so doing writes or issues a policy of insurance at a less rate than permitted under its schedules filed with the commissioner, or below the rate deemed by him to be proper and adequate to cover the class of risk insured, shall have its certificate of authority to do business in this state suspended until such time as the commissioner is satisfied that it is charging a proper rate of premium.

(2) Any insurer which has precipitated, or aided in precipitating or conducting a rate war for the purpose of punish-

ing or eliminating competitors or stifling competition, or demoralizing the business, or for any other purpose, and has ordered the cancellation or rewriting of policies at a rate lower than that provided by its rating schedules where such rate war is not in operation, and has paid or attempted to pay to the insured any return premiums, on any risk so to be rewritten, on which its agent has received or is entitled to receive his regular commission, such insurer shall not be allowed to charge back to such agent any portion of his commission on the ground that the same has not been earned. [1947 c 79 § .30.24; Rem. Supp. 1947 § 45.30.24.]

48.30.250 Interlocking ownership, management. (1) Any insurer may retain, invest in or acquire the whole or any part of the capital stock of any other insurer or insurers, or have a common management with any other insurer or insurers, unless such retention, investment, acquisition or common management is inconsistent with any other provision of this title, or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be a director of two or more insurers which are competitors, unless the effect thereof is to substantially lessen competition between insurers generally or tends to create a monopoly.

(3) If the commissioner finds, after a hearing thereon, that there is violation of this section he shall order all such persons and insurers to cease and desist from such violation within such time, or extension thereof, as may be specified in such order. [1949 c 190 § 34; Rem. Supp. 1949 § 45.30.25.]

48.30.260 Right of debtor or borrower to select agent, broker, insurer. (1) Every debtor or borrower, when property insurance of any kind is required in connection with the debt or loan, shall have reasonable opportunity and choice in the selection of the agent, broker, and insurer through whom such insurance is to be placed; but only if the insurance is properly provided for the protection of the creditor or lender, whether by policy or binder, not later than at commencement of risk as to such property as respects such creditor or lender, and in the case of renewal of insurance, only if the renewal policy, or a proper binder therefor containing a brief description of the coverage bound and the identity of the insurer in which the coverage is bound, is delivered to the creditor or lender not later than thirty days prior to the renewal date.

(2) Every person who lends money or extends credit and who solicits insurance on real and personal property must explain to the borrower in prominently displayed writing that the insurance related to such loan or credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (3)(b) of this section.

(3) No person who lends money or extends credit may:

(a) Solicit insurance for the protection of property, after a person indicates interest in securing a loan or credit extension, until such person has received a commitment from the lender as to a loan or credit extension;

(b) Unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the credit transaction;

(c) Require that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any contract of insurance required as security for a loan, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;

(d) Use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser taken at a time other than the making of the loan or extension of credit, information relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) Require any procedures or conditions of duly licensed agents, brokers, or insurers not customarily required of those agents, brokers, or insurers affiliated or in any way connected with the person who lends money or extends credit; or

(f) Require property insurance in an amount in excess of the amount which could reasonably be expected to be paid under the policy, or combination of policies, in the event of a loss.

(4) Nothing contained in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(5) Nothing contained in this section shall apply to credit life or credit disability insurance. [1990 1st ex.s. c 3 § 13; 1988 c 248 § 18; 1984 c 6 § 2; 1977 c 61 § 1; 1957 c 193 § 20.]

48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption. (Expires December 31, 2006.) (1) No officer or employee of this state, or of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer or agent or broker.

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(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to:

(a) The public nonprofit corporation authorized under RCW 67.40.020;

(b) Projects in excess of one hundred million dollars for port districts formed under chapter 53.04 RCW;

(c) A regional transit authority authorized under RCW 81.112.030; or

(d) Projects in excess of one hundred million dollars for counties with a population over one million, for projects administered for public hospitals. [2003 c 323 § 1. Prior: 2000 2nd sp.s. c 4 § 33; 2000 c 143 § 2; 1983 2nd ex.s. c 1 § 6; 1967 ex.s. c 12 § 3.]

Expiration date—2003 c 323 § 1: "Section 1 of this act expires December 31, 2006." [2003 c 323 § 3.]

Expiration date—2000 c 143: See note following RCW 53.08.145.

State convention and trade center—Corporation exempt: RCW 67.40.020.

48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption. (Effective December 31, 2006.) (1) No officer or employee of this state, or of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer or agent or broker.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or

such public agency, public authority, or public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to:

(a) The public nonprofit corporation authorized under RCW 67.40.020;

(b) A regional transit authority authorized under RCW 81.112.030; or

(c) Projects in excess of one hundred million dollars for counties with a population over one million, for projects administered for public hospitals. [2003 c 323 § 2; 2000 2nd sp.s. c 4 § 33; 1983 2nd ex.s. c 1 § 6; 1967 ex.s. c 12 § 3.]

Effective date—2003 c 323 § 2: "Section 2 of this act takes effect December 31, 2006." [2003 c 323 § 4.]

State convention and trade center—Corporation exempt: RCW 67.40.020.

48.30.300 Unfair discrimination, generally—Disability policies, specifically. Notwithstanding any provision contained in Title 48 RCW to the contrary:

(1) No person or entity engaged in the business of insurance in this state shall refuse to issue any contract of insurance or cancel or decline to renew such contract because of the sex or marital status, or the presence of any sensory, mental, or physical handicap of the insured or prospective insured. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased or reduced on the basis of the sex or marital status, or be restricted, modified, excluded or reduced on the basis of the presence of any sensory, mental, or physical handicap of the insured or prospective insured. Subject to the provisions of subsection (2) of this section these provisions shall not prohibit fair discrimination on the basis of sex, or marital status, or the presence of any sensory, mental, or physical handicap when bona fide statistical differences in risk or exposure have been substantiated.

(2) With respect to disability policies issued or renewed on and after July 1, 1994, that provide coverage against loss arising from medical, surgical, hospital, or emergency care services:

(a) Policies shall guarantee continuity of coverage. Such provision, which shall be included in every policy, shall provide that:

(i) The policy may be canceled or nonrenewed without the prior written approval of the commissioner only for nonpayment of premium or as permitted under RCW 48.18.090; and

(ii) The policy may be canceled or nonrenewed because of a change in the physical or mental condition or health of a covered person only with the prior written approval of the commissioner. Such approval shall be granted only when the insurer has discharged its obligation to continue coverage for such person by obtaining coverage with another insurer, health care service contractor, or health maintenance organi-

zation, which coverage is comparable in terms of premiums and benefits as defined by rule of the commissioner.

(b) It is an unfair practice for a disability insurer to modify the coverage provided or rates applying to an in-force disability insurance policy and to fail to make such modification in all such issued and outstanding policies.

(c) Subject to rules adopted by the commissioner, it is an unfair practice for a disability insurer to:

(i) Cease the sale of a policy form unless it has received prior written authorization from the commissioner and has offered all policyholders covered under such discontinued policy the opportunity to purchase comparable coverage without health screening; or

(ii) Engage in a practice that subjects policyholders to rate increases on discontinued policy forms unless such policyholders are offered the opportunity to purchase comparable coverage without health screening.

The insurer may limit an offer of comparable coverage without health screening to a period not less than thirty days from the date the offer is first made. [1993 c 492 § 287; 1975-76 2nd ex.s. c 119 § 7.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.30.310 Commercial motor vehicle employment driving record not to be considered, when. When an individual applies for a policy of casualty insurance providing either automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage on an individually owned passenger vehicle or a renewal of such policy, an insurer shall not consider the applicant's commercial motor vehicle employment driving record in determining whether the policy will be issued or renewed or in determining the rates for the policy. An insurer shall not cancel such policy or discriminate in regard to other terms or conditions of the policy based upon the applicant's commercial motor vehicle employment driving record.

"Employment driving record" means that record maintained by the director pertaining to motor vehicle accidents or convictions for violation of motor vehicle laws while the applicant is driving a commercial motor vehicle as an employee of another. [1977 ex.s. c 356 § 3.]

48.30.320 Notice of reason for cancellation, restrictions based on handicaps. Every authorized insurer, upon canceling, denying, or refusing to renew any individual life, individual disability, homeowner, dwelling fire, or private passenger automobile insurance policy, shall, upon written request, directly notify in writing the applicant or insured, as the case may be, of the reasons for the action by the insurer. Any benefits, terms, rates, or conditions of such an insurance contract which are restricted, excluded, modified, increased, or reduced because of the presence of a sensory, mental, or physical handicap shall, upon written request, be set forth in writing and supplied to the insured. The written communications required by this section shall be phrased in simple language which is readily understandable to a person of average intelligence, education, and reading ability. [1979 c 133 § 1.]

48.30.330 Immunity from libel or slander. With respect to contracts of insurance as defined in RCW 48.30.320, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, the commissioner's agents, or members of the commissioner's staff, or against any insurer, its authorized representative, its agents, its employees, furnishing to the insurer information as to reasons for cancellation or refusal to issue or renew, for libel or slander on the basis of any statement made by any of them in any written notice of cancellation or refusal to issue or renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to issue or renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith. [1979 c 133 § 2.]

Chapter 48.30A RCW INSURANCE FRAUD

Sections

48.30A.005	Findings—Intent.
48.30A.010	Definitions.
48.30A.015	Unlawful acts—Penalties.
48.30A.020	Defenses to proceedings under this chapter.
48.30A.030	Injunction available—Remedies—Costs—Attorneys' fees—Degree of proof—Time limit.
48.30A.035	Detrimental judgment—Written notification to appropriate regulatory or disciplinary body or agency.
48.30A.040	Violation—Cause for discipline—Unprofessional conduct—Regulatory penalty.
48.30A.045	Insurance antifraud plan—File plan and changes with commissioner—Exemptions.
48.30A.050	Insurance antifraud plan—Specific procedures.
48.30A.055	Insurance antifraud plan—Review—Disapproval—Notice—Audit to ensure compliance.
48.30A.060	Insurance antifraud plan—Actions taken by insurer—Report—Not public records.
48.30A.065	Insurance antifraud plan—Failure to file or exercise good faith—Penalty—Failure to follow plan—Civil penalty.
48.30A.070	Duty to investigate, enforce, and prosecute violations.
48.30A.900	Effective date—1995 c 285.

48.30A.005 Findings—Intent. The legislature finds that the business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. The payment of kickbacks, bribes, or rebates for referrals to service providers, as has been occurring with increasing regularity in this state, results in inflated or fraudulent insurance claims, results in greater insurance costs for all citizens, and is contrary to the public interest. In particular, the process whereby "cappers" buy and sell insurance claims without the controls of professional licensing and discipline creates a fertile ground for illegal activity and has, in this state, resulted in frauds committed against injured claimants, insurance companies, and the public. Operations that engage in this practice have some or all of the following characteristics: Cappers, acting under an agreement or understanding that they will receive a pecuniary benefit, refer claimants with real or imaginary claims, injuries, or property damage to service providers. This sets off a chain of events that corrupts both the provision of services and casualty or property insurance for all citizens. This chain of events includes false claims for services through the use of false estimates of repair; false prescriptions of care or rehabilitative

therapy; services that either do not occur or are provided by persons unqualified to provide the services; submission of false claims; submission of and demands for fraudulent costs, lost wages, pain and suffering, and the like; and other devices meant to result in false claims under casualty or property insurance policies or contracts, whether insured or self-insured, and either directly or through subrogation.

The legislature finds that combating these practices requires laws carefully fashioned to identify practices that mimic customary business practices. The legislature does not intend this law to be used against medical and other business referral practices that are otherwise legal, customary, and unrelated to the furtherance of some or all of the corrupt practices identified in this chapter. [1995 c 285 § 1.]

48.30A.010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Casualty or property insurance" includes both the insurance under which a claim is filed and insurance that receives a claim through subrogation, and means insurance as defined in RCW 48.11.040 and 48.11.070 and includes self-insurance arrangements.

(2) "Claimant" means a person who has or is believed by an actor to have an insurance claim.

(3) "Group-buying arrangement" means an arrangement made by a membership organization having one hundred or more members in which the organization asks for or receives valuable consideration in exchange for referring its members to a service provider; the consideration asked for or received will be or is used to benefit the entire organization, not just one or more individuals in positions of power or influence in the organization; and reasonable efforts are made to disclose to affected members of the organization the nature of the referral relationship, including the nature, extent, amount, and use of the consideration.

(4) "Health care services" means a service provided to a claimant for treatment of physical or mental illness or injury arising in whole or substantial part from trauma.

(5) "Insurance claim" means a claim for payment, benefits, or damages under a contract, plan, or policy of casualty or property insurance.

(6) "Legal provider" means an active member in good standing of the Washington state bar association, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law.

(7) "Service provider" means a person who directly or indirectly provides, advertises, or otherwise claims to provide services.

(8) "Services" means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim.

(9) "Trauma" means a physical injury or wound caused by external force or violence. [1995 c 285 § 2.]

48.30A.015 Unlawful acts—Penalties. (1) It is unlawful for a person:

(a) Knowing that the payment is for the referral of a claimant to a service provider, either to accept payment from

a service provider or, being a service provider, to pay another; or

(b) To provide or claim or represent to have provided services to a claimant, knowing the claimant was referred in violation of (a) of this subsection.

(2) It is unlawful for a service provider to engage in a regular practice of waiving, rebating, giving, paying, or offering to waive, rebate, give, or pay all or any part of a claimant's casualty or property insurance deductible.

(3) A violation of this section constitutes trafficking in insurance claims.

(4)(a) Trafficking in insurance claims is a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony. [2003 c 53 § 271; 1995 c 285 § 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

48.30A.020 Defenses to proceedings under this chapter. In a proceeding under this chapter, it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense:

(1) The conduct alleged was authorized by the rules of professional conduct or the admission to practice rules for lawyers as adopted by the state supreme court, Washington business and professions licensing statutes, or rules adopted by the secretary of health or the director of licensing;

(2) The payment was an incidental nonmonetary gift or gratuity, or was purely social in nature;

(3) The conduct alleged was an exercise of a group-buying arrangement;

(4) The conduct alleged was a legal provider paying a service provider's bills from the proceeds of an insurance claim that included the bills;

(5) The conduct alleged was a legal provider paying for services of an expert witness, including reports, consultation, and testimony; or

(6) The conduct alleged was a service provider's purchase of advertising from an unrelated business that provides referrals from advertising for groups of ten or more service providers that are not related to the advertising business and not related to each other. [1995 c 285 § 4.]

48.30A.030 Injunction available—Remedies—Costs—Attorneys' fees—Degree of proof—Time limit. Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this section is a preponderance of the evidence. An action under this section must be brought within three years after the violation of this chapter occurred. [1995 c 285 § 6.]

48.30A.035 Detrimental judgment—Written notification to appropriate regulatory or disciplinary body or agency. Whenever a service provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under RCW 48.30A.030, the attorney general or the prosecuting attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency. [1995 c 285 § 7.]

48.30A.040 Violation—Cause for discipline—Unprofessional conduct—Regulatory penalty. A violation of this chapter is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this chapter is unprofessional conduct in violation of RCW 18.130.180. [1995 c 285 § 8.]

48.30A.045 Insurance antifraud plan—File plan and changes with commissioner—Exemptions. (1) Each insurer licensed to write direct insurance in this state, except those exempted in subsection (2) of this section, shall institute and maintain an insurance antifraud plan. An insurer licensed on July 1, 1995, shall file its antifraud plan with the insurance commissioner no later than December 31, 1995. An insurer licensed after July 1, 1995, shall file its antifraud plan within six months of licensure. An insurer shall file any change to the antifraud plan with the insurance commissioner within thirty days after the plan has been modified.

(2) This section does not apply to health carriers, as defined in RCW 48.43.005, life insurers, or title insurers; or property or casualty insurers with annual gross written medical malpractice insurance premiums in this state that exceed fifty percent of their total annual gross written premiums in this state; or all credit-related insurance written in connection with a credit transaction in which the creditor is named as a beneficiary or loss payee under the policy except vendor single-interest or collateral protection coverage as defined in RCW 48.22.110(4). [1997 c 92 § 1; 1995 c 285 § 9.]

48.30A.050 Insurance antifraud plan—Specific procedures. An insurer's antifraud plan must establish specific procedures to:

(1) Prevent insurance fraud, including internal fraud involving employees or company representatives, fraud resulting from misrepresentation on applications for insurance coverage, and claims fraud;

(2) Review claims in order to detect evidence of possible insurance fraud and to investigate claims where fraud is suspected;

(3) Report fraud to appropriate law enforcement agencies and cooperate with those agencies in their prosecution of fraud cases;

(4) Undertake civil actions against persons who have engaged in fraudulent activities;

(5) Train company employees and agents in the detection and prevention of fraud. [1995 c 285 § 10.]

48.30A.055 Insurance antifraud plan—Review—Disapproval—Notice—Audit to ensure compliance. If after review of an insurer's antifraud plan, the commissioner finds that the plan does not comply with RCW 48.30A.050, the commissioner may disapprove the antifraud plan. Notice of disapproval must include a statement of the specific reasons for disapproval. The insurer shall refile a plan disapproved by the commissioner within sixty days of the date of the notice of disapproval. The commissioner may audit insurers to ensure compliance with antifraud plans. [1995 c 285 § 11.]

48.30A.060 Insurance antifraud plan—Actions taken by insurer—Report—Not public records. Each insurer shall annually provide to the insurance commissioner a summary report on actions taken under its antifraud plan to prevent and combat insurance fraud. The report must also include, but not be limited to, measures taken to protect and ensure the integrity of electronic data processing-generated data and manually compiled data, statistical data on the amount of resources committed to combatting fraud, and the amount of fraud identified and recovered during the reporting period. The antifraud plans and summary of the insurer's antifraud activities are not public records and are exempt from chapter 42.17 RCW, are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation. [1995 c 285 § 12.]

48.30A.065 Insurance antifraud plan—Failure to file or exercise good faith—Penalty—Failure to follow plan—Civil penalty. An insurer that fails to file a timely antifraud plan or who does not make a good faith attempt to file an antifraud plan that complies with RCW 48.30A.050, is subject to the penalty provisions of RCW 48.01.080, but no penalty may be imposed for the first filing made by an insurer under this chapter. An insurer that fails to follow the antifraud plan is subject to a civil penalty not to exceed ten thousand dollars for each violation, at the discretion of the commissioner after consideration of all relevant factors, including the willfulness of the violation. [1995 c 285 § 13.]

48.30A.070 Duty to investigate, enforce, and prosecute violations. It is the duty of all peace officers, law enforcement officers, and law enforcement agencies within this state to investigate, enforce, and prosecute all violations of this chapter. [1995 c 285 § 14.]

48.30A.900 Effective date—1995 c 285. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995. [1995 c 285 § 39.]

Chapter 48.31 RCW

MERGERS, REHABILITATION, LIQUIDATION

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Dissolution of business corporation: Chapter 23B.14 RCW.

Uniform insurers liquidation act: Chapter 48.99 RCW.

48.31.010 Merger or consolidation. (1) Subject to the provisions of RCW 48.08.080, relating to the mutualization of stock insurers, RCW 48.09.350, relating to the conversion or reinsurance of mutual insurers, and RCW 48.10.330, relating to the consolidation or conversion of reciprocal insurers, a domestic insurer may merge or consolidate with another insurer, subject to the following conditions:

(a) The plan of merger or consolidation must be submitted to and be approved by the commissioner in advance of the merger or consolidation.

(b) The commissioner shall not approve any such plan unless, after a hearing, pursuant to such notice as the commissioner may require, he finds that it is fair, equitable, consistent with law, and that no reasonable objection exists. If the commissioner fails to approve the plan, he shall state his reasons for such failure in his order made on such hearing. The insurers involved in the merger shall bear the expense of the mailing of the notice of hearing and of the order on hearing.

(c) No director, officer, member, or subscriber of any such insurer, except as is expressly provided by the plan of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration whatsoever, for in any manner aiding, promoting or assisting in the merger or consolidation.

(d) Any merger or consolidation as to an incorporated domestic insurer shall in other respects be governed by the general laws of this state relating to business corporations. Except, that as to domestic mutual insurers, approval by two-thirds of its members who vote thereon pursuant to such notice and procedure as was approved by the commissioner shall constitute approval of the merger or consolidation as respects the insurer's members.

(2) Reinsurance of all or substantially all of the insurance in force of a domestic insurer by another insurer shall be deemed a consolidation for the purposes of this section. [1973 1st ex.s. c 107 § 3; 1961 c 194 § 11; 1947 c 79 § .31.01; Rem. Supp. 1947 § 45.31.01.]

Severability—1973 1st ex.s. c 107: See note following RCW 48.17.330.

48.31.020 "Insurer"—Scope of term. For the purposes of this chapter, other than as to RCW 48.31.010, and in addition to persons included under RCW 48.99.010, the term "insurer" shall be deemed to include an insurer authorized under chapter 48.05 RCW, an insurer or institution holding a certificate of exemption under RCW 48.38.010, a health care service contractor registered under chapter 48.44 RCW, and a health maintenance organization registered under chapter 48.46 RCW, as well as all persons engaged as, or purporting to be engaged as insurers, institutions issuing charitable gift annuities, health care service contractors, or health maintenance organizations in this state, and to persons in process of organization to become insurers, institutions issuing charitable gift annuities, health care service contractors, or health maintenance organizations. [1998 c 284 § 8; 1989 c 151 § 1; 1947 c 79 § .31.02; Rem. Supp. 1947 § 45.31.02.]

48.31.021 Insurer—Self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, is an insurer under this chapter. [2004 c 260 § 20.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

48.31.030 Rehabilitation—Grounds. The commissioner may apply for an order directing him or her to rehabilitate a domestic insurer upon one or more of the following grounds: That the insurer

- (1) Is insolvent; or
- (2) Has refused to submit its books, records, accounts, or affairs to the reasonable examination of the commissioner; or
- (3) Has failed to comply with the commissioner's order, made pursuant to law, to make good an impairment of capital (if a stock insurer) or an impairment of assets (if a mutual or reciprocal insurer) within the time prescribed by law; or
- (4) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other insurer without first having obtained the written approval of the commissioner; or
- (5) Is found, after examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to its members, subscribers, or stockholders, or to the public; or
- (6) Has willfully violated its charter or any law of this state; or
- (7) Has an officer, director, or manager who has refused to be examined under oath, concerning its affairs, for which purpose the commissioner is authorized to conduct and to enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States, in which any such officer, director, or manager may then presently be, to the full extent permitted by the laws of any such other state or territory, this special authorization considered; or
- (8) Has been the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the insurer or of its property, or if a receiver, trustee, custodian, or sequestrator is appointed by a federal court or if such appointment is imminent; or
- (9) Has consented to such an order through a majority of its directors, stockholders, members, or subscribers; or
- (10) Has failed to pay a final judgment rendered against it in any state upon any insurance contract issued or assumed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later; or
- (11) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that, if established, would endanger assets in an amount threatening the solvency of the insurer; or
- (12) The insurer has failed to remove a person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business; or
- (13) Control of the insurer, whether by stock ownership or ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy; or
- (14) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately; or

(15) The board of directors or the holders of a majority of the shares entitled to vote, request, or consent to rehabilitation under this chapter. [1993 c 462 § 75; 1949 c 190 § 28; 1947 c 79 § .31.03; Rem. Supp. 1949 § 45.31.03.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.040 Rehabilitation—Order—Termination. (1)

An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(2) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he or she may apply to the court for an order of liquidation.

(3) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply for an order terminating the rehabilitation proceeding and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be granted except when, after a full hearing, the court has determined that the purposes of the proceedings have been fully accomplished.

(4) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and his or her successors in office as the rehabilitator, and shall direct the rehabilitator to immediately take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the recorder of deeds of the county in this state in which the principal business of the company is conducted, or the county in this state in which the company's principal office or place of business is located, imparts the same notice as a deed or other evidence of title duly filed or recorded with that recorder of deeds would have imparted. The order to rehabilitate the insurer by operation of law vests title to all assets of the insurer in the rehabilitator.

(5) An order issued under this section requires accountings to the court by the rehabilitator. Accountings must be done at such intervals as the court specifies in its order, but no less frequently than semiannually.

(6) Entry of an order of rehabilitation does not constitute an anticipatory breach of contracts of the insurer nor may it be grounds for retroactive revocation or retroactive cancellation of contracts of the insurer, unless the revocation or cancellation is done by the rehabilitator. [1993 c 462 § 76; 1947 c 79 § .31.04; Rem. Supp. 1947 § 45.31.04.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.045 Rehabilitation order against insurer—Insurer is party to action or proceeding—Stay the action—Statute of limitations or defense of laches. (1) A court in this state before which an action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceed-

ings. The rehabilitator shall take such action respecting the pending litigation as he or she deems necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) A statute of limitations or defense of laches does not run with respect to an action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. An action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon a cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered.

(3) A guaranty association or foreign guaranty association covering life or health insurance or annuities has standing to appear in a court proceeding concerning the rehabilitation of a life or health insurer if the association is or may become liable to act as a result of the rehabilitation. [1993 c 462 § 77.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.050 Liquidation—Grounds. The commissioner may apply for an order directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trustee assets in this state, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer, upon any of the grounds specified in RCW 48.31.030 or upon any one or more of the following grounds: That the insurer

(1) Has ceased transacting business for a period of one year; or

(2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except this code; or

(3) Has not organized or completed its organization and obtained a certificate of authority as an insurer prior to the expiration or revocation of its solicitation permit. [1947 c 79 § .31.05; Rem. Supp. 1947 § 45.31.05.]

48.31.060 Liquidation—Order. (1) An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his own name as commissioner or in the name of the insurer as the court may direct, to give notice to all creditors who may have claims against the insurer to present such claims.

(2) The commissioner may apply under this chapter for an order dissolving the corporate existence of a domestic insurer:

(a) Upon his application for an order of liquidation of such insurer, or at any time after such order has been granted; or

(b) Upon the grounds specified in item (3) of RCW 48.31.050, regardless of whether an order of liquidation is sought or has been obtained. [1947 c 79 § .31.06; Rem. Supp. 1947 § 45.31.06.]

48.31.070 Liquidation—Alien insurers. An order to liquidate the business of the United States branch of an alien insurer having trusteed assets in this state shall be in the same terms as those prescribed for domestic insurers, except that only the assets of the business of such United States branch shall be included therein. [1947 c 79 § .31.07; Rem. Supp. 1947 § 45.31.07.]

48.31.080 Conservation of assets—Foreign insurers. The commissioner may apply for an order directing him to conserve the assets within this state of a foreign insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050.

(2) That its property has been sequestered in its domiciliary sovereignty or in any other sovereignty. [1947 c 79 § .31.08; Rem. Supp. 1947 § 45.31.08.]

48.31.090 Conservation of assets—Alien insurers. The commissioner may apply for an order directing him to conserve the assets within this state of an alien insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050; or

(2) That the insurer has failed to comply, within the time designated by the commissioner, with an order of the commissioner pursuant to law to make good an impairment of its trusteed funds; or

(3) That the property of the insurer has been sequestered in its domiciliary sovereignty or elsewhere. [1947 c 79 § .31.09; Rem. Supp. 1947 § 45.31.09.]

48.31.100 Foreign insurers—Conservation, ancillary proceedings. (1) An order to conserve the assets of a foreign or alien insurer shall direct the commissioner forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) Whenever a domiciliary receiver is appointed for any such insurer in its domiciliary state which is also a reciprocal state, as defined in *RCW 48.31.110, the court shall on application of the commissioner appoint the commissioner as the ancillary receiver in this state, subject to the provisions of the uniform insurers liquidation act. [1947 c 79 § .31.10; Rem. Supp. 1947 § 45.31.10.]

*Reviser's note: RCW 48.31.110 was recodified as RCW 48.99.010 pursuant to 1993 c 462 § 81.

48.31.105 Conduct of proceedings—Requirement to cooperate—Definitions—Violations—Penalties. (1) An officer, manager, director, trustee, owner, employee, or agent of an insurer or other person with authority over or in charge of a segment of the insurer's affairs shall cooperate with the commissioner in a proceeding under this chapter or an investigation preliminary to the proceeding. The term "person" as used in this section includes a person who exercises control directly or indirectly over activities of the insurer through a holding company or other affiliate of the insurer. "To cooperate" as used in this section includes the following:

(a) To reply promptly in writing to an inquiry from the commissioner requesting such a reply; and

(b) To make available to the commissioner books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his or her possession, custody, or control.

(2) A person may not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto.

(3) This section does not abridge existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(4) A person included within subsection (1) of this section who fails to cooperate with the commissioner, or a person who obstructs or interferes with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto, or who violates an order the commissioner issued validly under this chapter may:

(a) Be guilty of a gross misdemeanor and sentenced to pay a fine not exceeding ten thousand dollars or to undergo imprisonment for a term of not more than one year, or both; or

(b) After a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars and be subject further to the revocation or suspension of insurance licenses issued by the commissioner. [2003 c 53 § 272; 1993 c 462 § 58.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.111 Commencement of delinquency proceeding by commissioner—Jurisdiction of courts. (1) A delinquency proceeding may not be commenced under this chapter by anyone other than the commissioner of this state, and no court has jurisdiction to entertain a proceeding commenced by another person.

(2) No court of this state has jurisdiction to entertain a complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to the proceedings, other than in accordance with this chapter.

(3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served under the rules of civil procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is an agent, broker, or other person who has written policies of insurance for or has acted in any manner on behalf of an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(b) If the person served is a reinsurer who has entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer, in an action on or incident to the reinsurance contract;

(c) If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(d) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in an action concerning the assets; or

(e) If the person served is obligated to the insurer in any way, in an action on or incident to the obligation.

(4) If the court on motion of a party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state. [2003 c 248 § 11; 1993 c 462 § 59.]

Severability—Implementation—1993 c 462: See RCW 48.31B.01 and 48.31B.902.

48.31.115 Immunity from suit and liability—Persons entitled to protection. (1) The persons entitled to protection under this section are:

(a) The commissioner and any other receiver responsible for conducting a delinquency proceeding under this chapter, including present and former commissioners and receivers; and

(b) The commissioner's employees, meaning all present and former special deputies and assistant special deputies and special receivers appointed by the commissioner and all persons whom the commissioner, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under this chapter. Attorneys, accountants, auditors, and other professional persons or firms who are retained as independent contractors, and their employees, are not considered employees of the commissioner for purposes of this section.

(2) The commissioner and the commissioner's employees are immune from suit and liability, both personally and in their official capacities, for a claim for damage to or loss of property or personal injury or other civil liability caused by or resulting from an alleged act or omission of the commissioner or an employee arising out of or by reason of his or her duties or employment. However, nothing in this subsection may be construed to hold the commissioner or an employee immune from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the commissioner or an employee.

(3) If a legal action is commenced against the commissioner or an employee, whether against him or her personally or in his or her official capacity, alleging property damage,

property loss, personal injury, or other civil liability caused by or resulting from an alleged act or omission of the commissioner or an employee arising out of or by reason of his or her duties or employment, the commissioner and any employee shall be indemnified from the assets of the insurer for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action unless it is determined upon a final adjudication on the merits that the alleged act or omission of the commissioner or employee giving rise to the claim did not arise out of or by reason of his or her duties or employment, or was caused by intentional or willful and wanton misconduct.

(a) Attorneys' fees and related expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the insurer, as they are incurred, in advance of the final disposition of such action upon receipt of an undertaking by or on behalf of the commissioner or employee to repay the attorneys' fees and expenses if it is ultimately determined upon a final adjudication on the merits and that the commissioner or employee is not entitled to immunity or indemnity under this section.

(b) Any indemnification under this section is an administrative expense of the insurer.

(c) In the event of an actual or threatened litigation against the commissioner or an employee for which immunity or indemnity may be available under this section, a reasonable amount of funds that in the judgment of the commissioner may be needed to provide immunity or indemnity shall be segregated and reserved from the assets of the insurer as security for the payment of indemnity until all applicable statutes of limitation have run or all actual or threatened actions against the commissioner or an employee have been completely and finally resolved, and all obligations of the insurer and the commissioner under this section have been satisfied.

(d) In lieu of segregation and reserving of funds, the commissioner may obtain a surety bond or make other arrangements that will enable the commissioner to secure fully the payment of all obligations under this section.

(4) If a legal action against an employee for which indemnity may be available under this section is settled before final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee, or indemnify the employee for the settlement amount, unless the commissioner determines:

(a) That the claim did not arise out of or by reason of the employee's duties or employment; or

(b) That the claim was caused by the intentional or willful and wanton misconduct of the employee.

(5) In a legal action in which the commissioner is a defendant, that portion of a settlement relating to the alleged act or omission of the commissioner is subject to the approval of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

(a) That the claim did not arise out of or by reason of the commissioner's duties or employment; or

(b) That the claim was caused by the intentional or willful and wanton misconduct of the commissioner.

(6) Nothing in this section removes or limits an immunity, indemnity, benefit of law, right, or defense otherwise available to the commissioner, an employee, or any other person, not an employee under subsection (1)(b) of this section, who is employed by or in the office of the commissioner or otherwise employed by the state.

(7)(a) Subsection (2) of this section applies to any suit based in whole or in part on an alleged act or omission that takes place on or after July 25, 1993.

(b) No legal action lies against the commissioner or an employee based in whole or in part on an alleged act or omission that took place before July 25, 1993, unless suit is filed and valid service of process is obtained within twelve months after July 25, 1993.

(c) Subsections (3), (4), and (5) of this section apply to a suit that is pending on or filed after July 25, 1993, without regard to when the alleged act or omission took place. [1993 c 462 § 60.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.121 Court order for a formal delinquency proceeding—Commissioner may petition—Insurer may petition for hearing and review. (1) The commissioner may petition the court alleging, with respect to a domestic insurer:

(a) That there exists a ground that would justify a court order for a formal delinquency proceeding against an insurer under this chapter;

(b) That the interests of policyholders, creditors, or the public will be endangered by delay; and

(c) The contents of an order deemed necessary by the commissioner.

(2) Upon a filing under subsection (1) of this section, the court may issue forthwith, ex parte and without a hearing, the requested order that shall: Direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business; and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.

(3) The court shall specify in the order what the order's duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold hearings it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this chapter vacates the seizure order.

(4) Entry of a seizure order under this section does not constitute an anticipatory breach of a contract of the insurer.

(5) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of an order under this section for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this subsection

may be held privately in chambers, and it must be so held if the insurer proceeded against so requests.

(6) If, at any time after the issuance of an order under this section, it appears to the court that a person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given does not stay the effect of an order previously issued by the court. [1993 c 462 § 61.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.125 Order of liquidation—Termination of coverage. (1) All policies, including bonds and other noncancelable business, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation continue in force only until the earliest of:

(a) The end of a period of thirty days from the date of entry of the liquidation order;

(b) The expiration of the policy coverage;

(c) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy;

(d) The liquidator has effected a transfer of the policy obligation; or

(e) The date proposed by the liquidator and approved by the court to cancel coverage.

(2) An order of liquidation terminates coverages at the time specified in subsection (1) of this section for purposes of any other statute.

(3) Policies of life or health insurance or annuities shall continue in force for the period and under the terms provided by an applicable guaranty association or foreign guaranty association.

(4) Policies of life or health insurance or annuities or a period or coverage of the policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (1) and (2) of this section. [1993 c 462 § 62.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.131 Appointment of liquidator—Actions at law or equity—Statute of limitations or defense of laches. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, an action at law or equity or in arbitration may not be brought against the insurer or liquidator, whether in this state or elsewhere, nor may such an existing action be maintained or further presented after issuance of the order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company when the injunctions are included in an order to liquidate an insurer issued under laws in other states corresponding to this subsection. Whenever, in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend an action in which he or she intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may, upon or after an order for liquidation, within two years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon a cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. Where, by an agreement, a period of limitation is fixed for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or where in a proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking an action, filing a claim or pleading, or doing an act, and where in such a case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take such an action or do such an act, required of or permitted to the insurer, within a period of one hundred eighty days after the entry of an order for liquidation, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) A statute of limitation or defense of laches does not run with respect to an action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. An action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

(4) A guaranty association or foreign guaranty association has standing to appear in a court proceeding concerning the liquidation of an insurer if the association is or may become liable to act as a result of the liquidation. [1993 c 462 § 63.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.135 Recovery from reinsurers—Not reduced by delinquency proceedings—Direct payment to insured.

The amount recoverable by the commissioner from reinsurers may not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement except as provided in RCW 48.31.290. Payment made directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation. [1993 c 462 § 64.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.141 Responsibility for payment of a premium—Earned or unearned premium—Violations—Penalties—Rights of party aggrieved.

(1)(a) An agent, broker, premium finance company, or any other person, other than the policy owner or the insured, responsible for the payment of a premium is obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator also has the right to recover from the person a part of an unearned premium that represents commission of the person. Credits or setoffs or both may not be allowed to an agent, broker, or premium finance company for amounts advanced to the insurer by the

agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the policy owner or the insured.

(b) Notwithstanding (a) of this subsection, the agent, broker, premium finance company, or other person is not liable for uncollected unearned premium of the insurer. A presumption exists that the premium as shown on the books of the insurer is collected, and the burden is upon the agent, broker, premium finance company, or other person to demonstrate by a preponderance of the evidence that the unearned premium was not actually collected. For purposes of this subsection, "unearned premium" means that portion of an insurance premium covering the unexpired term of the policy or the unexpired period of the policy period.

(c) An insured is obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) Suspend or revoke or refuse to renew the licenses of the offending party or parties;

(b) Impose a penalty of not more than one thousand dollars for each violation.

(3) Before the commissioner may take an action as set forth in subsection (2) of this section, he or she shall give written notice to the person accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After the hearing, or upon failure of the accused to appear at the hearing, the commissioner, if he or she finds a violation, shall impose those penalties under subsection (2) of this section that he or she deems advisable.

(4) When the commissioner takes action in any or all of the ways set out in subsection (2) of this section, the party aggrieved has the rights granted under the Administrative Procedure Act, chapter 34.05 RCW. [1993 c 462 § 65.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.145 Liquidator denies claim—Written notice—Objections of claimant—Court hearing.

(1) When the liquidator denies a claim in whole or in part, the liquidator shall give written notice of the determination to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file his or her objections with the liquidator. If no such a filing is made, the claimant may not further object to the determination.

(2) Whenever the claimant files objections with the liquidator and the liquidator does not alter his or her denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his or her recommendation. [1993 c 462 § 66.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.151 Creditor's claim against insurer is secured by other person—Subrogated rights—Agreements concerning distributions. Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name, and is subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he or she discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person is not entitled to a distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. The creditor shall hold any excess received by him or her in trust for the other person. The term "other person" as used in this section does not apply to a guaranty association or foreign guaranty association. [1993 c 462 § 67.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.155 Unclaimed funds—Liquidator's application for discharge—Duties of state treasurer. Unclaimed funds subject to distribution remaining in the liquidator's hands when he or she is ready to apply to the court for discharge, including the amount distributable to a person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest to the person entitled to them or his or her legal representative upon proof satisfactory to the state treasurer of his or her right to them. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the state treasurer. [1993 c 462 § 68.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.161 After termination of liquidation proceeding—Good cause to reopen proceedings. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order. [1993 c 462 § 69.]

Severability—Implementation—1993 c 462: See note following RCW 48.31B.901 and 48.31B.902.

48.31.165 Domiciliary receiver not appointed—Court order to liquidate—Notice—Domiciliary receiver appointed in other state. (1) If no domiciliary receiver has been appointed, the commissioner may apply to the court for an order directing him or her to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the grounds stated in: RCW 48.31.030, except subsection (10) of that section; 48.31.050(2); or 48.31.080.

(2) When an order is sought under subsection (1) of this section, the court shall cause the insurer to be given thirty days' notice and time to respond, or a lesser period reasonable under the circumstances.

(3) If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the recorder of deeds of the county in which the principal business of the company in this state is located or the county in which its principal office or place of business in this state is located, imparts the same notice as a deed or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under RCW 48.99.030. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under RCW 48.99.030.

(5) On the same grounds as are specified in subsection (1) of this section, the commissioner may petition an appropriate federal court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part thereof that the commissioner deems desirable for the protection of policyholders, creditors, and the public in this state.

(6) The court may order the commissioner, when he or she has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under those rules on the liquidation of insurers under this chapter that are otherwise compatible with this section. [1993 c 462 § 70.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.171 Domiciliary liquidator—Reciprocal state—Nonreciprocal state—Commissioner's duties. (1) Except as to special deposits and security on secured claims under RCW 48.99.030(2), the domiciliary liquidator of an insurer domiciled in a reciprocal state is vested by operation of law with the title to all of the assets, property, contracts, and rights of action, agents' balances, and all the books, accounts, and other records of the insurer located in this state. The date of vesting is the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting is the date of entry of the order directing possession to be taken. The domiciliary liquidator has the immediate right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the insurer located in this state. The domiciliary liquidator also has the right to recover all other assets of the insurer located in this state, subject to RCW 48.99.030.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state is vested by operation of law with the title to all of the property, contracts, and rights of action, and all the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under RCW 48.31.100 or 48.99.030, or for an ancillary receivership under

RCW 48.99.030, or after approval by the court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(3) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings. [1993 c 462 § 71.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.175 Foreign or alien insurer—Property located in this state—Commissioner's discretion. The commissioner in his or her sole discretion may institute proceedings under RCW 48.31.121 at the request of the commissioner or other appropriate insurance official of the domiciliary state of a foreign or alien insurer having property located in this state. [1993 c 462 § 72.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.181 Liquidation proceedings—One or more reciprocal states—Distributions—Special deposit claims—Secured claims. (1) In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state controls as to claims of residents of this and reciprocal states. Claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where the assets are located.

(2) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in a deposit, so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or another state may surrender his or her security and file his or her claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. [1993 c 462 § 73.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.184 Ancillary receiver in another state or foreign country—Failure to transfer assets. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state assets within his or her control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, then the claims filed in the ancillary receivership, other than special deposit claims or secured

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claims, shall be placed in the class of claims under RCW 48.31.280(8). [2003 c 248 § 12; 1993 c 462 § 74.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.185 Receiver's proposal to disperse assets upon liquidation—Application for approval—Contents of proposal—Notice of application. (1) Within one hundred twenty days of a final determination of insolvency of an insurer and order of liquidation by a court of competent jurisdiction of this state, the receiver shall make application to the court for approval of a proposal to disperse assets out of that insurer's marshalled assets from time to time as assets become available to the Washington insurance guaranty association and the Washington life and disability insurance guaranty association and to any entity or person performing a similar function in another state. For purposes of this section, "associations" means the Washington insurance guaranty association and the Washington life and disability insurance guaranty association and any entity or person performing a similar function in other states.

(2) Such a proposal must at least include provisions for:

(a) Reserving amounts for the payment of claims falling within the priorities established in RCW 48.31.280;

(b) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;

(c) Equitable allocation of disbursements to each of the associations entitled thereto;

(d) The securing by the receiver from each of the associations entitled to disbursements pursuant to this section an agreement to return to the receiver assets previously disbursed that are required to pay claims of secured creditors and claims falling within the priorities established in RCW 48.31.280. A bond is not required of any association; and

(e) A full report by the association to the receiver accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on those assets, and any other matters as the court may direct.

(3) The receiver's proposal must provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver, and must further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of the claim payments made or to be made by the associations then disbursements must be in the amount of available assets.

(4) The receiver's proposal shall, with respect to an insolvent insurer writing life insurance, disability insurance, or annuities, provide for disbursements of assets to the Washington life and disability insurance guaranty association or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the provisions of the Washington life and disability insurance guaranty association act.

(5) Notice of an application must be given to the associations in and to the commissioners of insurance of each of the states. Notice is effected when deposited in the United States certified mails, first class postage prepaid, at least thirty days

prior to submission of the application to the court. [2003 c 248 § 13; 1975-'76 2nd ex.s. c 109 § 10.]

48.31.190 Commencement of proceeding—Venue—Effect of appellate review. (1) Proceedings under this chapter involving a domestic insurer shall be commenced in the superior court for the county in which is located the insurer's home office or, at the election of the commissioner, in the superior court for Thurston county. Proceedings under this chapter involving other insurers shall be commenced in the superior court for Thurston county.

(2) The commissioner shall commence any such proceeding, the attorney general representing him, by an application to the court or to any judge thereof, for an order directing the insurer to show cause why the commissioner should not have the relief prayed for.

(3) Upon a showing of an emergency or threat of imminent loss to policyholders of the insurer the court may issue an ex parte order authorizing the commissioner immediately to take over the premises and assets of the insurer, the commissioner then to preserve the status quo, pending a hearing on the order to show cause, which shall be heard as soon as the court calendar permits in preference to other civil cases.

(4) In response to any order to show cause issued under this chapter the insurer shall have the burden of going forward with and producing evidence to show why the relief prayed for by the commissioner is not required.

(5) On the return of such order to show cause, and after a full hearing, the court shall either deny the relief sought in the application or grant the relief sought in the application together with such other relief as the nature of the case and the interest of policyholders, creditors, stockholders, members, subscribers, or the public may require.

(6) No appellate review of a superior court order, entered after a hearing, granting the commissioner's petition to rehabilitate an insurer or to carry out an insolvency proceeding under this chapter, shall stay the action of the commissioner in the discharge of his responsibilities under this chapter, pending a decision by the appellate court in the matter.

(7) In any proceeding under this chapter the commissioner and his deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or his deputies. [1993 c 462 § 82; 1988 c 202 § 46; 1969 ex.s. c 241 § 13; 1967 c 150 § 31; 1947 c 79 § .31.19; Rem. Supp. 1947 § 45.31.19.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

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

48.31.200 Injunctions. (1) Upon application by the commissioner for such an order to show cause or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents, and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the commis-

sioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof. [1947 c 79 § .31.20; Rem. Supp. 1947 § 45.31.20.]

48.31.210 Change of venue. At any time after the commencement of a proceeding under this chapter the commissioner may apply to the court for an order changing the venue of, and removing the proceeding to Thurston county, or to any other county of this state in which he deems that such proceeding may be most economically and efficiently conducted. [1947 c 79 § .31.21; Rem. Supp. 1947 § 45.31.21.]

48.31.220 Deposit of moneys collected. The moneys collected by the commissioner in a proceeding under this chapter, shall be, from time to time, deposited in one or more state or national banks, savings banks, or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking law of this state. The commissioner may in his discretion deposit such moneys or any part thereof in a national bank or trust company as a trust fund. [1947 c 79 § .31.22; Rem. Supp. 1947 § 45.31.22.]

48.31.230 Exemption from filing fees. The commissioner shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate, or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this chapter, whether or not such paper or instrument be executed by the commissioner or his deputies, employees, or attorneys of record and whether or not it is connected with the commencement of an action or proceeding by or against the commissioner, or with the subsequent conduct of such action or proceeding. [1947 c 79 § .31.23; Rem. Supp. 1947 § 45.31.23.]

48.31.240 Borrowing on pledge of assets. For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this chapter the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property whether real, personal or mixed of such insurer, and the commissioner, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof. The commissioner shall be under no obligation personally or in his official capacity as commissioner to repay any loan made pursuant to this section. [1947 c 79 § .31.24; Rem. Supp. 1947 § 45.31.24.]

48.31.260 Liquidation—Date rights, liabilities fixed. The rights and liabilities of the insurer and of its creditors,

policyholders, stockholders, members, subscribers, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to the provisions of RCW 48.31.300 with respect to the rights of claimants holding contingent claims and RCW 48.31.280 with respect to the priority and order of distributions of claims. [2001 c 40 § 2; 1947 c 79 § .31.26; Rem. Supp. 1947 § 45.31.26.]

Application—Severability—2001 c 40: See notes following RCW 48.31.280.

48.31.270 Voidable transfers. (1) Any transfer of, or lien upon, the property of an insurer which is made or created within four months prior to the granting of an order to show cause under this chapter with the intent of giving to any creditor or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class and which is accepted by such creditor having reasonable cause to believe that such a preference will occur, shall be voidable.

(2) Every director, officer, employee, stockholder, member, subscriber, and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the commissioner.

(3) The commissioner as liquidator, rehabilitator or conservator in any proceeding under this chapter, may avoid any transfer of, or lien upon the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the granting of an order to show cause under this chapter. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as above specified. [1947 c 79 § .31.27; Rem. Supp. 1947 § 45.31.27.]

48.31.280 Priority and order of distribution of claims. The priority of distribution of claims from the insurer's estate is as follows: Every claim in a class must be paid in full or adequate funds retained for payment before the members of the next class receive any payment; no subclasses may be established within a class; and no claim by a shareholder, policyholder, or other creditor may circumvent the priority classes through the use of equitable remedies. The order of distribution of claims is:

(1) Class 1. The costs and expenses of administration during rehabilitation and liquidation, including but not limited to the following:

(a) The actual and necessary costs of preserving or recovering the assets of the insurer;

(b) Compensation for all authorized services rendered in the rehabilitation and liquidation;

(c) Necessary filing fees;

(d) The fees and mileage payable to witnesses;

(e) Authorized reasonable attorneys' fees and other professional services rendered in the rehabilitation and liquidation;

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(f) The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.

(2) Class 2. Loss claims. For purposes of this section, loss claims are all claims under policies, including claims of the federal or a state or local government, for losses incurred, including third-party claims, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, are loss claims. That portion of any loss indemnification that is provided for by other benefits or advantages recovered by the claimant, is not included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to an employee may be treated as a gratuity. Loss claims also include claims under nonassessable policies for unearned premium or other premium refunds.

(3) Class 3. Claims of the federal government, other than claims which are included as loss claims under subsection (2) of this section.

(4) Class 4. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation; except, where there are no claims and no potential claims of the federal government in the estate, in which case claims in this class shall have priority over claims in class 2 and below. Principal officers and directors are not entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.

(5) Class 5. Claims of general creditors including claims of ceding and assuming companies in their capacity as such.

(6) Class 6. Claims of any state or local government, except those under subsection (2) of this section. Claims, including those of any governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims are postponed to the class of claims under subsection (9) of this section.

(7) Class 7. Claims filed late or any other claims other than claims under subsections (8) and (9) of this section.

(8) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.

(9) Class 9. The claims of shareholders or other owners in their capacity as shareholders. [2001 c 40 § 1; 1993 c 462 § 83; 1975-'76 2nd ex.s. c 109 § 1; 1947 c 79 § .31.28; Rem. Supp. 1947 § 45.31.28.]

Application—2001 c 40: "This act applies to and governs all claims filed in any proceeding to liquidate an insurer that is initiated on or after January 1, 2001." [2001 c 40 § 3.]

Severability—2001 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 40 § 4.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.290 Offsets. (1) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) of this section.

(2) No offset shall be allowed in favor of any such person where (a) the obligation of the insurer to such person would not at the date of the entry of any liquidation order, or otherwise, as provided in RCW 48.31.260, entitle him to share as a claimant in the assets of the insurer, or (b) the obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset, or (c) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon a subscription to the capital stock of a stock insurer. [1947 c 79 § .31.29; Rem. Supp. 1947 § 45.31.29.]

48.31.300 Allowance of contingent and other claims.

(1) No contingent claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to RCW 48.31.310, except that such claims shall be considered, if properly presented, and may be allowed to share where:

(a) Such claim becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of such insurer, or

(b) There is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

(2) Where an insurer has been so adjudicated to be insolvent any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer, shall have the right to file a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed

(a) If it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and

(b) If such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claims against such insurer arising out of his or her cause of action other than those already presented can be made; and

(c) If the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

No judgment against such an insured taken after the date of the entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, inquest or by collusion prior to the entry of

the liquidation order shall be considered as conclusive evidence in the liquidation proceeding either of the liability of such insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

(3) No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for fixation of rights and liabilities as provided in RCW 48.31.260 unless the claimant shall surrender his or her security to the commissioner in which event the claim shall be allowed in the full amount for which it is valued.

(4) Whether or not the third party files a claim, the insured may file a claim on his or her own behalf in the liquidation.

(5) No claim may be presented under this section if it is or may be covered by a guaranty association or foreign guaranty association. [1993 c 462 § 84; 1947 c 79 § .31.30; Rem. Supp. 1947 § 45.31.30.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.310 Time to file claims. (1) If upon the granting of an order of liquidation under this chapter or at any time thereafter during the liquidation proceeding, the insurer shall not be clearly solvent, the court shall after such notice and hearing as it deems proper, make an order declaring the insurer to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the commissioner shall notify all persons who may have claims against such insurer and who have not filed proper proofs thereof, to present the same to him, at a place specified in such notice, within four months from the date of the entry of such order, or if the commissioner shall certify that it is necessary, within such longer time as the court shall prescribe. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court.

(2) Proofs of claim may be filed subsequent to the date specified, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed before said date, have been paid in full with interest. [1947 c 79 § .31.31; Rem. Supp. 1947 § 45.31.31.]

48.31.320 Report for assessment. Within three years from the date an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer was filed in the office of the clerk of the court by which such order was made, the commissioner may make a report to the court setting forth

(1) the reasonable value of the assets of the insurer;

(2) the insurer's probable liabilities; and

(3) the probable necessary assessment, if any, to pay all claims and expenses in full, including expenses of administration. [1947 c 79 § .31.32; Rem. Supp. 1947 § 45.31.32.]

48.31.330 Levy of assessment. (1) Upon the basis of the report provided for in RCW 48.31.320, including any

amendments thereof, the court, ex parte, may levy one or more assessments against all members of such insurer who, as shown by the records of the insurer, were members (if a mutual insurer) or subscribers (if a reciprocal insurer) at any time within one year prior to the date of issuance of the order to show cause under RCW 48.31.190.

(2) Such assessment or assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the estimated cost of collection and percentage of uncollectibility thereof. The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to this chapter or pursuant to any other provisions of this code, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this code; except that if the court finds that the policy was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, the court may determine the upper limit of such assessment upon the basis of such minimum rate.

(3) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this code. [1947 c 79 § .31.33; Rem. Supp. 1947 § 45.31.33.]

48.31.340 Order for payment of assessment. After levy of assessment as provided in RCW 48.31.330, upon the filing of a further detailed report by the commissioner, the court shall issue an order directing each member (if a mutual insurer) or each subscriber (if a reciprocal insurer) if he shall not pay the amount assessed against him to the commissioner on or before a day to be specified in the order, to show cause why he should not be held liable to pay such assessment together with costs as set forth in RCW 48.31.360 and why the commissioner should not have judgment therefor. [1947 c 79 § .31.34; Rem. Supp. 1947 § 45.31.34.]

48.31.350 Publication, transmittal of assessment order. The commissioner shall cause a notice of such assessment order setting forth a brief summary of the contents of such order to be:

(1) Published in such manner as shall be directed by the court; and

(2) Enclosed in a sealed envelope, addressed and mailed postage prepaid to each member or subscriber liable thereunder at his last known address as it appears on the records of the insurer, at least twenty days before the return day of the order to show cause provided for in RCW 48.31.340. [1947 c 79 § .31.35; Rem. Supp. 1947 § 45.31.35.]

48.31.360 Judgment upon the assessment. (1) On the return day of the order to show cause provided for in RCW 48.31.340 if the member or subscriber does not appear and serve verified objections upon the commissioner, the court shall make an order adjudging that such member or subscriber is liable for the amount of the assessment against him together with ten dollars costs, and that the commissioner may have judgment against the member or subscriber therefor.

(2) If on such return day the member or subscriber shall appear and serve verified objections upon the commissioner

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there shall be a full hearing before the court or a referee to hear and determine, who, after such hearing, shall make an order either negating the liability of the member or subscriber to pay the assessment or affirming his liability to pay the whole or some part thereof together with twenty-five dollars costs and the necessary disbursements incurred at such hearing, and directing that the commissioner in the latter case may have judgment therefor.

(3) A judgment upon any such order shall have the same force and effect, and may be entered and docketed, and may be appealed from as if it were a judgment in an original action brought in the court in which the proceeding is pending. [1947 c 79 § .31.36; Rem. Supp. 1947 § 45.31.36.]

Chapter 48.31B RCW

INSURER HOLDING COMPANY ACT

Sections

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- 48.31B.070 Person aggrieved by actions of commissioner.
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- 48.31B.901 Severability—1993 c 462.
- 48.31B.902 Implementation—1993 c 462.

48.31B.005 Definitions. As used in this chapter, the following terms have the meanings set forth in this section, unless the context requires otherwise.

(1) An "affiliate" of, or person "affiliated" with, a specific person, is a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) The term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting

securities of any other person. This presumption may be rebutted by a showing made in a manner similar to that provided by RCW 48.31B.025(11) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(4) The term "insurer" has the same meaning as set forth in RCW 48.01.050; it does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(5) A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, a similar entity, or any combination of the foregoing acting in concert, but does not include a joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

(6) A "securityholder" of a specified person is one who owns a security of that person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(7) A "subsidiary" of a specified person is an affiliate controlled by that person directly or indirectly through one or more intermediaries.

(8) The term "voting security" includes a security convertible into or evidencing a right to acquire a voting security. [1993 c 462 § 2.]

48.31B.010 Insurer ceases to control subsidiary—Disposal of investment. If an insurer ceases to control a subsidiary, it shall dispose of any investment in the subsidiary within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment has been made, the investment meets the requirements for investment under any other section of this Title, and the insurer has notified the commissioner thereof. [1993 c 462 § 3.]

48.31B.015 Control of insurer—Acquisition, merger, or exchange—Preacquisition notification—Jurisdiction of courts. (1) No person other than the issuer may make a tender offer for or a request or invitation for tenders of, or enter into an agreement to exchange securities of, seek to acquire, or acquire, in the open market or otherwise, voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly, or by conversion or by exercise of a right to acquire, be in control of the insurer. No person may enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or the agreement is entered into, or before the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement con-

taining the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner as prescribed in this section.

For purposes of this section a domestic insurer includes a person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information set forth in RCW 48.31B.020(3)(a) sixty days before the proposed effective date of the acquisition. Persons who fail to file the required preacquisition notification with the commissioner are subject to the penalties in RCW 48.31B.020(5)(c). For the purposes of this section, "person" does not include a securities broker holding, in usual and customary broker's function, less than twenty percent of the voting securities of an insurance company or of a person who controls an insurance company.

(2) The statement to be filed with the commissioner under this section must be made under oath or affirmation and must contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected, hereinafter called "acquiring party," and:

(i) If that person is an individual, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(ii) If that person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the person and any predecessors have been in existence; an informative description of the business intended to be done by the person's subsidiaries; any convictions of crimes during the past ten years; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to those positions. The list must include for each such individual the information required by (a)(i) of this subsection.

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including a pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. However, where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for such lesser period as the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety days before the filing of the statement.

(d) Any plans or proposals that each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security referred to in subsection (1) of this section that each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method by which the fairness of the proposal was arrived at.

(f) The amount of each class of any security referred to in subsection (1) of this section that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which an acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve calendar months before the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the security.

(i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve calendar months before the filing of the statement, by an acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and, if distributed, of additional soliciting material relating to the securities.

(k) The term of an agreement, contract, or understanding made with or proposed to be made with a broker-dealer as to solicitation or securities referred to in subsection (1) of this section for tender, and the amount of fees, commissions, or other compensation to be paid to broker-dealers with regard to the securities.

(l) Such additional information as the commissioner may prescribe by rule as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by (a) through (l) of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls a partner or member. If a partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information called for by (a) through (l) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

If a material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer under this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the insurer within two business days after the person learns of the change.

(3) If an offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may use those documents in furnishing the information called for by that statement.

(4)(a) The commissioner shall approve a merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing thereon, he or she finds that:

(i) After the change of control, the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein. In applying the competitive standard in (a)(ii) of this subsection:

(A) The informational requirements of RCW 48.31B.020(3)(a) and the standards of RCW 48.31B.020(4)(b) apply;

(B) The commissioner may not disapprove the merger or other acquisition if the commissioner finds that any of the situations meeting the criteria provided by RCW 48.31B.020(4)(c) exist; and

(C) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(iii) The financial condition of an acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The plans or proposals that the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(v) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vi) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(b) The commissioner shall approve an exchange or other acquisition of control referred to in this section within sixty days after he or she declares the statement filed under this section to be complete and after holding a public hearing. At the hearing, the person filing the statement, the insurer, and any person whose significant interest is determined by

the commissioner to be affected may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith may conduct discovery proceedings in the same manner as is allowed in the superior court of this state. All discovery proceedings must be concluded not later than three days before the commencement of the public hearing.

(c) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. All reasonable costs of a hearing held under this section, as determined by the commissioner, including costs associated with the commissioner's use of investigatory, professional, and other necessary personnel, mailing of required notices and other information, and use of equipment or facilities, must be paid before issuance of the commissioner's order by the acquiring person.

(5) This section does not apply to:

(a) A transaction that is subject to RCW 48.31.010, dealing with the merger or consolidation of two or more insurers;

(b) An offer, request, invitation, agreement, or acquisition that the commissioner by order has exempted from this section as: (i) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) otherwise not comprehended within the purposes of this section.

(6) The following are violations of this section:

(a) The failure to file a statement, amendment, or other material required to be filed under subsection (1) or (2) of this section; or

(b) The effectuation or an attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given approval thereto.

(7) The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving that person arising out of violations of this section, and each such person is deemed to have performed acts equivalent to and constituting an appointment by that person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process in an action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at the person's last known address. [1993 c 462 § 4.]

48.31B.020 Acquisition of insurer—Change in control—Definitions—Exemptions—Competition—Preacquisition notification—Violations—Penalties. (1) The definitions in this subsection apply only for the purposes of this section.

(a) "Acquisition" means an agreement, arrangement, or activity, the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

(b) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(2)(a) Except as exempted in (b) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(b) This section does not apply to the following:

(i) An acquisition subject to approval or disapproval by the commissioner under RCW 48.31B.015;

(ii) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under RCW 48.31B.005(2), it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(iii) The acquisition of a person by another person when neither person is directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with subsection (3)(a) of this section sixty days before the proposed effective date of the acquisition. However, preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by this subsection (2)(b);

(iv) The acquisition of already affiliated persons;

(v) An acquisition if, as an immediate result of the acquisition:

(A) In no market would the combined market share of the involved insurers exceed five percent of the total market;

(B) There would be no increase in any market share; or

(C) In no market would:

(I) The combined market share of the involved insurers exceed twelve percent of the total market; and

(II) The market share increase by more than two percent of the total market.

For the purpose of (b)(v) of this subsection, a "market" means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(vi) An acquisition for which a preacquisition notification would be required under this section due solely to the resulting effect on the ocean marine insurance line of business;

(vii) An acquisition of an insurer whose domiciliary commissioner affirmatively finds: That the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; and the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

(3) An acquisition covered by subsection (2) of this section may be subject to an order under subsection (5) of this section unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification.

(a) The preacquisition notification must be in such form and contain such information as prescribed by the commissioner relating to those markets that, under subsection (2)(b)(v) of this section, cause the acquisition not to be exempted from this section. The commissioner may require such additional material and information as he or she deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (4) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of the person indicating his or her ability to render an informed opinion.

(b) The waiting period required begins on the date the commissioner declares the preacquisition notification to be complete and ends on the earlier of the sixtieth day after the date of the declaration or the termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner may require the submission of additional needed information relevant to the proposed acquisition. If additional information is required, the waiting period ends on the earlier of the sixtieth day after the commissioner declares he or she has received the additional information or the termination of the waiting period by the commissioner.

(4)(a) The commissioner may enter an order under subsection (5)(a) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in a line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with subsection (3) of this section.

(b) In determining whether a proposed acquisition would violate the competitive standard of (a) of this subsection, the commissioner shall consider the following:

(i) An acquisition covered under subsection (2) of this section involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

(A) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more; or

(B) If the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four largest insurers is seventy-five percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of viola-

tion of the competitive standard in (a) of this subsection. For the purpose of (b)(i) of this subsection, the insurer with the largest share of the market is Insurer A.

(ii) There is a significant trend toward increased concentration when the aggregate market share of a grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from a base year five to ten years before the acquisition up to the time of the acquisition. An acquisition or merger covered under subsection (2) of this section involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in (a) of this subsection if:

(A) There is a significant trend toward increased concentration in the market;

(B) One of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and

(C) Another involved insurer's market is two percent or more.

(iii) For the purposes of (b) of this subsection:

(A) The term "insurer" includes a company or group of companies under common management, ownership, or control;

(B) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, adopted by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;

(C) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(iv) Even though an acquisition is not prima facie violative of the competitive standard under (b)(i) and (ii) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under (b)(i) and (ii) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under (b)(iv) of this subsection include, but are not limited to, the following: Market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(c) An order may not be entered under subsection (5)(a) of this section if:

(i) The acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition; or

(ii) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.

(5)(a)(i) If an acquisition violates the standards of this section, the commissioner may enter an order:

(A) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(B) Denying the application of an acquired or acquiring insurer for a license to do business in this state.

(ii) The commissioner may not enter the order unless:

(A) There is a hearing; (B) notice of the hearing is issued before the end of the waiting period and not less than fifteen days before the hearing; and (C) the hearing is concluded and the order is issued no later than sixty days after the end of the waiting period. Every order must be accompanied by a written decision of the commissioner setting forth his or her findings of fact and conclusions of law.

(iii) An order entered under (a) of this subsection may not become final earlier than thirty days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(iv) An order pursuant to (a) of this subsection does not apply if the acquisition is not consummated.

(b) A person who violates a cease and desist order of the commissioner under (a) of this subsection and while the order is in effect, may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:

(i) A monetary penalty of not more than ten thousand dollars for every day of violation; or

(ii) Suspension or revocation of the person's license; or

(iii) Both (b)(i) and (b)(ii) of this subsection.

(c) An insurer or other person who fails to make a filing required by this section and who also fails to demonstrate a good faith effort to comply with the filing requirement, is subject to a civil penalty of not more than fifty thousand dollars.

(6) RCW 48.31B.045 (2) and (3) and 48.31B.050 do not apply to acquisitions covered under subsection (2) of this section. [1993 c 462 § 5.]

48.31B.025 Registration with commissioner—Information required—Rule making—Disclaimer of affiliation—Failure to file. (1) Every insurer authorized to do business in this state that is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in:

(a) This section;

(b) RCW 48.31B.030 (1)(a), (2), and (3); and

(c) Either RCW 48.31B.030(1)(b) or a provision such as the following: Each registered insurer shall keep current the

information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each change or addition.

An insurer subject to registration under this section shall register within fifteen days after it becomes subject to registration, and annually thereafter by May 15th of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require an insurer authorized to do business in the state that is a member of a holding company system, but that is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(2) An insurer subject to registration shall file the registration statement on a form prescribed by the commissioner, containing the following current information:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchange of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of subsidiary or controlling affiliate, for a loan made to a member of the insurance holding company system;

(e) Other matters concerning transactions between registered insurers and affiliates as may be included from time to time in registration forms adopted or approved by the commissioner.

(3) Registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) No information need be disclosed on the registration statement filed under subsection (2) of this section if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of the 31st day of the

previous December are not material for purposes of this section.

(5)(a) Subject to RCW 48.31B.030(2), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within five business days after their declaration and at least fifteen business days before payment, and shall provide the commissioner such other information as may be required by rule.

(b) If the commissioner determines that a registered insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the commissioner may order the registered insurance company to limit or discontinue the payment of stockholder dividends until such time as the surplus is adequate.

(6) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with this chapter.

(7) The commissioner shall terminate the registration of an insurer that demonstrates that it no longer is a member of an insurance holding company system.

(8) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The commissioner may allow an insurer authorized to do business in this state and part of an insurance holding company system to register on behalf of an affiliated insurer that is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(10) This section does not apply to an insurer, information, or transaction if and to the extent that the commissioner by rule or order exempts the insurer, information, or transaction from this section.

(11) A person may file with the commissioner a disclaimer of affiliation with an authorized insurer, or an insurer or a member of an insurance holding company system may file the disclaimer. The person making such a filing with the commissioner shall at the same time deliver a complete copy of the filing to each domestic insurer which is the subject of such filing. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer is relieved of any duty to register or report under this section that may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(12) Failure to file a registration statement or a summary of the registration statement required by this section within the time specified for the filing is a violation of this section. [2000 c 214 § 1; 1993 c 462 § 6.]

48.31B.030 Insurer subject to registration—Standards for transactions within a holding company system—Extraordinary dividends or distributions—

Insurer's surplus. (1)(a) Transactions within a holding company system to which an insurer subject to registration is a party are subject to the following standards:

(i) The terms must be fair and reasonable;

(ii) Charges or fees for services performed must be fair and reasonable;

(iii) Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(iv) The books, accounts, and records of each party to all such transactions must be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(v) The insurer's surplus regarding policyholders after dividends or distributions to shareholders or affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and a person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction and the commissioner declares the notice to be sufficient at least sixty days before, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period:

(i) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments if the transactions are equal to or exceed: (A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; (B) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of the previous December;

(ii) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, an affiliate of the insurer making the loans or extensions of credit if the transactions are equal to or exceed: (A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; (B) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of the previous December;

(iii) Reinsurance agreements or modifications to them in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the 31st day of the previous December, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(iv) Management agreements, service contracts, and cost-sharing arrangements; and

(v) Material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing contained in this section authorizes or permits a transaction that, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered into over a twelve-month period for that purpose, the commissioner may apply for an order as described in RCW 48.31B.045(1).

(d) The commissioner, in reviewing transactions under (b) of this subsection, shall consider whether the transactions comply with the standards set forth in (a) of this subsection and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within thirty days of an investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

(2)(a) No domestic insurer may pay an extraordinary dividend or make any other extraordinary distribution to its shareholders until: (i) Thirty days after the commissioner declares that he or she has received sufficient notice of the declaration thereof and has not within that period disapproved the payment; or (ii) the commissioner has approved the payment within the thirty-day period.

(b) For purposes of this section, an extraordinary dividend or distribution is a dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions made within the period of twelve consecutive months ending on the date on which the proposed dividend is scheduled for payment or distribution, exceeds the greater of: (i) Ten percent of the company's surplus as regards policyholders as of the 31st day of the previous December; or (ii) the net gain from operations of the company if the company is a life insurance company, or the net income if the company is not a life insurance company, for the twelve month period ending the 31st day of the previous December, but does not include pro rata distributions of any class of the company's own securities.

(c) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration confers no rights upon shareholders until: (i) The commissioner has approved the payment of the dividend or distribution; or (ii) the commissioner has not disapproved the payment within the thirty-day period referred to in (a) of this subsection.

(3) For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, may be considered:

(a) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) The extent to which the insurer's business is diversified among the several lines of insurance;

(c) The number and size of risks insured in each line of business;

(d) The extent of the geographical dispersion of the insurer's insured risks;

(e) The nature and extent of the insurer's reinsurance program;

(f) The quality, diversification, and liquidity of the insurer's investment portfolio;

(g) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) The surplus as regards policyholders maintained by other comparable insurers;

(i) The adequacy of the insurer's reserves;

(j) The quality and liquidity of investments in affiliates.

The commissioner may discount any such investment or may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment the investment so warrants; and

(k) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items. [1993 c 462 § 7.]

48.31B.035 Examination of insurers—Commissioner may order production of information—Failure to comply—Costs of examination. (1) Subject to the limitation contained in this section and in addition to the powers that the commissioner has under chapter 48.03 RCW relating to the examination of insurers, the commissioner also may order an insurer registered under RCW 48.31B.025 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition of the insurer or to determine compliance with this title. If the insurer fails to comply with the order, the commissioner may examine the affiliates to obtain the information.

(2) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers under subsection (1) of this section are liable for and shall pay the expense of the examination in accordance with RCW 48.03.060. [1993 c 462 § 8.]

48.31B.040 Rule making. The commissioner may, upon notice and opportunity for all interested persons to be heard, adopt rules and issue orders that are necessary to carry out this chapter. [1993 c 462 § 9.]

48.31B.045 Violations of chapter—Commissioner may seek superior court order. (1) Whenever it appears to the commissioner that an insurer or a director, officer, employee, or agent of the insurer has committed or is about to commit a violation of this chapter or any rule or order of the

commissioner under this chapter, the commissioner may apply to the superior court for Thurston county or to the court for the county in which the principal office of the insurer is located for an order enjoining the insurer or the director, officer, employee, or agent from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(2) No security that is the subject of an agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of this chapter or of a rule or order of the commissioner under this chapter may be voted at a shareholders' meeting, or may be counted for quorum purposes. Any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding, but no action taken at any such meeting may be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that a security of the insurer has been or is about to be acquired in contravention of this chapter or of a rule or order of the commissioner under this chapter, the insurer or the commissioner may apply to the superior court for Thurston county or to the court for the county in which the insurer has its principal place of business to enjoin an offer, request, invitation, agreement, or acquisition made in contravention of RCW 48.31B.015 or a rule or order of the commissioner under that section to enjoin the voting of a security so acquired, to void a vote of the security already cast at a meeting of shareholders, and for such other relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(3) If a person has acquired or is proposing to acquire voting securities in violation of this chapter or a rule or order of the commissioner under this chapter, the superior court for Thurston county or the court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester voting securities of the insurer owned directly or indirectly by the person, and issue such order with respect to the securities as may be appropriate to carry out this chapter.

Notwithstanding any other provisions of law, for the purposes of this chapter, the situs of the ownership of the securities of domestic insurers is in this state. [1993 c 462 § 10.]

48.31B.050 Violations of chapter—Penalties—Civil forfeitures—Orders—Referral to prosecuting attorney—Imprisonment. (1) The commissioner shall require, after notice and hearing, an insurer failing, without just cause, to file a registration statement as required in this chapter, to pay a penalty of not more than ten thousand dollars per day. The maximum penalty under this section is one million dollars. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer. The commissioner shall pay a fine collected under this section to the state treasurer for the account of the general fund.

(2) Every director or officer of an insurance holding company system who knowingly violates this chapter, or participates in, or assents to, or who knowingly permits an officer or agent of the insurer to engage in transactions or make investments that have not been properly reported or submitted under RCW 48.31B.025(1) or 48.31B.030(1)(b) or (2), or that violate this chapter, shall pay, in their individual capacity, a civil forfeiture of not more than ten thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Whenever it appears to the commissioner that an insurer subject to this chapter or a director, officer, employee, or agent of the insurer has engaged in a transaction or entered into a contract that is subject to RCW 48.31B.030 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any such contracts and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

(4) Whenever it appears to the commissioner that an insurer or a director, officer, employee, or agent of the insurer has committed a willful violation of this chapter, the commissioner may refer the matter to the prosecuting attorney of Thurston county or the county in which the principal office of the insurer is located. An insurer that willfully violates this chapter may be fined not more than one million dollars. Any individual who willfully violates this chapter may be fined in his or her individual capacity not more than ten thousand dollars, or be imprisoned for not more than three years, or both.

(5) An officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made a false statement or false report or false filing with the intent to deceive the commissioner in the performance of his or her duties under this chapter, upon conviction thereof, shall be imprisoned for not more than three years or fined not more than ten thousand dollars or both. The officer, director, or employee upon whom the fine is imposed shall pay the fine in his or her individual capacity. [1993 c 462 § 11.]

48.31B.055 Violations of chapter—Impairment of financial condition—Commissioner may take possession.

Whenever it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, the commissioner may proceed as provided in RCW 48.31.030 and 48.31.040 to take possession of the property of the domestic insurer and to conduct the business of the insurer. [1993 c 462 § 12.]

48.31B.060 Order for liquidation or rehabilitation—Recovery of distributions or payments—Personal liability.

ity—Maximum amount recoverable. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order may recover on behalf of the insurer: (a) From a parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or (b) a payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, where the distribution or payment under (a) or (b) of this subsection is made at any time during the one year before the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2), (3), and (4) of this section.

(2) No such distribution is recoverable if it is shown that when paid, the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) A person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate when the distributions were paid is liable up to the amount of distributions or payments under subsection (1) of this section the person received. A person who controlled the insurer at the time the distributions were declared is liable up to the amount of distributions he or she would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that a person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from it under those provisions, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for a resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it. [1993 c 462 § 13.]

48.31B.065 Violations of chapter—Contrary to interests of policyholders or the public—Suspension, revocation, or nonrenewal of license. Whenever it appears to the commissioner that a person has committed a violation of this chapter that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew the insurer's license or authority to do business in this state for such period as he or she finds is required for the protection of policyholders or the public. Such a determination must be accompanied by specific findings of fact and conclusions of law. [1993 c 462 § 14.]

48.31B.070 Person aggrieved by actions of commissioner. (1) A person aggrieved by an act, determination, rule,

order, or any other action of the commissioner under this chapter may proceed in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

(2) A person aggrieved by a failure of the commissioner to act or make a determination required by this chapter may petition the commissioner under the procedure described in RCW 34.05.330. [1993 c 462 § 15.]

48.31B.900 Short title. This chapter may be known and cited as the Insurer Holding Company Act. [1993 c 462 § 1.]

48.31B.901 Severability—1993 c 462. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 462 § 112.]

48.31B.902 Implementation—1993 c 462. The insurance commissioner may take such steps as are necessary to ensure that this act is implemented on July 25, 1993. [1993 c 462 § 106.]

Chapter 48.31C RCW

HOLDING COMPANY ACT FOR HEALTH CARE SERVICE CONTRACTORS AND HEALTH MAINTENANCE ORGANIZATIONS

Sections

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- 48.31C.901 Effective date—2001 c 179.

48.31C.010 Definitions. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Acquisition" or "acquire" means an agreement, arrangement, or activity, the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisi-

tion of voting securities, all or substantially all of the assets, bulk reinsurance, consolidations, affiliations, and mergers.

(2) "Affiliate" of, or person "affiliated" with, a specific person, means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities, voting rights, by contract other than a commercial contract for goods, nonmanagement services, a debt obligation which is not convertible into a right to acquire a voting security, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(a) For a for-profit person, control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact. A person may file with the commissioner a disclaimer of control of a health carrier. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the health carrier as well as the basis for disclaiming the control. After furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such a determination, the commissioner may:

- (i) Allow a disclaimer; or
- (ii) Disallow a disclaimer notwithstanding the absence of a presumption to that effect.

(b) For a nonprofit corporation organized under chapters 24.03 and 24.06 RCW, control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing a majority of voting rights of the person or the power to elect or appoint a majority of the board of directors, trustees, or other governing body of the person, unless the power is the result of an official position of, or corporate office held by, the person.

(c) Control includes either permanent or temporary control, or both.

(4) "Domestic health carrier" means a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, that is formed under the laws of this state.

(5) "Foreign health carrier" means a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, that is formed under the laws of the United States, of a state or territory of the United States other than this state, or the District of Columbia.

(6) "Health carrier holding company system" means two or more affiliated persons, one or more of which is a health care service contractor or health maintenance organization.

(7) "Health coverage business" means the business of a disability insurer authorized under chapter 48.05 RCW, a health care service contractor registered under chapter 48.44 RCW, and a health maintenance organization registered under chapter 48.46 RCW, entering into any policy, contract,

or agreement to arrange, reimburse, or pay for health care services.

(8) "Involved carrier" means an insurer, health care service contractor, or health maintenance organization, which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(9) "Person" means an individual, corporation, partnership, association, joint stock company, limited liability company, trust, unincorporated organization, similar entity, or any combination acting in concert, but does not include a joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or personal property.

(10) "Security holder" of a specified person means one who owns a security of that person, including (a) common stock, (b) preferred stock, (c) debt obligations convertible into the right to acquire voting securities, and any other security convertible into or evidencing the right to acquire (a) through (c) of this subsection.

(11) "Subsidiary" of a specified person means an affiliate controlled by that person directly or indirectly through one or more intermediaries.

(12) "Voting security" includes a security convertible into or evidencing a right to acquire a voting security. [2001 c 179 § 1.]

48.31C.020 Acquisition of a foreign health carrier—Preacquisition notification—Review. (1) No person may acquire control of a foreign health carrier registered to do business in this state unless a preacquisition notification is filed with the commissioner under this section and the waiting period has expired. If a preacquisition notification is not filed with the commissioner an involved carrier may be subject to an order under subsection (3) of this section. The acquired person may file a preacquisition notification.

(a) The preacquisition notification must be in the form and contain the information prescribed by the commissioner. The commissioner may require additional material and information necessary to determine whether the proposed acquisition, if consummated, would have the effect of substantially lessening competition, or tending to create a monopoly, in the health coverage business in this state. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of the person indicating his or her ability to render an informed opinion.

(b) The waiting period required under this section begins on the date the commissioner receives the preacquisition notification and ends on the earlier of the sixtieth day after the date of the receipt by the commissioner of the preacquisition notification or the termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner may require the submission of additional needed information relevant to the proposed acquisition. If additional information is required, the waiting period ends on the earlier of the thirtieth day after the commissioner has received the additional information or the termination of the waiting period by the commissioner.

(2)(a) The commissioner may enter an order under subsection (3)(a) of this section with respect to an acquisition if:

(i) The health carrier fails to file adequate information in compliance with subsection (1)(a) of this section; or

(ii) The antitrust section of the office of the attorney general and any federal antitrust enforcement agency has chosen not to undertake a review of the proposed acquisition and the commissioner pursuant to his or her own review finds that there is substantial evidence that the effect of the acquisition may substantially lessen competition or tend to create a monopoly in the health coverage business.

(b) If the antitrust section of the office of the attorney general undertakes a review of the proposed transaction then the attorney general shall seek input from the commissioner throughout the review.

(c) If the antitrust section of the office of the attorney general does not undertake a review of the proposed acquisition and the review is being conducted by the commissioner, then the commissioner shall seek input from the attorney general throughout the review.

(3)(a)(i) If an acquisition violates the standards of this section, the commissioner may enter an order:

(A) Requiring an involved carrier to cease and desist from doing business in this state with respect to business as a health care service contractor or health maintenance organization; or

(B) Denying the application of an acquired or acquiring carrier for a license, certificate of authority, or registration to do business in this state.

(ii) The commissioner may not enter the order unless:

(A) There is a hearing;

(B) Notice of the hearing is issued before the end of the waiting period and not less than fifteen days before the hearing; and

(C) The hearing is concluded and the order is issued no later than thirty days after the conclusion of the hearing. Every order must be accompanied by a written decision of the commissioner setting forth his or her findings of fact and conclusions of law.

(iii) An order entered under (a) of this subsection may not become final earlier than thirty days after it is issued, during which time the involved carrier may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(iv) An order under (a) of this subsection does not apply if the acquisition is not consummated.

(b) A person who violates a cease and desist order of the commissioner under (a) of this subsection and while the order is in effect, may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:

(i) A monetary penalty of not more than ten thousand dollars for every day of violation; or

(ii) Suspension or revocation of the person's license, certificate of authority, or registration; or

(iii) Both (b)(i) and (b)(ii) of this subsection.

(c) A carrier or other person who fails to make a filing required by this section and who also fails to demonstrate a good faith effort to comply with the filing requirement, is subject to a civil penalty of not more than fifty thousand dollars.

(4) An order may not be entered under subsection (3)(a) of this section if:

(a) The acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from more competition; or

(b) The acquisition will substantially increase the availability of health care coverage, and the public benefits of the increase exceed the public benefits that would arise from more competition.

(5)(a) RCW 48.31C.080 (2) and (3) and 48.31C.090 do not apply to acquisitions covered under this section.

(b) This section does not apply to the following:

(i) An acquisition subject to approval or disapproval by the commissioner under RCW 48.31C.030;

(ii) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in the health coverage business in this state;

(iii) The acquisition of a person by another person when neither person is directly, nor through affiliates, primarily engaged in the business of a domestic or foreign health carrier, if preacquisition notification is filed with the commissioner in accordance with subsection (1) of this section sixty days before the proposed effective date of the acquisition. However, preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by this subsection (5)(b);

(iv) The acquisition of already affiliated persons;

(v) An acquisition if, as an immediate result of the acquisition:

(A) In no market would the combined market share of the involved carriers exceed five percent of the total market;

(B) There would be no increase in any market share; or

(C) In no market would:

(I) The combined market share of the involved carriers exceed twelve percent of the total market; and

(II) The market share increase by more than two percent of the total market.

For the purpose of (b)(v) of this subsection, "market" means direct written premium in this state for a line of business as contained in the annual statement required to be filed by carriers licensed to do business in this state;

(vi) An acquisition of a health carrier whose domiciliary commissioner affirmatively finds: That the health carrier is in failing condition; there is a lack of feasible alternatives to improving such a condition; and the public benefits of improving the health carrier's condition through the acquisition exceed the public benefits that would arise from more competition, and the findings are communicated by the domiciliary commissioner to the commissioner of this state. [2001 c 179 § 2.]

48.31C.030 Acquisition of a domestic health carrier—Filing—Review—Jurisdiction of courts. (1) No person may acquire control of a domestic health carrier unless the person has filed with the commissioner and has sent to the health carrier a statement containing the information required by this section and the acquisition has been approved by the commissioner as prescribed in this section.

(2) The statement to be filed with the commissioner under this section must be made under oath or affirmation and must contain the following information:

(a) The name and address of the acquiring party. For purposes of this section, "acquiring party" means each person by whom or on whose behalf the acquisition of control under subsection (1) of this section is to be effected:

(i) If the acquiring party is an individual, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(ii) If the acquiring party is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the person and any predecessors have been in existence; an informative description of the business intended to be done by the person's subsidiaries; any convictions of crimes during the past ten years; and a list of all individuals who are or who have been selected to become directors, trustees, or executive officers of the person, or who perform or will perform functions appropriate to those positions. The list must include for each such individual the information required by (a)(i) of this subsection.

(b) The source, nature, and amount of the consideration used or to be used in effecting the acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including a pledge of assets, a pledge of the health carrier's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. However, where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for such lesser period as the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety days before the filing of the statement. If the acquiring party and any predecessor has not had fully audited financial statements prepared during any of the preceding five years, then reviewed financial statements may be substituted for those years, except for the latest fiscal year which must be fully audited financial statements.

(d) Any plans or proposals that each acquiring party may have to liquidate the health carrier, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security or number and description of other voting rights referred to in RCW 48.31C.010(3) that each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition under RCW 48.31C.010(3), and a statement as to the method by which the fairness of the proposal was arrived at.

(f) The amount of each class of any security referred to in RCW 48.31C.010(3) that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in RCW 48.31C.010(3) in which an acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of any security referred to in RCW 48.31C.010(3) during the twelve calendar months before the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the security.

(i) A description of any recommendations to purchase any security referred to in RCW 48.31C.010(3) made during the twelve calendar months before the filing of the statement, by an acquiring party, or by anyone based upon interviews with outside parties or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in RCW 48.31C.010(3), and, if distributed, of additional soliciting material relating to the securities.

(k) The term of an agreement, contract, or understanding made with or proposed to be made with a broker-dealer as to solicitation or securities referred to in RCW 48.31C.010(3) for tender, and the amount of fees, commissions, or other compensation to be paid to broker-dealers with regard to the securities.

(l) Such additional information as the commissioner may prescribe by rule as necessary or appropriate for the protection of subscribers of the health carrier or in the public interest.

If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information required under (a) through (l) of this subsection must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls a partner or member. If a partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information required under (a) through (l) of this subsection must be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

If a material change occurs in the facts set forth in the statement filed with the commissioner and sent to the health carrier under this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the health carrier within two business days after the person learns of the change.

(3) If an offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to

be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may use those documents in furnishing the information called for by that statement.

(4) The commissioner shall approve an exchange or other acquisition of control referred to in this section within sixty days after he or she declares the statement filed under this section to be complete and if a hearing is requested by the commissioner or either party to the transaction, after holding a public hearing. Unless the commissioner declares the statement to be incomplete and requests additional information, the statement is deemed complete sixty days after receipt of the statement by the commissioner. If the commissioner declares the statement to be incomplete and requests additional information, the sixty-day time period in which the statement is deemed complete shall be tolled until fifteen days after receipt by the commissioner of the additional information. If the commissioner declares the statement to be incomplete, the commissioner shall promptly notify the person filing the statement of the filing deficiencies and shall set forth with specificity the additional information required to make the filing complete. At the hearing, the person filing the statement, the health carrier, and any person whose significant interest is determined by the commissioner to be affected may present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith may conduct discovery proceedings in the same manner as is allowed in the superior court of this state. All discovery proceedings must be concluded not later than three business days before the commencement of the public hearing.

(5)(a) The commissioner shall approve an acquisition of control referred to in subsection (1) of this section unless, after a public hearing, he or she finds that:

(i) After the change of control, the domestic health carrier referred to in subsection (1) of this section would not be able to satisfy the requirements for registration as a health carrier;

(ii) The antitrust section of the office of the attorney general and any federal antitrust enforcement agency has chosen not to undertake a review of the proposed acquisition and the commissioner pursuant to his or her own review finds that there is substantial evidence that the effect of the acquisition may substantially lessen competition or tend to create a monopoly in the health coverage business.

If the antitrust section of the office of the attorney general does not undertake a review of the proposed acquisition and the review is being conducted by the commissioner, then the commissioner shall seek input from the attorney general throughout the review.

If the antitrust section of the office of the attorney general undertakes a review of the proposed transaction then the attorney general shall seek input from the commissioner throughout the review. As to the commissioner, in making this determination:

(A) The informational requirements of RCW 48.31C.020(1)(a) apply;

(B) The commissioner may not disapprove the acquisition if the commissioner finds that:

(I) The acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from more competition; or

(II) The acquisition will substantially increase or will prevent significant deterioration in the availability of health care coverage, and the public benefits of the increase exceed the public benefits that would arise from more competition;

(C) The commissioner may condition the approval of the acquisition on the removal of the basis of disapproval, as follows, within a specified period of time:

(I) The financial condition of an acquiring party is such as might jeopardize the financial stability of the health carrier, or prejudice the interest of its subscribers;

(II) The plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to subscribers of the health carrier and not in the public interest;

(III) The competence, experience, and integrity of those persons who would control the operation of the health carrier are such that it would not be in the interest of subscribers of the health carrier and of the public to permit the merger or other acquisition of control; or

(IV) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(b) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. All reasonable costs of a hearing held under this section, as determined by the commissioner, including reasonable costs associated with the commissioner's use of investigatory, professional, and other necessary personnel, mailing of required notices and other information, and use of equipment or facilities, must be paid before issuance of the commissioner's order by the acquiring person.

(c) The commissioner may condition approval of an acquisition on the removal of the basis of disapproval within a specified period of time.

(6) Upon the request of a party to the acquisition the commissioner may order that this section does not apply to an offer, request, invitation, agreement, or acquisition as:

(a) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic health carrier; or

(b) Otherwise not comprehended within the purposes of this section.

(7) The following are violations of this section:

(a) The failure to file a statement, amendment, or other material required to be filed under subsection (1) or (2) of this section; or

(b) The effectuation or an attempt to effectuate an acquisition of control of a domestic health carrier unless the commissioner has given approval.

(8) The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving that person arising out of violations of this section, and such a person has performed acts equivalent to and constituting an appointment by that person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process in an action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such a person at the person's last known address. [2001 c 179 § 3.]

48.31C.040 Registration with commissioner—Information required—Rule making—Disclaimer of affiliation—Failure to file. (1) Every health carrier registered to do business in this state that is a member of a health carrier holding company system shall register with the commissioner, except a foreign health carrier subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in:

- (a) This section;
- (b) RCW 48.31C.050(1) and 48.31C.060; and
- (c) Either RCW 48.31C.050(1)(b) or a provision such as the following: Each registered health carrier shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each change or addition.

A health carrier subject to registration under this section shall register within one hundred twenty days of May 7, 2001, and thereafter within fifteen days after it becomes subject to registration, and annually thereafter by May 15th of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require a health carrier authorized to do business in the state that is a member of a health carrier holding company system, but that is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by the health carrier with the regulatory authority of its domiciliary jurisdiction.

(2) A health carrier subject to registration shall file the registration statement on a form prescribed by the commissioner, containing the following current information:

- (a) The capital structure, general financial condition, ownership, and management of the health carrier and any person controlling the health carrier;
- (b) The identity and relationship of every member of the health carrier holding company system;
- (c) The following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the health carrier and its affiliates:
 - (i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the health carrier or of the health carrier by its affiliates;
 - (ii) Purchases, sales, or exchange of assets;
 - (iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the health carrier's assets to liability, other than subscriber contracts entered into in the ordinary course of the health carrier's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the health carrier's stock, including stock of a subsidiary or controlling affiliate, for a loan made to a member of the health carrier holding company system; and

(e) Other matters concerning transactions between registered health carriers and affiliates as may be included from time to time in registration forms adopted or approved by the commissioner by rule.

(3) Registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) No information need be disclosed on the registration statement filed under subsection (2) of this section if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees, involving two percent or less of a health carrier's admitted assets as of the 31st day of the previous December are not material for purposes of this section.

(5) A person within a health carrier holding company system subject to registration shall provide complete and accurate information to a health carrier, where the information is reasonably necessary to enable the health carrier to comply with this chapter.

(6) The commissioner shall terminate the registration of a health carrier under this section that demonstrates that it no longer is a member of a health carrier holding company system.

(7) The commissioner may require or allow two or more affiliated health carriers subject to registration under this section to file a consolidated registration statement.

(8) The commissioner may allow a health carrier registered to do business in this state and part of a health carrier holding company system to register on behalf of an affiliated health carrier that is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(9) This section does not apply to a health carrier, information, or transaction if, and to the extent that, the commissioner by rule or order exempts the health carrier, information, or transaction from this section.

(10) A person may file with the commissioner a disclaimer of affiliation with an authorized health carrier, or a health carrier or a member of a health carrier holding company system may file the disclaimer. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the health carrier as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the health carrier is relieved of any duty to register or report under this section that may arise out of the health

carrier's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(11) Failure to file a registration statement or a summary of the registration statement required by this section within the time specified for the filing is a violation of this section. [2001 c 179 § 4.]

48.31C.050 Health carrier subject to registration—Standards for transactions within a holding company system—Notice to commissioner—Review. (1) Transactions within a health carrier holding company system to which a health carrier subject to registration is a party are subject to the following standards:

(a) The terms must be fair and reasonable;

(b) Charges or fees for services performed must be fair and reasonable;

(c) Expenses incurred and payment received must be allocated to the health carrier in conformity with customary statutory accounting practices consistently applied;

(d) The books, accounts, and records of each party to all such transactions must be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(e) The health carrier's net worth after the transaction must exceed the health carrier's company action level risk-based capital. In addition, the commissioner may disapprove a transaction if the health carrier's risk-based capital net worth is less than the product of 2.5 and the health carrier's authorized control level risk-based capital and the commissioner reasonably believes that the health carrier's net worth is at risk of falling below its company action level risk-based capital due to anticipated future financial losses not reflected in the risk-based capital calculation. This subsection (1)(e) does not prohibit transactions that improve or help maintain the health carrier's net worth.

(2) The following transactions, excepting those transactions which are subject to approval by the commissioner elsewhere within this title, involving a domestic health carrier and a person in its health carrier holding company system may not be entered into unless the health carrier has notified the commissioner in writing of its intention to enter into the transaction and the commissioner does not declare the notice to be incomplete at least thirty days before, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. Unless the commissioner declares the notice to be incomplete and requests additional information, the notice is deemed complete thirty days after receipt of the notice by the commissioner. If the commissioner declares the notice to be incomplete, the thirty-day time period in which the notice is deemed complete shall be tolled until fifteen days after the receipt by the commissioner of the additional information:

(a) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments if the transactions are equal to or exceed the lesser of (i) two months of the health carrier's annualized claims and administrative costs, (ii) five percent

of the health carrier's admitted assets, or (iii) twenty-five percent of net worth, as of the 31st day of the previous December;

(b) Loans or extensions of credit to any person who is not an affiliate, if the health carrier makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, an affiliate of the health carrier making the loans or extensions of credit, if the transactions are equal to or exceed the lesser of (i) two months of the health carrier's annualized claims and administrative costs, (ii) three percent of the health carrier's admitted assets, or (iii) twenty-five percent of net worth, as of the 31st day of the previous December;

(c) Reinsurance agreements or modifications to them in which the reinsurance premium or a change in the health carrier's liabilities equals or exceeds five percent of the health carrier's net worth, as of the 31st day of the previous December, including those agreements that may require as consideration the transfer of assets from a health carrier to a nonaffiliate, if an agreement or understanding exists between the health carrier and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the health carrier;

(d) Management agreements, service contracts, and cost-sharing arrangements; and

(e) Other acquisitions or dispositions of assets involving more than five percent of the health carrier's admitted assets, specified by rule, that the commissioner determines may adversely affect the interests of the health carrier's subscribers.

(3) A domestic health carrier may not enter into transactions that are part of a plan or series of like transactions with persons within the health carrier holding company system if the aggregate amount of the transactions within a twelve-month period exceed the statutory threshold amount. If the commissioner determines that the separate transactions entered into over a twelve-month period exceed the statutory threshold amount, the commissioner may apply for an order as described in RCW 48.31C.080(1).

(4) The commissioner, in reviewing transactions under subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section.

(5) If a health carrier complies with the terms of a management agreement, service contract, or cost-sharing agreement that has not been disapproved by the commissioner under subsection (2) of this section, then the health carrier is not required to obtain additional approval from the commissioner for individual transactions conducted under the terms of the management agreement, service contract, or cost-sharing agreement. The commissioner, however, retains the authority to examine the individual transactions to determine their compliance with the terms of the management agreement, service contract, or cost-sharing agreement and subsection (1) of this section.

(6) This section does not authorize or permit a transaction that, in the case of a health carrier not a member of the same health carrier holding company system, would be otherwise contrary to law. [2001 c 179 § 5.]

48.31C.060 Extraordinary dividends or distributions—Restrictions—Definition of distribution. (1)(a) Subject to subsection (2) of this section, each registered health carrier shall report to the commissioner all dividends and other distributions to shareholders or members not within the ordinary course of business within five business days after their declaration and at least fifteen business days before payment and shall provide the commissioner such other information as may be required by rule.

(b) Any payment of a dividend or other distribution to shareholders or members which would reduce the net worth of the health carrier below the greater of (i) the minimum required by RCW 48.44.037 for a health care service contractor or RCW 48.46.235 for a health maintenance organization or (ii) the company action level RBC under RCW 48.43.300(9)(a) is prohibited.

(2)(a) No domestic health carrier may pay an extraordinary dividend or make any other extraordinary distribution to its shareholders or members until: (i) Thirty days after the commissioner has received sufficient notice of the declaration, unless the commissioner declares the notice to be incomplete and requests additional information in which event the thirty days shall be tolled until fifteen days after receipt by the commissioner of the additional information or thirty days after the original receipt of the notice by the commissioner, whichever is later, and the commissioner has not within that period disapproved the payment; or (ii) the commissioner has approved the payment within the thirty-day period.

(b) For purposes of this section, an extraordinary dividend or distribution is a dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions not within the ordinary course of business made within the period of twelve consecutive months ending on the date on which the proposed dividend is scheduled for payment or distribution, exceeds the lesser of: (i) Ten percent of the health carrier's net worth as of the 31st day of the previous December; or (ii) the net income of the health carrier for the twelve-month period ending the 31st day of the previous December, but does not include pro rata distributions of any class of the company's own securities.

(c) Notwithstanding any other provision of law, a health carrier may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration confers no rights upon shareholders or members until: (i) The commissioner has approved the payment of the dividend or distribution; or (ii) the commissioner has not disapproved the payment within the thirty-day period referred to in (a) of this subsection.

(3) For the purpose of this section, "distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a health carrier to or for the benefit of its members or shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; or a distribution of indebtedness in respect to any of its shares. It does not include any remuneration to a shareholder or member made as consideration for

services or items provided by such shareholder or member, including but not limited to remuneration in exchange for health care services, equipment or supplies, or administrative support services or equipment. [2001 c 179 § 6.]

48.31C.070 Examination of health carriers—Commissioner may order production of information—Failure to comply—Costs. (1) Subject to the limitation contained in this section and in addition to the powers that the commissioner has under RCW 48.44.145 relating to the examination of health care service contractors and under RCW 48.46.120 relating to the examination of health maintenance organizations, the commissioner also may order a health carrier registered under RCW 48.31C.040 to produce such records, books, or other information papers in the possession of the health carrier or its affiliates as are reasonably necessary to ascertain the financial condition of the health carrier or to determine compliance with this title. If the health carrier fails to comply with the order, the commissioner may examine the affiliates to obtain the information.

(2) The commissioner may retain at the registered health carrier's expense those attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(3) Each registered health carrier producing for examination records, books, and papers under subsection (1) of this section are liable for and shall pay the expense of the examination in accordance with RCW 48.03.060.

(4) Chapter 48.03 RCW applies to this chapter except to the extent expressly modified by this chapter. [2001 c 179 § 7.]

48.31C.080 Violations of chapter—Commissioner may seek superior court order. (1) Whenever it appears to the commissioner that a health carrier or a director, officer, employee, or agent of the health carrier has committed or is about to commit a violation of this chapter or any rule or order of the commissioner under this chapter, the commissioner may apply to the superior court for Thurston county or to the court for the county in which the principal office of the health carrier is located for an order enjoining the health carrier or the director, officer, employee, or agent from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interest of the health carrier's subscribers or the public may require.

(2) No security that is the subject of an agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of this chapter or of a rule or order of the commissioner under this chapter may be voted at a shareholders' meeting, or may be counted for quorum purposes. Any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding, but no action taken at any such meeting may be invalidated by the voting of the securities, unless the action would materially affect control of the health carrier or unless the courts of this state have

so ordered. If a health carrier or the commissioner has reason to believe that a security of the health carrier has been or is about to be acquired in contravention of this chapter or of a rule or order of the commissioner under this chapter, the health carrier or the commissioner may apply to the superior court for Thurston county or to the court for the county in which the health carrier has its principal place of business to enjoin an offer, request, invitation, agreement, or acquisition made in contravention of RCW 48.31C.030 or a rule or order of the commissioner under that section to enjoin the voting of a security so acquired, to void a vote of the security already cast at a meeting of shareholders, and for such other relief as the nature of the case and the interest of the health carrier's subscribers or the public may require.

(3) If a person has acquired or is proposing to acquire voting securities in violation of this chapter or a rule or order of the commissioner under this chapter, the superior court for Thurston county or the court for the county in which the health carrier has its principal place of business may, on such notice as the court deems appropriate, upon the application of the health carrier or the commissioner seize or sequester voting securities of the health carrier owned directly or indirectly by the person, and issue such order with respect to the securities as may be appropriate to carry out this chapter.

(4) Notwithstanding any other provisions of law, for the purposes of this chapter, the situs of the ownership of the securities of domestic health carriers is in this state.

(5) Subsections (2) and (3) of this section do not apply to acquisitions under RCW 48.31C.020. [2001 c 179 § 8.]

48.31C.090 Violations of chapter—Penalties—Civil forfeitures—Orders—Referral to prosecuting attorney—Imprisonment. (1) The commissioner may require, after notice and hearing, a health carrier failing, without just cause, to file a registration statement as required in this chapter, to pay a penalty of not more than ten thousand dollars per day. The maximum penalty under this section is one million dollars. The commissioner may reduce the penalty if the health carrier demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the health carrier. The commissioner shall transfer a fine collected under this section to the state treasurer for deposit into the general fund.

(2) Every director or officer of a health carrier holding company system who knowingly violates this chapter, or participates in, or assents to, or who knowingly permits an officer or agent of the health carrier to engage in transactions or make investments that have not been properly reported or submitted under RCW 48.31C.040(1), 48.31C.050(2), or 48.31C.060, or that violate this chapter, shall pay, in their individual capacity, a civil forfeiture of not more than ten thousand dollars per violation, after notice and hearing. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Whenever it appears to the commissioner that a health carrier subject to this chapter, or a director, officer, employee, or agent of the health carrier, has engaged in a transaction or entered into a contract that is subject to RCW

48.31C.050 and 48.31C.060 and that would not have been approved had approval been requested, the commissioner may order the health carrier to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the health carrier to void any such contracts and restore the status quo if that action is in the best interest of the subscribers or the public.

(4) Whenever it appears to the commissioner that a health carrier or a director, officer, employee, or agent of the health carrier has committed a willful violation of this chapter, the commissioner may refer the matter to the prosecuting attorney of Thurston county or the county in which the principal office of the health carrier is located. A health carrier that willfully violates this chapter may be fined not more than one million dollars. Any individual who willfully violates this chapter may be fined in his or her individual capacity not more than ten thousand dollars, or be imprisoned for not more than three years, or both.

(5) An officer, director, or employee of a health carrier holding company system who willfully and knowingly subscribes to or makes or causes to be made a false statement, false report, or false filing with the intent to deceive the commissioner in the performance of his or her duties under this chapter, upon conviction thereof, shall be imprisoned for not more than three years or fined not more than ten thousand dollars or both. The officer, director, or employee upon whom the fine is imposed shall pay the fine in his or her individual capacity.

(6) This section does not apply to acquisitions under RCW 48.31C.020. [2001 c 179 § 9.]

48.31C.100 Violations of chapter—Impairment of financial condition. Whenever it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic health carrier as to threaten insolvency or make the further transaction of business by it hazardous to its subscribers or the public, the commissioner may proceed as provided in RCW 48.31.030 and 48.31.040 to take possession of the property of the domestic health carrier and to conduct the business of the health carrier. [2001 c 179 § 10.]

48.31C.110 Order for liquidation or rehabilitation—Recovery of distributions or payments—Liability—Maximum amount recoverable. (1) If an order for liquidation or rehabilitation of a domestic health carrier has been entered, the receiver appointed under the order may recover on behalf of the health carrier:

(a) From a parent corporation or a holding company, a person, or an affiliate, who otherwise controlled the health carrier, the amount of distributions, other than distributions of shares of the same class of stock, paid by the health carrier on its capital stock; or

(b) A payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment, made by the health carrier or its subsidiary to a director, officer, or employee;

Where the distribution or payment under (a) or (b) of this subsection is made at anytime during the one year before the

petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2) through (4) of this section.

(2) No such distribution is recoverable if it is shown that when paid, the distribution was lawful and reasonable, and that the health carrier did not know and could not reasonably have known that the distribution might adversely affect the ability of the health carrier to fulfill its contractual obligations.

(3) A person who was a parent corporation, a holding company, or a person, who otherwise controlled the health carrier, or an affiliate when the distributions were paid, is liable up to the amount of distributions or payments under subsection (1) of this section the person received. A person who controlled the health carrier at the time the distributions were declared is liable up to the amount of distributions he or she would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent health carrier to pay the contractual obligations of the impaired or insolvent health carrier.

(5) To the extent that a person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from it under those provisions, its parent corporation, holding company, or person, who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for a resulting deficiency in the amount recovered from the parent corporation, holding company, or person, who otherwise controlled it. [2001 c 179 § 11.]

48.31C.120 Violations of chapter—Contrary to interests of subscribers or the public. Whenever it appears to the commissioner that a person has committed a violation of this chapter that makes the continued operation of a health carrier contrary to the interests of subscribers or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew the health carrier's registration to do business in this state for such period as he or she finds is required for the protection of subscribers or the public. Such a suspension, revocation, or refusal to renew the health carrier's registration must be accompanied by specific findings of fact and conclusions of law. [2001 c 179 § 12.]

48.31C.130 Confidential proprietary and trade secret information—Exempt from public disclosure—Exceptions. Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070 are exempt from public inspection and copying and shall not be subject to subpoena directed to the commissioner or any person who received the confidential proprietary financial and trade secret information while acting under the authority of the commissioner. This information shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health carrier to which it pertains unless the commissioner,

after giving the health carrier that would be affected by the disclosure notice and hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, members, shareholders, or the public will be served by the publication, in which event the commissioner may publish information related to the transactions or filings in the manner and time frame he or she reasonably deems appropriate and sensitive to the interest in preserving confidential proprietary and trade secret information. The commissioner is authorized to use such documents, materials, or information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The confidentiality created by chapter 179, Laws of 2001 shall apply only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, and the insurance departments of other states. [2001 c 179 § 13.]

48.31C.140 Person aggrieved by actions of commissioner. A person aggrieved by an act, determination, rule, order, or any other action of or failure to act by the commissioner under this chapter may proceed in accordance with chapters 34.05 and 48.04 RCW. [2001 c 179 § 15.]

48.31C.150 Rule making. The commissioner may adopt rules to implement and administer this chapter. [2001 c 179 § 16.]

48.31C.160 Dual holding company system membership. If an insurance company holding a certificate of authority from the commissioner under chapter 48.05 RCW is a member of both a health carrier holding company system under this chapter and an insurance holding company system under chapter 48.31B RCW, then chapter 48.31B RCW applies to the authorized insurance company. [2001 c 179 § 17.]

48.31C.900 Severability—2001 c 179. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 c 179 § 18.]

48.31C.901 Effective date—2001 c 179. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]. [2001 c 179 § 19.]

Chapter 48.32 RCW

WASHINGTON INSURANCE GUARANTY ASSOCIATION ACT

Sections

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48.32.920	Section headings not part of law.
48.32.930	Severability—1971 ex.s. c 265.

48.32.010 Purpose. The purpose of this chapter is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers. [1971 ex.s. c 265 § 1.]

48.32.020 Scope. This chapter shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, workers' compensation and ocean marine insurance. [1987 c 185 § 29; 1975-'76 2nd ex.s. c 109 § 2; 1971 ex.s. c 265 § 2.]

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

48.32.030 Definitions. As used in this chapter:

(1) "Account" means one of the two accounts created in RCW 48.32.040 as now or hereafter amended.

(2) "Association" means the Washington Insurance Guaranty Association created in RCW 48.32.040.

(3) "Commissioner" means the insurance commissioner of this state.

(4) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after the first day of April, 1971 and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise: PROVIDED, That a claim for any such amount asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association, would be a "covered claim" may be filed directly with the receiver of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer. In addition, "covered claim" shall not include any claim filed with the association subsequent to the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(5) "Insolvent insurer" means an insurer (a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) deter-

mined to be insolvent and ordered liquidated by a court of competent jurisdiction, and which adjudication was subsequent to the first day of April, 1971.

(6) "Member insurer" means any person who (a) writes any kind of insurance to which this chapter applies under RCW 48.32.020, including the exchange of reciprocal or interinsurance contracts, and (b) holds a certificate of authority to transact insurance in this state.

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(8) "Person" means any individual, corporation, partnership, association, or voluntary organization. [1975-'76 2nd ex.s. c 109 § 3; 1971 ex.s. c 265 § 3.]

48.32.040 Creation of the association. There is hereby created a nonprofit unincorporated legal entity to be known as the Washington Insurance Guaranty Association. All insurers defined as member insurers in RCW 48.32.030(6) as now or hereafter amended shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under RCW 48.32.070 and shall exercise its powers through a board of directors established under RCW 48.32.050 as now or hereafter amended. For purposes of administration and assessment, the association shall be divided into two separate accounts: (1) The automobile insurance account; and (2) the account for all other insurance to which this chapter applies. [1975-'76 2nd ex.s. c 109 § 4; 1971 ex.s. c 265 § 4.]

48.32.050 Board of directors. (1) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors. [1975-'76 2nd ex.s. c 109 § 5; 1971 ex.s. c 265 § 5.]

48.32.060 Powers and duties of the association. (1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty days after the order of liquidation, or before the policy expiration date if less than thirty days after the order of liquidation, or before the insured replaces the policy or on request effects cancellation, if he does so within thirty days of the order of liquidation, but such obligation shall include only that amount of each covered claim which is in excess of one

hundred dollars and is less than three hundred thousand dollars. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Allocate claims paid and expenses incurred among the two accounts enumerated in RCW 48.32.040 as now or hereafter amended separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under subsection (1)(a) above subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under RCW 48.32.110, and other expenses authorized by this chapter. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available may be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable, including the payment of claims in the order such claims are received from claimants or in groups or categories of claims, or otherwise. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer if they are chargeable to the account for which the assessment is made.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims.

(e) Notify such persons as the commissioner directs under RCW 48.32.080(2)(a).

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred

by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.

(2) The association may:

(a) Appear in, defend, and appeal any action on a claim brought against the association.

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(c) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

(d) Sue or be sued.

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this chapter.

(f) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(g) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year. [1975-'76 2nd ex.s. c 109 § 6; 1971 ex.s. c 265 § 6.]

48.32.070 Plan of operation. (1)(a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within ninety days following May 21, 1971 or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under RCW 48.32.060 will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under RCW 48.32.050.

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under RCW 48.32.060 subsections (1)(c) and (2)(c), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter. [1971 ex.s. c 265 § 7.]

48.32.080 Duties and powers of the commissioner.

(1) The commissioner shall:

(a) Notify the association promptly whenever he or any of his examiners has, or comes into, possession of any data or information relative to any insurer under his jurisdiction for any purpose indicating that such insurer is in or is approaching a condition of impaired assets, imminent insolvency, or insolvency.

(b) Furnish to the association copies of all preliminary and final audits, investigations, memorandums, opinions, and reports relative to any insurer under his jurisdiction for any purpose, promptly upon the preparation of any thereof.

(c) Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency. The association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member insurer at the same time such complaint is filed with a court of competent jurisdiction.

(d) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication or in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer

which fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Whenever the commissioner or any of his examiners comes into possession of or obtains any data or information indicating that any insurer under his jurisdiction for any purpose is in or is approaching a condition of impaired assets, imminent insolvency, or insolvency, he shall within fifteen days of having such data or information commence investigation and/or take formal action relative to any such insurer, and in addition within said time shall notify the association of such condition. Upon failure of the commissioner so to act, the association is hereby authorized and directed to act and commence appropriate investigation or proceedings or may at its option refer the matter to the attorney general for appropriate action relative to which the attorney general shall keep the association advised throughout any such action or proceedings.

(4) Any final action or order of the commissioner under this chapter shall be subject to judicial review in a court of competent jurisdiction. [1975-76 2nd ex.s. c 109 § 7; 1971 ex.s. c 265 § 8.]

48.32.090 Effect of paid claims. (1) Any person recovering under this chapter shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the right of the association against the assets of the insolvent insurer. [1971 ex.s. c 265 § 9.]

48.32.100 Nonduplication of recovery. (1) Any person having a claim against his insurer under any provision in his insurance policy which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of such recovery under the claimant's insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its

equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim, from the association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent. [1987 c 185 § 30; 1971 ex.s. c 265 § 10.]

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

48.32.110 Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner. [1971 ex.s. c 265 § 11.]

48.32.120 Examination of the association. The association shall be subject to examination and regulation by the

commissioner. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the commissioner. [1971 ex.s. c 265 § 12.]

48.32.130 Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property. [1971 ex.s. c 265 § 13.]

48.32.145 Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c). Every member insurer that prior to April 1, 1993, or after July 27, 1997, shall have paid one or more assessments levied pursuant to RCW 48.32.060(1)(c) shall be entitled to take a credit against any premium tax falling due under RCW 48.14.020. The amount of the credit shall be one-fifth of the aggregate amount of such aggregate assessments paid during such calendar year for each of the five consecutive calendar years beginning with the calendar year following the calendar year in which such assessments are paid. Whenever the allowable credit is or becomes less than one thousand dollars, the entire amount of the credit may be offset against the premium tax at the next time the premium tax is paid. [1997 c 300 § 1; 1993 sp.s. c 25 § 901; 1977 ex.s. c 183 § 1; 1975-'76 2nd ex.s. c 109 § 11.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

48.32.150 Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this chapter. [1971 ex.s. c 265 § 15.]

48.32.160 Stay of proceedings—Setting aside judgment. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for one hundred eighty days and such additional time thereafter as may be fixed by the court from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. Any judgment under any decision, verdict, or finding based on default of the insolvent insurer or on its failure to defend an insured which is unsatisfied at the date the insolvency is determined shall be set aside on the motion of the association and the association shall be permitted to defend such claim on the merits. [1975-'76 2nd ex.s. c 109 § 8; 1971 ex.s. c 265 § 16.]

48.32.170 Termination, distribution of fund. (1) The commissioner shall by order terminate the operation of the Washington insurers insolvency pool as to any kind of insurance afforded by property or casualty insurance policies with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which:

(a) Is a permanent plan which is adequately funded or for which adequate funding is provided; and

(b) Extends, or will extend to state policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents than the protection and benefits provided with respect to such kind of insurance under this chapter.

(2) The commissioner shall by the same such order authorize discontinuance of future payments by insurers to the Washington insurers insolvency pool with respect to the same kinds of insurance: PROVIDED, That assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(3) In the event the operation of any account of the Washington insurers insolvency pool shall be so terminated as to all kinds of insurance otherwise within its scope, the pool as soon as possible thereafter shall distribute the balance of the moneys and assets remaining in said account (after discharge of the functions of the pool with respect to prior insurer insolvencies not covered by such other plan, together with related expenses) to the insurers which are then writing in this state policies of the kinds of insurance covered by such account, and which had made payments into such account, pro rata upon the basis of the aggregate of such payments made by the respective insurers to such account during the period of five years next preceding the date of such order. Upon completion of such distribution with respect to all of the accounts specified in RCW 48.32.060, this chapter shall be deemed to have expired. [1971 ex.s. c 265 § 17.]

48.32.900 Short title. This chapter shall be known and may be cited as the Washington Insurance Guaranty Association Act. [1971 ex.s. c 265 § 18.]

48.32.910 Construction—1971 ex.s. c 265. This chapter shall be liberally construed to effect the purpose under RCW 48.32.010 which shall constitute an aid and guide to interpretation. [1971 ex.s. c 265 § 19.]

48.32.920 Section headings not part of law. Section headings as used in this chapter do not constitute any part of the law. [1971 ex.s. c 265 § 22.]

48.32.930 Severability—1971 ex.s. c 265. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1971 ex.s. c 265 § 23.]

Chapter 48.32A RCW

WASHINGTON LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION ACT

Sections

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Group stop loss insurance exemption: RCW 48.21.015.

48.32A.005 Short title. This chapter may be known and cited as the Washington life and disability insurance guaranty association act. [2001 c 50 § 1.]

48.32A.015 Purpose. (1) The purpose of this chapter is to protect, subject to certain limitations, the persons specified in RCW 48.32A.025(1) against failure in the performance of contractual obligations, under life and disability insurance policies and annuity contracts specified in RCW 48.32A.025(2), because of the impairment or insolvency of the member insurer that issued the policies or contracts.

(2) To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited by this chapter, and members of the association are subject to assessment to provide funds to carry out the purpose of this chapter. [2001 c 50 § 2.]

48.32A.025 Coverage and limitations. (1) This chapter provides coverage for the policies and contracts specified in subsection (2) of this section as follows:

(a) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under (b) of this subsection;

(b) To persons who are owners of or certificate holders under the policies or contracts, other than unallocated annuity contracts and structured settlement annuities, and in each case who:

(i) Are residents; or

(ii) Are not residents, but only under all of the following conditions:

(A) The insurer that issued the policies or contracts is domiciled in this state;

(B) The states in which the persons reside have associations similar to the association created by this chapter; and

(C) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law;

(c) For unallocated annuity contracts specified in subsection (2) of this section, (a) and (b) of this subsection do not apply, and this chapter, except as provided in (e) and (f) of this subsection, does provide coverage to:

(i) Persons who are the owners of the unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(ii) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents;

(d) For structured settlement annuities specified in subsection (2) of this section, (a) and (b) of this subsection do not apply, and this chapter, except as provided in (e) and (f) of this subsection, does provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(i) Is a resident, regardless of where the contract owner resides; or

(ii) Is not a resident, but only under both of the following conditions:

(A)(I) The contract owner of the structured settlement annuity is a resident; or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state; and the state in which the contract owner resides has an association similar to the association created by this chapter; and

(B) Neither the payee, nor beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides;

(e) This chapter does not provide coverage to:

(i) A person who is a payee, or beneficiary, of a contract owner resident of this state, if the payee, or beneficiary, is afforded any coverage by the association of another state; or

(ii) A person covered under (c) of this subsection, if any coverage is provided by the association of another state to the person; and

(f) This chapter is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person shall not be provided coverage under this chapter. In determining the application of this subsection (1)(f) in situations where a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association.

(2)(a) This chapter provides coverage to the persons specified in subsection (1) of this section for direct, nongroup life, disability, or annuity policies or contracts and supplemental contracts to any of these, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries, and any immediate or deferred annuity contracts. However, any annuity contracts that are unallocated annuity contracts are subject to the specific provisions in this chapter for unallocated annuity contracts.

(b) This chapter does not provide coverage for:

(i) A portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract owner;

(ii) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; and

(B) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(iv) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, disability, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as defined in 29 U.S.C. Sec. 1144;

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(v) A portion of a policy or contract to the extent that it provides for:

(A) Dividends or experience rating credits;

(B) Voting rights; or

(C) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) An unallocated annuity contract issued to or in connection with a benefit plan protected under the federal pension benefit guaranty corporation, regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;

(viii) A portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery;

(ix) A portion of a policy or contract to the extent that the assessments required by RCW 48.32A.085 with respect to the policy or contract are preempted by federal or state law;

(x) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to

the contract owner or policy owner, including without limitation:

- (A) Claims based on marketing materials;
- (B) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;
- (C) Misrepresentations of or regarding policy benefits;
- (D) Extra-contractual claims; or
- (E) A claim for penalties or consequential or incidental damages;
- (xi) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; or

(xii) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subsection (2)(b)(xii), the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

(3) The benefits that the association may become obligated to cover shall in no event exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(b)(i) With respect to one life, regardless of the number of policies or contracts:

(A) Five hundred thousand dollars in life insurance death benefits, but not more than five hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) In disability insurance benefits:

(I) Five hundred thousand dollars for coverages not defined as disability income insurance or basic hospital, medical, and surgical insurance or major medical insurance including any net cash surrender and net cash withdrawal values;

(II) Five hundred thousand dollars for disability income insurance;

(III) Five hundred thousand dollars for basic hospital medical and surgical insurance or major medical insurance; or

(C) Five hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values, except as provided in (ii), (iii), and (v) of this subsection (3)(b);

(ii) With respect to each individual participating in a governmental retirement benefit plan established under sec-

tion 401, 403(b), or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, one hundred thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values;

(iii) With respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, five hundred thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iv) However, in no event shall the association be obligated to cover more than: (A) An aggregate of five hundred thousand dollars in benefits with respect to any one life under (i), (ii), and (iii) of this subsection (3)(b) except with respect to benefits for basic hospital, medical, and surgical insurance and major medical insurance under (i)(B) of this subsection (3)(b), in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or (B) with respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits, regardless of the number of policies and contracts held by the owner;

(v) With respect to either: (A) One contract owner provided coverage under subsection (1)(d)(ii) of this section; or (B) one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in (ii) of this subsection (3)(b), five million dollars in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state and in no event shall the association be obligated to cover more than five million dollars in benefits with respect to all these unallocated contracts; or

(vi) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under RCW 48.32A.075, the association is not required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract. [2001 c 50 § 3.]

48.32A.035 Construction. This chapter shall be construed to effect the purpose under RCW 48.32A.015. [2001 c 50 § 4.]

48.32A.045 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Account" means either of the two accounts created under RCW 48.32A.055.

(2) "Association" means the Washington life and disability insurance guaranty association created under RCW 48.32A.055.

(3) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

(4) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

(5) "Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.

(6) "Commissioner" means the insurance commissioner of this state.

(7) "Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under RCW 48.32A.025.

(8) "Covered policy" means a policy or contract or portion of a policy or contract for which coverage is provided under RCW 48.32A.025.

(9) "Extra-contractual claims" includes, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorneys' fees and costs.

(10) "Impaired insurer" means a member insurer which, after July 22, 2001, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(11) "Insolvent insurer" means a member insurer which, after July 22, 2001, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(12) "Member insurer" means an insurer licensed, or that holds a certificate of authority, to transact in this state any kind of insurance for which coverage is provided under RCW 48.32A.025, and includes an insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

(a) A health care service contractor, whether profit or nonprofit;

(b) A health maintenance organization;

(c) A fraternal benefit society;

(d) A mandatory state pooling plan;

(e) A mutual assessment company or other person that operates on an assessment basis;

(f) An insurance exchange;

(g) An organization that has a certificate or license limited to the issuance of charitable gift annuities under RCW 48.38.010; or

(h) An entity similar to (a) through (g) of this subsection.

(13) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or any successor thereto.

(14) "Owner" of a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. "Owner," "contract owner," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

(15) "Person" means an individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(16) "Plan sponsor" means:

(a) The employer in the case of a benefit plan established or maintained by a single employer;

(b) The employee organization in the case of a benefit plan established or maintained by an employee organization; or

(c) In the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(17) "Premiums" means amounts or considerations, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits and less dividends and experience credits. "Premiums" does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under RCW 48.32A.025(2), except that assessable premium shall not be reduced on account of RCW 48.32A.025(2)(b)(iii) relating to interest limitations and RCW 48.32A.025(3)(b) relating to limitations with respect to one individual, one participant, and one contract owner. "Premiums" does not include:

(a) Premiums in excess of five million dollars on an unallocated annuity contract not issued under a governmental retirement benefit plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code; or

(b) With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

(18)(a) "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the

association in its reasonable judgment by considering the following factors:

- (i) The state in which the primary executive and administrative headquarters of the entity is located;
- (ii) The state in which the principal office of the chief executive officer of the entity is located;
- (iii) The state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;
- (iv) The state in which the executive or management committee of the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;
- (v) The state from which the management of the overall operations of the entity is directed; and
- (vi) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors in (a)(i) through (v) of this subsection.

However, in the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state is the principal place of business of the plan sponsor.

(b) The principal place of business of a plan sponsor of a benefit plan described in subsection (16)(c) of this section is the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, is the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

(19) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

(20) "Resident" means a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person is its principal place of business. Citizens of the United States that are either (a) residents of foreign countries, or (b) residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this chapter, are residents of the state of domicile of the insurer that issued the policies or contracts.

(21) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(22) "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.

(23) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, disability, or annuity policy or contract.

(24) "Unallocated annuity contract" means an annuity contract or group annuity certificate which is not issued to

and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate. [2001 c 50 § 5.]

48.32A.055 Creation of the association. (1) There is created a nonprofit unincorporated legal entity to be known as the Washington life and disability insurance guaranty association which is composed of the commissioner ex officio and each member insurer. All member insurers must be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under RCW 48.32A.095 and shall exercise its powers through a board of directors established under RCW 48.32A.065. For purposes of administration and assessment, the association shall maintain two accounts:

(a) The life insurance and annuity account which includes the following subaccounts:

- (i) Life insurance account;
- (ii) Annuity account which includes annuity contracts owned by a governmental retirement plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code, but otherwise excludes unallocated annuities; and

(iii) Unallocated annuity account, which excludes contracts owned by a governmental retirement benefit plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code; and

(b) The disability insurance account.

(2) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association. [2001 c 50 § 6.]

48.32A.065 Board of directors. (1) The board of directors of the association consists of the commissioner ex officio and not less than five nor more than nine member insurers serving terms as established in the plan of operation. The insurer members of the board are selected by member insurers subject to the approval of the commissioner.

Vacancies on the board are filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(2) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board are not otherwise compensated by the association for their services. [2001 c 50 § 7.]

48.32A.075 Powers and duties of the association. (1) If a member insurer is an impaired insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner:

(a) Guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; or

(b) Provide such moneys, pledges, loans, notes, guarantees, or other means as are proper to effectuate (a) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under (a) of this subsection.

(2) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(a)(i)(A) Guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(ii) Provide moneys, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties; or

(b) Provide benefits and coverages in accordance with the following provisions:

(i) With respect to life and disability insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(A) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to the policies and contracts;

(B) With respect to nongroup policies, contracts, and annuities not later than the earlier of the next renewal date, if any, under the policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to the policies or contracts;

(ii) Make diligent efforts to provide all known insureds or annuitants, for nongroup policies and contracts, or group policy owners with respect to group policies and contracts, thirty days notice of the termination of the benefits provided;

(iii) With respect to nongroup life and disability insurance policies and annuities covered by the association, make diligent efforts to make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make diligent efforts to make available substitute coverage on an individual basis in accordance with the provisions of (b)(iv) of this subsection, if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class;

(iv)(A) The substitute coverage under (b)(iii) of this subsection, must be offered through a solvent, admitted insurer. In the alternative, the association in its discretion, and subject

to any conditions imposed by the association and approved by the commissioner, may reissue the terminated coverage;

(B) Substituted coverage must be offered without requiring evidence of insurability, and may not provide for any waiting period or exclusion that would not have applied under the terminated policy;

(C) The association may reinsure any reissued policy;

(v) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium must be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court;

(vi) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued policy cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association; or

(vii) When proceeding under this subsection (2)(b) with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with RCW 48.32A.025(2)(b)(iii).

(3) Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under this chapter with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(5) The protection provided by this chapter does not apply when any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(6) In carrying out its duties under subsection (2) of this section, the association may:

(a) Subject to approval by a court in this state, impose permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, are in the public interest; and

(b) Subject to approval by a court in this state, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out

of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(7) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, under RCW 48.31.171, shall be promptly paid to the association. The association is entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association and not retained under this subsection. Any amount so paid to the association less the amount not retained by it shall be treated as a distribution of estate assets under RCW 48.31.185 or similar provision of the state of domicile of the impaired or insolvent insurer.

(8) If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subsection (2) of this section, the commissioner has the powers and duties of the association under this chapter with respect to the insolvent insurer.

(9) The association may render assistance and advice to the commissioner, upon the commissioner's request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

(10) The association has standing to appear or intervene before a court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Standing extends to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association also has the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

(11)(a) A person receiving benefits under this chapter is deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The

association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon the person.

(b) The subrogation rights of the association under this subsection have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

(c) In addition to (a) and (b) of this subsection, the association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contracts, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the United States Internal Revenue Code.

(d) If (a) through (c) of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion thereof, covered by the association.

(e) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in this subsection, the person shall pay to the association the portion of the recovery attributable to the policies, or portion thereof, covered by the association.

(12) In addition to the rights and powers elsewhere in this chapter, the association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;

(b) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under RCW 48.32A.085 and to settle claims or potential claims against it;

(c) Borrow money to effect the purposes of this chapter; any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this chapter;

(e) Take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;

(f) Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or disability insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter;

(g) Organize itself as a corporation or in other legal form permitted by the laws of the state;

(h) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request; and

(i) Take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.

(13) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

(14)(a) At any time within one year after the coverage date, which is the date on which the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of the member insurer, that accrue on or after the coverage date and that relate to contracts covered, in whole or in part, by the association, under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. However, the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. The election is effective when notice is provided to the receiver, rehabilitator, or liquidator and to the affected reinsurers. If the association makes an election, the following provisions apply with respect to the agreements selected by the association:

(i) The association is responsible for all unpaid premiums due under the agreements, for periods both before and after the coverage date, and is responsible for the performance of all other obligations to be performed after the coverage date, in each case which relate to contracts covered, in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association;

(ii) The association is entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part. However, upon receipt of any such amounts, the association is obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of: The amount received by the association, over the benefits paid by the association on account of the policy or contract, less the retention of the impaired or insolvent member insurer applicable to the loss or event;

(iii) Within thirty days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid by either the member insurer, or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. Either the association or indemnity reinsurer shall pay the net balance due

the other within five days of the completion of this calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association pursuant to (a)(ii) of this subsection, the receiver, rehabilitator, or liquidator shall remit the same to the association as promptly as practicable; and

(iv) If the association, within sixty days of the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association, in whole or in part, the reinsurer is not entitled to terminate the reinsurance agreements, insofar as the agreements relate to contracts covered by the association, in whole or in part, and is not entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association;

(b) In the event the association transfers its obligations to another insurer, and if the association and the other insurer agree, the other insurer succeeds to the rights and obligations of the association under (a) of this subsection effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in (a) of this subsection. However:

(i) The indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;

(ii) The obligations described in (a)(ii) of this subsection no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer; and

(iii) This subsection (14)(b) does not apply if the association has previously expressly determined in writing that it will not exercise the election referred to in (a) of this subsection;

(c) The provisions of this subsection supersede the provisions of any law of this state or of any affected reinsurance agreement that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator remains entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions; and

(d) Except as set forth under this subsection, this subsection does not alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. This subsection does not abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. This subsection does not give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

(15) The board of directors of the association has discretion and may exercise reasonable business judgment to determine the means by which the association provides the benefits of this chapter in an economical and efficient manner.

(16) When the association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(17) Venue in a suit against the association arising under this chapter is in the county in which liquidation or rehabilitation proceedings have been filed in the case of a domestic insurer. In other cases, venue is in King county or Thurston county. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

(18) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsection (1) or (2) of this section, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

(a) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for: (i) A fixed interest rate; (ii) payment of dividends with minimum guarantees; or (iii) a different method for calculating interest or changes in value;

(b) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

(c) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms. [2001 c 50 § 8.]

48.32A.085 Assessments. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments are due not less than thirty days after prior written notice to the member insurers and accrue interest at twelve percent per annum on and after the due date.

(2) There are two classes of assessments, as follows:

(a) Class A assessments are authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer; and

(b) Class B assessments are authorized and called to the extent necessary to carry out the powers and duties of the association under RCW 48.32A.075 with regard to an impaired or an insolvent insurer.

(3)(a) The amount of a class A assessment is determined by the board and may be authorized and called on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. The total of all nonpro rata assessments may not exceed one hundred fifty dollars per member insurer in any one calendar year. The amount of a class B assessment may be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board to be fair and reasonable under the circumstances.

(b) Class B assessments against member insurers for each account and subaccount must be in the proportion that

the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to premiums received on business in this state for those calendar years by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection must be made with a reasonable degree of accuracy, recognizing that exact determinations are not always possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(5)(a)(i) Subject to the provisions of (a)(ii) of this subsection, the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account may not in one calendar year exceed two percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(ii) If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation in (a)(i) of this subsection must be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated under this section.

(iii) If the maximum assessment, together with the other assets of the association in an account, does not provide in one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon thereafter as permitted by this chapter.

(b) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to

one or more impaired or insolvent insurers, when the maximum assessment is insufficient to cover anticipated claims.

(c) If the maximum assessment for a subaccount of the life and annuity account in one year does not provide an amount sufficient to carry out the responsibilities of the association, then under subsection (3)(b) of this section, the board shall access the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in (a) of this subsection.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses claims.

(7) Any member insurer may when determining its premium rates and policy owner dividends, as to any kind of insurance within the scope of this chapter, consider the amount reasonably necessary to meet its assessment obligations under this chapter.

(8) The association shall issue to each insurer paying an assessment under this chapter, other than a class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

(9)(a) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment is available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment must be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

(b) Within sixty days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(c) Within thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.

(d) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.

(e) If the protest or appeal on the assessment is upheld, the amount paid in error or excess must be returned to the

member company. Interest on a refund due a protesting member must be paid at the rate actually earned by the association.

(10) The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request. [2001 c 50 § 9.]

48.32A.095 Plan of operation. (1)(a) The association shall submit to the commissioner a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments are effective upon the commissioner's written approval or unless it has not been disapproved within thirty days.

(b) If the association fails to submit a suitable plan of operation within one hundred twenty days following July 22, 2001, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt reasonable rules as necessary or advisable to effectuate the provisions of this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation must, in addition to requirements enumerated elsewhere in this chapter:

(a) Establish procedures for handling the assets of the association;

(b) Establish the amount and method of reimbursing members of the board of directors under RCW 48.32A.065;

(c) Establish regular places and times for meetings including telephone conference calls of the board of directors;

(d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) Establish the procedures whereby selections for the board of directors are made and submitted to the commissioner;

(f) Establish any additional procedures for assessments under RCW 48.32A.085; and

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under RCW 48.32A.075(12)(c) and 48.32A.085, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization must be reimbursed for any payments made on behalf of the association and must be paid for its performance of any function of the association. A delegation under this subsection takes effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter. [2001 c 50 § 10.]

48.32A.105 Duties and powers of the commissioner.

(1) In addition to the duties and powers enumerated elsewhere in this chapter, the commissioner shall:

(a) Upon request of the board of directors, provide the association with a statement of the premiums in this and other appropriate states for each member insurer;

(b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer constitutes notice to its shareholders, if any; the failure of the insurer to promptly comply with such a demand does not excuse the association from the performance of its powers and duties under this chapter; and

(c) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

(2) In addition to the duties and powers enumerated elsewhere in this chapter, the commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer that fails to pay an assessment when due. The forfeiture may not exceed five percent of the unpaid assessment per month, but no forfeiture may be less than one hundred dollars per month.

(3) A final action by the board of directors of the association may be appealed to the commissioner by a member insurer if the appeal is taken within sixty days of the member insurer's receipt of notice of the final action being appealed. A final action or order of the commissioner is subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state that apply to the actions or orders of the commissioner.

(4) The liquidator, rehabilitator, or conservator of an impaired insurer may notify all interested persons of the effect of this chapter. [2001 c 50 § 11.]

48.32A.115 Prevention of insolvencies. The commissioner shall aid in the detection and prevention of insurer insolvencies or impairments.

(1) It is the duty of the commissioner to:

(a) Notify the commissioners of all the other states, territories of the United States, and the District of Columbia within thirty days following the action taken or the date the action occurs, when the commissioner takes any of the following actions against a member insurer:

(i) Revocation of license;

(ii) Suspension of license; or

(iii) Makes a formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners or creditors;

(b) Report to the board of directors when the commissioner has taken any of the actions set forth in (a) of this subsection or has received a report from any other commissioner indicating that any such action has been taken in another state. The report to the board of directors must contain all sig-

nificant details of the action taken or the report received from another commissioner;

(c) Report to the board of directors when the commissioner has reasonable cause to believe from an examination, whether completed or in process, of any member insurer that the insurer may be an impaired or insolvent insurer; and

(d) Furnish to the board of directors the national association of insurance commissioners insurance regulatory information system ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information must be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the duties and responsibilities of the commissioner regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(3) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. The reports and recommendations are not public documents.

(4) The board of directors may, upon majority vote, notify the commissioner of any information indicating a member insurer may be an impaired or insolvent insurer.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies. [2001 c 50 § 12.]

48.32A.125 Credits for assessments paid—Tax offsets. (1) A member insurer may offset against its premium tax liability to this state an assessment described in RCW 48.32A.085(8) to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(2) Any sums that are acquired by refund, under RCW 48.32A.085(6), from the association by member insurers, and that have been offset against premium taxes as provided in subsection (1) of this section, must be paid by the insurers to the commissioner and then deposited with the state treasurer for credit to the general fund of the state of Washington. The association shall notify the commissioner that refunds have been made. [2001 c 50 § 13.]

48.32A.135 Miscellaneous provisions. (1) This chapter does not reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(2) Records must be kept of all meetings of the board of directors to discuss the activities of the association in carry-

ing out its powers and duties under RCW 48.32A.075. The records of the association with respect to an impaired or insolvent insurer may not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under RCW 48.32A.145.

(3) For the purpose of carrying out its obligations under this chapter, the association is a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee under RCW 48.32A.075(11). Assets of the impaired or insolvent insurer attributable to covered policies must be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(4) As a creditor of the impaired or insolvent insurer as established in subsection (3) of this section, the association and other similar associations are entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association is entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

(5)(a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and the policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration must be given to the welfare of the policy owners of the continuing or successor insurer.

(b) A distribution to stockholders, if any, of an impaired or insolvent insurer shall not be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under RCW 48.32A.075 with respect to the insurer have been fully recovered by the association.

(6)(a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of (b) through (d) of this subsection.

(b) A distribution is not recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, is liable up to the amount of distributions which would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(e) If any person liable under (c) of this subsection is insolvent, all its affiliates that controlled it at the time the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate. [2001 c 50 § 14.]

48.32A.145 Examination of the association—Annual report. The association is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than one hundred eighty days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year. Upon the request of a member insurer, the association shall provide the member insurer with a copy of the report. [2001 c 50 § 15.]

48.32A.155 Tax exemptions. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property. [2001 c 50 § 16.]

48.32A.165 Immunity. There is no liability on the part of and no cause of action of any nature may arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or the commissioner's representatives, for any action or omission by them in the performance of their powers and duties under this chapter. Immunity extends to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees. [2001 c 50 § 17.]

48.32A.175 Stay of proceedings—Reopening default judgments. All proceedings in which the insolvent insurer is a party in any court in this state are stayed sixty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default the association may apply to have such a judgment set aside by the same court that made such a judgment and must be permitted to defend against the suit on the merits. [2001 c 50 § 18.]

48.32A.185 Prohibited advertisement of insurance guaranty association act in insurance sales—Notice to policy owners. (1) No person, including an insurer, agent, or affiliate of an insurer may make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Washington life and disability insurance guaranty association act. However, this section does not apply to the Washington life and disability insurance guaranty association or any other entity which does not sell or solicit insurance.

(2) Within one hundred eighty days after July 22, 2001, the association shall prepare a summary document describing the general purposes and current limitations of this chapter and complying with subsection (3) of this section. This document must be submitted to the commissioner for approval. The document must also be available upon request by a policy owner. The distribution, delivery, contents, or interpretation of this document does not guarantee that either the policy or the contract or the owner of the policy or contract is covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this chapter may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, or insured any greater rights than those stated in this chapter.

(3) The document prepared under subsection (2) of this section must contain a clear and conspicuous disclaimer on its face. The commissioner shall establish the form and content of the disclaimer. The disclaimer must:

(a) State the name and address of the life and disability insurance guaranty association and insurance department;

(b) Prominently warn the policy or contract owner that the life and disability insurance guaranty association may not cover the policy or, if coverage is available, it is subject to substantial limitations and exclusions and conditioned on continued residence in this state;

(c) State the types of policies for which guaranty funds provide coverage;

(d) State that the insurer and its agents are prohibited by law from using the existence of the life and disability insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(e) State that the policy or contract owner should not rely on coverage under the life and disability insurance guaranty association when selecting an insurer;

(f) Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter; and

(g) Provide other information as directed by the commissioner including but not limited to, sources for information about the financial condition of insurers provided that the information is not proprietary and is subject to disclosure under chapter 42.17 RCW.

(4) A member insurer must retain evidence of compliance with subsection (2) of this section for as long as the policy or contract for which the notice is given remains in effect. [2001 c 50 § 19.]

48.32A.901 Prospective application—Savings—2001 c 50. (1) This chapter does not apply to any impaired insurer that was under an order of rehabilitation or conservation, or to any insolvent insurer that was placed under an order of liquidation, prior to July 22, 2001.

(2) Any section repealed in this act pertaining to the powers and obligations of the association, reinsurance and guaranty of policies, assessments, and premium tax offsets shall apply to impaired insurers placed under an order of rehabilitation or conservation, and to insolvent insurers placed under an order of liquidation, prior to July 22, 2001. [2001 c 50 § 20.]

48.32A.902 Captions not law—2001 c 50. Captions used in this act are not any part of the law. [2001 c 50 § 21.]

Chapter 48.34 RCW

CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE

Sections

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48.34.010 Declaration of purpose—Liberal construction. The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit accident and health insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed. [1961 c 219 § 1.]

48.34.020 Chapter part of insurance code—What insurance subject to chapter. (1) This chapter is a part of the insurance code.

(2) All life insurance and all accident and health insurance in connection with loans or other credit transactions shall be subject to the provisions of this chapter, except such insurance under an individual policy in connection with a loan or other credit transaction of more than ten years duration. Insurance shall not be subject to the provisions of this chapter where its issuance is an isolated transaction on the part of the insurer not related to an agreement or a plan for

insuring debtors of the creditor. [1969 ex.s. c 241 § 14; 1961 c 219 § 2.]

48.34.030 Definitions. For the purpose of this chapter: (1) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;

(2) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;

(3) "Creditor" means the lender of money or vendor or lessor of goods, services, properties, rights, or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any such lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or a director, officer, or employee of any of them or any other person in any way associated with any of them;

(4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, properties, rights, or privileges for which payment is arranged through a credit transaction;

(5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with the loan or other credit transaction. [1961 c 219 § 3.]

48.34.040 Authorized forms. Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

(1) Individual policies of life insurance issued to debtors on the term plan;

(2) Individual policies of accident and health insurance issued to debtors on a term plan, or disability benefit provisions in individual policies of credit life insurance;

(3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(4) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors, or disability benefit provisions in group credit life insurance policies to provide such coverage. [1961 c 219 § 4.]

48.34.050 Life—Limitation on amount under individual policy. The initial amount of credit life insurance under an individual policy shall not exceed the total amount repayable under the contract of indebtedness. Where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. [1961 c 219 § 5.]

48.34.060 Life—Limitation on amount repayable under group policy. The initial amount of credit life insurance under a group policy shall at no time exceed the amount owed by the debtor which is repayable in installments to the creditor. [1987 c 130 § 1; 1983 1st ex.s. c 32 § 23; 1977 c 61 § 2; 1967 ex.s. c 82 § 1; 1961 c 219 § 6.]

48.34.070 Accident and health—Limitation on amount. The total amount of periodic indemnity payable by credit accident and health insurance in the event of disability,

as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness; and the amount of such periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments. [1961 c 219 § 7.]

48.34.080 Commencement, termination date of term.

The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor: PROVIDED, That, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen days beyond the scheduled maturity date of indebtedness, except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in RCW 48.34.110. [1961 c 219 § 8.]

48.34.090 Policy or certificate—Contents—Delivery, copy of application or notice in lieu—Substitute insurer, premium, etc., on rejection. (1) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

(2) Each individual policy or group certificate of credit life insurance, and/or credit accident and health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the name or names of the debtor or in the case of a certificate under a group policy, the identity by name or otherwise of the debtor, the premium or amount of payment, if any, by the debtor separately for credit life insurance and credit accident and health insurance, a description of the coverage including the amount and term thereof, and any exceptions, limitations and restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance exceeds the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate. With respect to any policy issued after September 8, 1975, credit life insurance shall not be subject to any exceptions or reductions other than for fraud, or for suicide occurring within two years of the effective date of the insurance.

(3) The individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the

indebtedness is incurred except as provided in subsections (4) and (5).

(4) If such individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer; the name or names of the debtor; the premium or amount of payment by the debtor, if any, separately for credit life insurance and credit accident and health insurance; the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for, or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument, or agreement, or the application for any such loan, sale or credit, unless the information required by this subsection is prominently set forth therein under a descriptive heading which shall be underlined and printed in capital letters. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in RCW 48.34.080.

(5) If the named insurer does not accept the risk, then the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance an appropriate refund shall be made. [1975 1st ex.s. c 266 § 13; 1961 c 219 § 9.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.34.100 Filing policies, notices, riders, etc.—Approval by commissioner—Preexisting policies—Forms. (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

(2) No such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, or riders shall be used in this state until approved by the commissioner pursuant to RCW 48.18.100 and RCW 48.18.110. In addition to any grounds for disapproval provided therein, the form shall be disapproved both as to credit life and credit accident and health insurance if the benefits provided therein are not reasonable in relation to the premium charged.

(3) If a group policy of credit life insurance or credit accident and health insurance has been delivered in this state before midnight, June 7, 1961, on the first anniversary date following such time the terms of the policy as they apply to persons newly insured thereafter shall be rewritten to conform with the provisions of this chapter.

(4) If a group policy has been or is delivered in another state before or after August 11, 1969, the forms to be filed by

the insurer with the commissioner are the group certificates and notices of proposed insurance delivered or issued for delivery in this state. He shall approve them if:

(a) They provide the information that would be required if the group policy was delivered in this state; and

(b) The applicable premium rates or charges do not exceed those established by his rules or regulations. [1969 ex.s. c 241 § 15; 1961 c 219 § 10.]

48.34.110 Refunds—Credits—Charges to debtor.

(1) Each individual policy, or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto. The formula to be used in computing such refund shall be filed with and approved by the commissioner.

(2) If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

(3) The amount charged to a debtor for any credit life or credit accident and health insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined. [1961 c 219 § 11.]

48.34.120 Debtor's right to furnish and obtain own insurance. When the credit life insurance or credit accident and health insurance is required in connection with any credit transaction, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state. [1961 c 219 § 12.]

48.34.900 Severability—1961 c 219. If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the chapter and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby. [1961 c 219 § 13.]

48.34.910 Small loan act [Consumer finance act] not affected. Nothing in this chapter shall be construed to permit any practice prohibited by *chapter 31.08 RCW, nor is it intended that this chapter shall amend or repeal any provision of chapter 31.08 RCW, known as the **"Small Loan Act". [1961 c 219 § 14.]

Reviser's note: *(1) Chapter 31.08 RCW was repealed by 1991 c 208 § 24, effective January 1, 1993.

** (2) The "small loan act" was redesignated as the "consumer finance act" by 1979 c 18.

Chapter 48.35 RCW**ALIEN INSURERS**

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48.35.200	Domestication—When effective—Deposits—Transfer of assets.

48.35.010 Application—Definition. This chapter applies to all alien insurers using this state as a state of entry to transact insurance in the United States.

For the purposes of this chapter, "alien insurer" has the definition supplied in RCW 48.05.010. [1991 c 268 § 1.]

48.35.020 Deposit required—Amount. (1) An alien insurer may use this state as a state of entry to transact insurance in the United States by maintaining in this state a deposit of assets in a solvent trust company or other solvent financial institution having trust powers domiciled in this state and so designated by the commissioner. The commissioner's designated depositories are authorized to receive and hold a deposit of assets. A deposit so held is at the expense of the insurer. A solvent financial institution domiciled in this state, the deposits of which are insured by the federal deposit insurance corporation and which is a member of the federal reserve system, may be designated as the commissioner's depository to receive and hold a deposit of assets.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, must be in an amount not less than the higher of deposits required of an alien insurer under RCW 48.05.090 or five hundred thousand dollars and consist of eligible assets as set forth in RCW 48.16.030.

(3) The deposit may be referred to as "trusteed assets." [1991 c 268 § 2.]

48.35.030 Deposit required—Duration. The deposit required by this chapter must be for the benefit, security, and protection of the policyholders or creditors, or both, of the insurer in the United States. It shall be maintained as long as there is outstanding any liability of the insurer arising out of its insurance transactions in the United States. [1991 c 268 § 4.]

48.35.040 Trusts created before May 17, 1991. All trusts of trusteed assets created before May 17, 1991, must be continued under the instruments creating those trusts. If the commissioner determines that the instruments are inconsistent with the provisions of this chapter, the insurer shall correct those inconsistencies within six months of the commissioner's determination. [1991 c 268 § 3.]

48.35.050 Alien insurer—State authorization required. An alien insurer proposing to use this state as a state of entry to transact insurance in the United States, must be authorized to transact insurance in this state and may make and execute any trust agreement required by this chapter. [1991 c 268 § 6.]

48.35.060 Trusteed assets—Creation—Commissioner's approval of trust agreement. (1) The alien insurer shall create the trusteed assets required by this chapter under a written trust agreement between the insurer and the trustee, consistent with the provisions of this chapter, and in such form and manner as the commissioner may designate or approve.

(2) The agreement is effective when filed with and approved in writing by the commissioner. The commissioner shall not approve any trust agreement not found to be in compliance with state or federal law or the terms of which do not in fact provide reasonably adequate protection for the insurer's policyholders or creditors, or both, in the United States. [1991 c 268 § 5.]

48.35.070 Trust agreement—Amendment. A trust agreement may be amended. However, the amendment is not effective until filed with the commissioner and the commissioner finds and states in writing that the amendment is in compliance with this chapter. [1991 c 268 § 7.]

48.35.080 Trust agreement—Withdrawal of commissioner's approval. The commissioner may withdraw his or her approval of a trust agreement, or of an amendment to the agreement, if the commissioner determines that the requisites for the approval no longer exist. The determination shall be made after notice and a hearing as provided in chapter 48.04 RCW. [1991 c 268 § 8.]

48.35.090 Trust agreement—Vesting of trusteed assets. The trust agreement must provide that title to the trusteed assets vests and remains vested in the trustees and their successors for the purposes of the trust deposit. [1991 c 268 § 9.]

48.35.100 Trusteed assets—Trustee's records. The trustee shall keep the trusteed assets separate from other assets and shall maintain a record sufficient to identify the trusteed assets at all times. [1991 c 268 § 10.]

48.35.110 Trusteed assets—Trustee's statements—Commissioner's approval. (1) The trustee of trusteed assets shall file statements with the commissioner, in a form required by the commissioner, certifying the character and amount of the assets.

(2) If the trustee fails to file a requested statement after a reasonable time has expired, the commissioner may suspend or revoke the certificate of authority of the insurer required under RCW 48.05.030. [1991 c 268 § 11.]

48.35.120 Trusteed assets—Examination—Commissioner's approval of assignment or transfer. (1) The commissioner may examine trusteed assets of any insurer at any time in accordance with the same conditions and procedures governing the examination of insurers provided in chapter 48.03 RCW.

(2) The depositing insurer shall not assign or transfer, voluntarily, involuntarily, or by operation of law, all or a part of its interest in the trusteed assets without the prior written approval of the commissioner, and a transfer or assignment occurring without approval is void. The assignee or transferee of the trusteed assets shall irrevocably and automatically assume all of the obligations and liabilities of the assignor or transferor. [1991 c 268 § 12.]

48.35.130 Trusteed assets—Commissioner's approval of withdrawals. (1) The trust agreement must provide that the commissioner shall authorize and approve in writing all withdrawals of trusteed assets in advance except as follows:

(a) Any or all income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager;

(b) Withdrawals coincident with substitutions of securities or assets that are at least equal in value to those being withdrawn, if the substituted securities or assets would be eligible for investment by domestic insurers, and the insurer's United States manager requests the withdrawal in writing under a general or specific written authority previously given or delegated by the insurer's board of directors, or other similar governing body, and a copy of such authority has been filed with the trustee;

(c) For the purpose of making deposits required by another state in which the insurer is, or becomes, an authorized insurer and for the protection of the insurer's policyholders or creditors, or both, in the state or United States, if the withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required. The trustee shall transfer any assets withdrawn and in the amount required to be deposited in the other state, directly to the depository required to receive the deposit as certified in writing by the public official having supervision of insurance in that state; and

(d) For the purpose of transferring the trusteed assets to an official liquidator, conservator, or rehabilitator under an order of a court of competent jurisdiction.

(2) The commissioner shall authorize a withdrawal of only those assets that are in excess of the amount of assets required to be held in trust, or as may otherwise be consistent with the provisions of this chapter.

(3) If at any time the insurer becomes insolvent or if its assets held in the United States are less than required as determined by the commissioner, the commissioner shall order in writing the trustee to suspend the withdrawal of assets until a

further order of the commissioner releasing the assets. [1991 c 268 § 13.]

48.35.140 Trusteed assets—Substitution of trustee.

A new trustee may be substituted for the original trustee of trusteed assets in the event of a vacancy or for other proper cause. Any such substitution is subject to the commissioner's approval. [1991 c 268 § 14.]

48.35.150 Trusteed assets—Compensation and expenses of trustees.

The insurer shall provide for the compensation and expenses of the trustees of assets of an alien insurer under this chapter in an amount, or on a basis, as agreed upon by the insurer and the trustees in the trust agreement, subject to the prior approval of the commissioner. [1991 c 268 § 15.]

48.35.160 United States manager—Mexican or Canadian insurers.

The provisions of this chapter applicable to a United States manager shall, in the case of insurers domiciled in Mexico or Canada, be deemed to refer to the president, vice-president, secretary, or treasurer of the Mexican or Canadian insurer. [1991 c 268 § 16.]

48.35.170 Domestication of alien insurer—Commissioner's approval.

(1) Upon compliance with this chapter, an alien insurer authorized to do business in this state may, with the prior written approval of the commissioner, domesticate its United States branch by entering into an agreement in writing with a domestic insurer providing for the acquisition by the domestic insurer of all of the assets and the assumption of all of the liabilities of the United States branch.

(2) The acquisition of assets and assumption of liabilities of the United States branch by the domestic insurer is effected by filing with the commissioner an instrument or instruments of transfer and assumption in form satisfactory to the commissioner and executed by the alien insurer and the domestic insurer. [1991 c 268 § 17.]

48.35.180 Domestication agreement—Necessary authorization.

(1) The domestication agreement shall be authorized, adopted, approved, signed, and acknowledged by the alien insurer in accordance with the laws of the country under which it is organized.

(2) In the case of a domestic insurer, the domestication agreement shall be approved, adopted, and authorized by its board of directors and executed by its president or a vice-president and attested by its secretary or assistant secretary under its corporate seal. [1991 c 268 § 18.]

48.35.190 Domestication agreement—Commissioner's approval of corporate proceedings.

An executed counterpart of the domestication agreement, together with certified copies of the corporate proceedings of the domestic insurer and the alien insurer, approving, adopting, and authorizing the execution of the domestication agreement, shall be submitted to the commissioner for approval. The commissioner shall thereupon consider the agreement, and, if the commissioner finds that the same is in accordance with the provisions hereof and that the interests of the policyholders

of the United States branch of the alien insurer and of the domestic insurer are not materially adversely affected, the commissioner shall approve the domestication agreement and authorize the consummation thereof. [1991 c 268 § 19.]

48.35.200 Domestication—When effective—Deposits—Transfer of assets. (1) Upon the filing with the commissioner of a certified copy of the instrument of transfer and assumption pursuant to which a domestic company succeeds to the business and assets of the United States branch of an alien insurer and assumes all its liabilities, the domestication of the United States branch is deemed effective; and all the rights, franchises, and interests of the United States branch in and to every species of property and things, in actions thereunder belonging, are deemed as transferred to and vested in the domestic insurer, and simultaneously the domestic insurer is deemed to have assumed all of the liabilities of the United States branch. The domestic insurer is considered as having the age as the oldest of the two parties to the domestication agreement for purposes of laws relating to age of company.

(2) All deposits of the United States branch held by the commissioner, or by state officers, or other state regulatory agencies pursuant to requirements of state laws, are deemed to be held as security for the satisfaction by the domestic insurer of all liabilities to policyholders within the United States assumed from the United States branch; and the deposits are deemed to be assets of the domestic insurer and are reported as such in the annual financial statements and other reports that the domestic insurer may be required to file. Upon the ultimate release by a state officer or agency of a deposit, the securities and cash constituting the released deposit is delivered and paid over to the domestic insurer as the lawful successor in interest to the United States branch.

(3) Contemporaneously with the consummation of the domestication of the United States branch, the commissioner shall direct the trustee, if any, of the United States branch's trusteed assets, as set forth in RCW 48.35.020, to transfer and deliver to the domestic insurer all assets, if any, held by such trustee. [1991 c 268 § 20.]

Chapter 48.36A RCW

FRATERNAL BENEFIT SOCIETIES

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48.36A.901	Effective date—1987 c 366.

48.36A.010 Fraternal benefit society defined. Any incorporated society, order, or supreme lodge, without capital stock, including one exempted under the provisions of RCW 48.36A.370(1)(b) whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society. [1987 c 366 § 1.]

48.36A.020 Lodge system—Lodges for children. (1) A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its laws, rules, and ritual. Subordinate lodges shall be required by the laws of the society to hold regular meetings at least once in each month in furtherance of the purposes of the society.

(2) A society may, at its option, organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges shall not be required of the children, nor shall they have a voice or vote in the management of the society. [1987 c 366 § 2.]

48.36A.030 Representative form of government. A society has a representative form of government when:

(1) It has a supreme governing body constituted in one of the following ways:

(a) The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their

representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than two-thirds of the votes and not less than the number of votes required to amend the society's laws. The assembly shall be elected and shall meet at least once every four years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws; or

(b) The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board shall constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society;

(2) The officers of the society are elected either by the supreme governing body or by the board of directors;

(3) Only benefit members are eligible for election to the supreme governing body and the board of directors; and

(4) Each voting member shall have one vote. No vote may be cast by proxy. [1987 c 366 § 3.]

48.36A.040 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Benefit contract" means the agreement for provision of benefits authorized by RCW 48.36A.160, as that agreement is described in RCW 48.36A.190(1).

(2) "Benefit member" means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

(3) "Certificate" means the document issued as written evidence of the benefit contract.

(4) "Premiums" means premiums, rates, dues or other required contributions by whatever name known, which are payable under the certificate.

(5) "Laws" means the society's articles of incorporation, constitution, and bylaws, however designated.

(6) "Rules" means all rules, regulations, or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.

(7) "Society" means fraternal benefit society, unless otherwise indicated.

(8) "Lodge" means subordinate member units of the society, known as camps, courts, councils, branches, or by any other designation. [1987 c 366 § 4.]

48.36A.050 Beneficial operations—Laws and rules.

(1) A society shall operate for the benefit of members and their beneficiaries by:

(a) Providing benefits as specified in RCW 48.36A.160; and

(b) Operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members, which may also be extended to others.

These purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

(2) Every society may adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It may change, alter, add to, or amend such laws and rules and has such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society. [1987 c 366 § 5.]

48.36A.060 Membership classes, rights, grievances.

(1) A society shall specify in its laws or rules:

(a) Eligibility standards for each and every class of membership, provided that if benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than age fifteen and not greater than age twenty-one;

(b) The process for admission to membership for each membership class; and

(c) The rights and privileges of each membership class, provided that only benefit members shall have the right to vote on the management of the insurance affairs of the society.

(2) A society may also admit social members who have no voice or vote in the management of the insurance affairs of the society.

(3) Membership rights in the society are personal to the member and are not assignable.

(4) A society may provide in its laws or rules for grievance or complaint procedures for members. [1987 c 366 § 6.]

48.36A.070 Location of office and meetings—Official publications, annual statement.

(1) The principal office of any domestic society shall be located in this state. The meetings of its supreme governing body may be held in any state, district, province, or territory where the society has at least one subordinate lodge, or in such other location as determined by the supreme governing body, and all business transacted at the meetings is as valid in all respects as if the meetings were held in this state. The minutes of the proceedings of the supreme governing body and of the board of directors shall be in the English language.

(2) (a) A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Required reports, notices, and statements shall be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

(b) Not later than June 1st of each year, a synopsis of the society's annual statement providing an explanation of the facts concerning the condition of the society thereby dis-

closed shall be printed and mailed to each benefit member of the society or, in lieu thereof, the synopsis may be published in the society's official publication. [1987 c 366 § 7.]

48.36A.080 Immunity of officers—Indemnification of person responsible—Insurance for liability. (1) The officers and members of the supreme governing body or any subordinate body of a society shall not be personally liable for any benefits provided by a society.

(2) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, the person in connection with or arising out of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that the person is or was a director, officer, employee, or agent of the society or of any firm, corporation, or organization which the person served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed (a) in relation to any matter in such action, suit, or proceeding as to which the person shall finally be adjudged to be or have been guilty of breach of a duty as a director, officer, employee, or agent of the society; or (b) in relation to any matter in the action, suit, or proceeding, or threat thereof, which has been made the subject of a compromise settlement; unless in either case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that their conduct was unlawful. The determination whether the conduct of the person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in (a) or (b) of this subsection may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to the person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which the person may be entitled as a matter of law and shall inure to the benefit of the person's heirs, executors, and administrators.

(3) A society may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the society, or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization against any liability asserted against the person and incurred by the person in any capacity or arising out of the person's status as such, whether or not the society would have the power to indemnify the person against the liability under this section. [1987 c 366 § 8.]

48.36A.090 Nonwaiver provisions. The laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or

authority to waive any of the provisions of the laws of the society. Such provision shall be binding on the society and every member and beneficiary of a member. [1987 c 366 § 9.]

48.36A.100 Formation of domestic society—Procedures and requirements. A domestic society organized on or after January 1, 1988, shall be formed as follows, but not until it has and continues to maintain unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340:

(1) Seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(a) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(b) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. The purposes shall not include more liberal powers than are granted by this chapter;

(c) The names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all the officers shall be elected by the supreme governing body, which election shall be held not later than one year from the date of issuance of the permanent certificate of authority.

(2) The articles of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with the commissioner, who may require further information as the commissioner deems necessary. The bond with sureties approved by the commissioner shall be in an amount, not less than three hundred thousand dollars nor more than one million five hundred thousand dollars as required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain, and file the articles of incorporation and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

(3) No preliminary certificate of authority granted under the provisions of this section shall be valid after one year from its date or after a further period, not exceeding one year, as may be authorized by the commissioner upon cause shown, unless the five hundred applicants required by subsection (4) of this section have been secured and the organization has been completed under this chapter. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society shall have completed its

organization and received a certificate of authority to do business under this chapter.

(4) Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount collected. No society shall incur any liability other than for the return of the advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:

(a) Actual bona fide applications for benefits have been secured on not less than five hundred applicants, and any necessary evidence of insurability has been furnished to and approved by the society;

(b) At least ten subordinate lodges have been established into which the five hundred applicants have been admitted;

(c) There has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted, and premiums therefor; and

(d) It has been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of the society, that at least five hundred applicants have each paid in cash at least one regular monthly premium and the total amount of collected premiums equals at least one hundred fifty thousand dollars. The advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within one year, the premiums shall be returned to the applicants.

(5) The commissioner may make such examination and require such further information as the commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of this chapter, the commissioner shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate of authority shall be prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall cause a record of the certificate of authority to be made. A certified copy of the record may be given in evidence with like effect as the original certificate of authority.

(6) Any incorporated society authorized to transact business in this state at the time this chapter becomes effective shall not be required to reincorporate.

(7) The commissioner may, by rule, require domestic fraternal societies to have and maintain a larger amount of surplus than the minimum amount of capital and surplus prescribed under RCW 48.05.340, based upon the type, volume, and nature of insurance business transacted, consistent with the principles of risk-based capital modified to recognize the special characteristics of fraternal benefit societies. [1996 c 236 § 1; 1987 c 366 § 10.]

48.36A.110 Amendment of society's laws. (1) A domestic society may amend its laws in accordance with the provisions thereof by action of its supreme governing body at

any regular or special meeting thereof or, if its laws so provide, by referendum. The referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within six months from the date of submission, a majority of the members voting shall have signified their consent to the amendment by one of the specified methods.

(2) No amendment to the laws of any domestic society shall take effect unless approved by the commissioner. The commissioner shall approve the amendment if the commissioner finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects, and purposes of the society. Unless the commissioner disapproves any amendment within sixty days after the filing of same, the amendment shall be considered approved. The approval or disapproval by the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case the commissioner disapproves the amendment, the reasons for the disapproval shall be stated in the written notice.

(3) Within ninety days from the approval by the commissioner, all amendments, or a synopsis thereof, shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that the amendments or synopsis thereof, have been furnished to the addressee.

(4) Every foreign or alien society authorized to do business in this state shall file with the commissioner a certified copy of all amendments of, or additions to, its laws within ninety days after their enactment.

(5) Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of their legal adoption. [1987 c 366 § 11.]

48.36A.120 Not-for-profit institutions authorized—Funeral homes prohibited.

(1) A society may create, maintain, and operate, or establish organizations to operate, not-for-profit institutions to further the purposes permitted by RCW 48.36A.050(1)(b). The institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held or leased by the society for this purpose shall be reported in every annual statement.

(2) No society shall own or operate funeral homes or undertaking establishments. [1987 c 366 § 12.]

48.36A.130 Reinsurance. (1) A domestic society may, by a reinsurance agreement, transfer any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make such reinsurance and authorized to do business in this state, or if not so authorized, one which is approved by the commissioner, but no domestic society may reinsure substantially all of its insurance in force without the written permission of the com-

missioner. It may take credit for the reserves on the transferred risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a transferring society for reinsurance made, transferred, renewed, or otherwise becoming effective after January 1, 1988, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the transferring society under the contract or contracts reinsured without diminution because of the insolvency of the transferring society.

(2) Notwithstanding the limitation in subsection (1) of this section, a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under RCW 48.36A.140. [1987 c 366 § 13.]

48.36A.140 Consolidation and merger. (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the commissioner:

(a) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) A sworn statement by the president and secretary or corresponding officers of each society showing their financial condition on a date fixed by the commissioner but not earlier than December 31st next preceding the date of the contract;

(c) A certificate of the officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, such vote being conducted at a regular or special meeting of each such body, or, if the society's laws so permit, by mail; and

(d) Evidence that at least sixty days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

(2) If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate to that effect. Upon approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event, the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state or territory and a certificate of such approval is filed with the commissioner of this state or, if the laws of the state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of insurance of the state or territory and a certificate of such approval is filed with the commissioner of this state.

(3) Upon the consolidation or merger becoming effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every species of property, real, personal, or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or

interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after the consolidation or merger.

(4) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that the notice or document has been duly addressed and mailed, shall be prima facie evidence that the notice or document has been furnished to the addressees. [1987 c 366 § 14.]

48.36A.150 Conversion to mutual life insurance company. Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the insurance laws of this state for mutual life insurance companies. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of such plan, or if the society is organized under the direct election method pursuant to RCW 48.36A.030(1)(b), the plan of conversion shall be submitted by mail to the benefit members or the plan may be published in the official publication authorized by RCW 48.36A.070(2)(a). The affirmative vote of two-thirds of the benefit members voting thereon shall be necessary for the approval of the plan. No conversion shall take effect unless and until approved by the commissioner who may give approval if the commissioner finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society. [1987 c 366 § 15.]

48.36A.160 Contractual benefits. (1) A society may provide the following contractual benefits in any form:

(a) Death benefits;

(b) Endowment benefits;

(c) Annuity benefits;

(d) Temporary or permanent disability benefits;

(e) Hospital, medical, or nursing benefits;

(f) Monument or tombstone benefits to the memory of deceased members; and

(g) Such other benefits as authorized for life insurers and which are not inconsistent with this chapter.

(2) A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in subsection (1) of this section, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person. [1987 c 366 § 16.]

48.36A.170 Designation of beneficiary—Funeral benefits. (1) The owner of a benefit contract shall have the right at all times to change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary

designations and shall provide that no revocable beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.

(2) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, provided the portion paid shall not exceed the sum of one thousand dollars.

(3) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds shall be payable, the amount of the benefit, except to the extent that funeral benefits may be paid under this section, shall be payable to the personal representative of the deceased insured, provided that if the owner of the certificate is other than the insured, the proceeds shall be payable to the owner. [1987 c 366 § 17.]

48.36A.180 Protection of benefits. No money or other benefit, charity, relief, or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society. [1987 c 366 § 18.]

48.36A.190 Benefit certificates—Impaired reserves.

(1) Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision shall be void.

(2) Except as provided in RCW 48.36A.220, any changes, additions, or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate, shall bind the owner and the beneficiaries, and shall govern and control the benefit contract in all respects the same as though the changes, additions, or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

(3) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(4) Except as provided in RCW 48.36A.220, a society shall provide in its laws that if its reserves as to all or any

class of certificates become impaired, its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board, and that if the payment is not made, either (a) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or (b) in lieu of or in combination with (a) of this subsection, the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(5) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(6) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from January 1, 1988, shall be approved by the commissioner and shall meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificates shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(7) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith. Ownership rights prior to the transfer shall be specified in the certificate.

(8) A society may specify the terms and conditions on which benefit contracts may be assigned. [1987 c 366 § 19.]

48.36A.200 Paid-up nonforfeiture benefits and cash surrender values. (1) For certificates issued prior to one year after January 1, 1988, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall comply with the provisions of law applicable immediately prior to January 1, 1988.

(2) For certificates issued on or after one year from January 1, 1988, for which reserves are computed on the commissioner's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial table or the commissioner's 1958 standard ordinary mortality table, or the commissioner's 1980 standard mortality table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits based upon such tables.

(3) For annuity certificates issued on or after one year from January 1, 1988, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing annuities. [1987 c 366 § 20.]

48.36A.210 Authorized investments. A society shall invest its funds only in investments that are authorized by the laws of this state for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated, shall be deemed to have met the requirements of this section for the investment of funds. [1987 c 366 § 21.]

48.36A.220 Assets—Investment and disbursement.

(1) All assets shall be held, invested, and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment on the surrender of any part thereof, except as provided in the benefit contract.

(2) A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

(3) A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to all the provisions of law regulating life insurers establishing such accounts and issuing such contracts, as provided in chapter 48.18A RCW. To the extent the society deems it necessary in order to comply with any applicable federal or state laws, or any rules issued thereunder, the society may adopt special procedures for the conduct of the business and affairs of a separate account, may, for persons having beneficial interests therein, provide special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account, and may issue contracts on a variable basis to which RCW 48.36A.190 (2) and (4) shall not apply. [1987 c 366 § 22.]

48.36A.230 Chapter exclusive. Societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state unless they are

expressly designated therein, or unless it is specifically made applicable by this chapter. [1987 c 366 § 23.]

48.36A.240 Funds tax exempt, exception. Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax, other than taxes on real estate and office equipment. [1987 c 366 § 24.]

48.36A.250 Valuation standards—Reserves. (1) Standards of valuation for certificates issued prior to one year after January 1, 1988, shall be those provided by the laws applicable immediately prior to January 1, 1988.

(2) The minimum standards of valuation for certificates issued on or after one year from January 1, 1988, shall be based on the following tables:

(a) For certificates of life insurance: The commissioner's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers;

(b) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits, and for noncancellable accident and health benefits: Such tables as are authorized for use by life insurers in this state.

All of the above shall be under valuation methods and standards, including interest assumptions, in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits.

(3) The commissioner may, in the commissioner's discretion, accept other standards for valuation if the commissioner finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner may, in the commissioner's discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.

(4) Any society, with the consent of the commissioner of insurance of the state of domicile of the society and under the conditions, if any, which the commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves required by this section, but the contractual rights of any benefit member shall not be affected thereby. [1987 c 366 § 25.]

48.36A.260 Annual financial statement. (1) Every society transacting business in this state shall annually, on or before the first day of March, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a fee of ten dollars for filing. The statement shall be in general form and context as approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(2) As part of the required annual statement, each society shall, on or before the first day of March, file with the commissioner a valuation of its certificates in force on December 31st last preceding, provided the commissioner may, in the commissioner's discretion for cause shown, extend the time for filing the valuation for not more than two calendar months. The valuation shall be done in accordance with the standards specified in RCW 48.36A.250. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(3) A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars for each day during which the neglect continues, and, upon notice by the commissioner, its authority to do business in this state shall cease while the default continues. [1987 c 366 § 26.]

48.36A.263 Filing of financial statements. Every fraternal benefit society holding a certificate of authority shall file its financial statements as required by this code and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law. [1999 c 33 § 2.]

48.36A.270 Licenses and renewals—Fees—Existing societies. A license under this chapter continues in force until suspended, revoked, or not renewed. A license is subject to renewal annually on the first day of July upon payment of the fee for the license. If not so renewed, the certificate expires as of the thirtieth day of June of the same year. Licenses existing on June 9, 1994, continue in force until July 1, 1995, unless revoked or suspended. For each license or renewal the society shall pay the commissioner the fee established pursuant to RCW 48.14.010, subject to the retaliatory provision of RCW 48.14.040. A certified copy or duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter. [1994 c 131 § 1; 1987 c 366 § 27.]

48.36A.272 Notice of intent to suspend, revoke, or refuse to renew a license. The commissioner shall give a society notice of his or her intention to suspend, revoke, or refuse to renew its license not less than ten days before the effective date of the order of suspension, revocation or refusal, except that advance notice of intention is not required where the order results from a domestic society's failure to make good a deficiency of assets as required by the commissioner. [1996 c 236 § 4.]

48.36A.274 Duration of suspension. The commissioner shall not suspend a society's license for a period in excess of one year, and shall state in his or her order of suspension the period during which the order is effective. [1996 c 236 § 5.]

48.36A.276 Reauthorization of license. A society whose license has been suspended, revoked, or refused may

not subsequently be authorized unless the grounds for the suspension, revocation, or refusal no longer exist and the society is otherwise fully qualified. [1996 c 236 § 6.]

48.36A.278 Notice to agents of loss of authority. Upon the suspension, revocation, or refusal of a society's license, the commissioner shall give notice to the society and shall suspend, revoke, or refuse the authority of its agents to represent it in this state and give notice to the agents. [1996 c 236 § 7.]

48.36A.280 Examinations. (1) The commissioner, or any person the commissioner may appoint, may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized by chapter 48.03 RCW. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers shall also be applicable to the examination of societies.

(2) The expense of each examination and of each valuation, including the compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued. The payments shall be made upon receipt of statements furnished by the commissioner. [1987 c 366 § 28.]

48.36A.282 Transactions hazardous to certificate holders or creditors—Standards for consideration. The following standards may be considered by the commissioner to determine whether the continued operation of any society transacting an insurance business in this state might be deemed to be hazardous to the certificate holders or creditors. The commissioner may consider:

(1) Adverse findings reported in either a financial condition or market conduct examination report, or both, of a state insurance department that could lead to impairment of surplus;

(2) The national association of insurance commissioners insurance regulatory information system and its related reports;

(3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income that could lead to an impairment of surplus;

(4) The society's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the society's ability to meet its outstanding obligations as they mature;

(5) The ability of an assuming reinsurer to perform and whether the society's reinsurance program provides sufficient protection for the society's remaining surplus after taking into account the society's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(6) The society's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash refunds paid to members, is greater than fifty percent of the society's remaining surplus as regards certificate holders in excess of the minimum required;

(7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation;

(8) Contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount that in the opinion of the commissioner may affect the solvency of the society;

(9) The age and collectibility of receivables;

(10) Whether the management of a society, including officers, trustees, directors, or any other person who directly or indirectly controls the operation of the society, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the society in such a position;

(11) Whether management of a society has failed to respond to inquiries relative to the condition of the society or has furnished misleading information concerning an inquiry;

(12) Whether management of a society either has filed any false or misleading sworn financial statement, or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the society;

(13) Whether the society has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and

(14) Whether the society has experienced or will experience in the foreseeable future, either cash flow problems or liquidity problems, or both. [1996 c 236 § 8.]

48.36A.284 Determination of financial condition—Hazardous to certificate holders—Commissioner's order—Hearing. (1) For the purpose of making a determination of a society's financial condition, the commissioner may:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) Increase the society's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the society will be called upon to meet the obligation undertaken within the next twelve-month period.

(2) If the commissioner determines that the continued operation of the society authorized to transact business in this state may be hazardous to the certificate holders, then the commissioner may, in conjunction with or in lieu of a notice required or permitted by RCW 48.36A.272, issue an order requiring the society to:

(a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) Reduce, suspend, or limit the volume of business being accepted or renewed;

(c) Reduce general insurance and commission expenses by specified methods;

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(d) Increase the society's surplus;

(e) Suspend or limit the declaration and payment of refunds by a society to its members;

(f) File reports in a form acceptable to the commissioner concerning the market value of a society's assets;

(g) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(h) Document the adequacy of premium rates in relation to the risks insured; or

(i) File, in addition to regular annual statements, interim financial reports on the form adopted by the national association of insurance commissioners or on a format promulgated by the commissioner.

(3) Any society subject to an order under subsection (2) of this section may make a written demand for a hearing, subject to the requirements of RCW 48.04.010, by specifying in what respects it is aggrieved and the grounds to be relied upon as basis for the relief to be demanded at the hearing. [1996 c 236 § 9.]

48.36A.286 Rehabilitation, liquidation, or conservation of society—Same as insurance companies—Priority of distribution of claims. (1) Any rehabilitation, liquidation, or conservation of a domestic fraternal benefit society is the same as the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a domestic fraternal benefit society upon any one or more of the following grounds: That the domestic fraternal benefit society:

(a) Is insolvent; or

(b) Has ceased transacting insurance business for a period of one year; or

(c) Is insolvent and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except this code; or

(d) Any of the matters set forth in RCW 48.36A.310.

(2) The priority of the distribution of claims from a domestic fraternal benefit society's estate shall be as set forth in RCW 48.31.280. [1996 c 236 § 10.]

48.36A.290 License required—Obtaining. (1) No foreign or alien society shall transact business in this state without a license issued by the commissioner. Any society desiring admission to this state shall comply substantially with the requirements and limitations of this chapter applicable to domestic societies and must have and continue to maintain unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340. A society may be licensed to transact business in this state upon filing with the commissioner:

(a) A duly certified copy of its articles of incorporation;

(b) A copy of its bylaws, certified by its secretary or corresponding officer;

(c) A power of attorney to the commissioner as prescribed in RCW 48.36A.410;

(d) A statement of its business under oath by its president and secretary, or corresponding officers, in a form prescribed by the commissioner, verified by an examination made by the supervising insurance official of its home state or other state, territory, province, or country, satisfactory to the commissioner;

(e) Certification from the proper official of its home state, territory, province, or country that the society is legally incorporated and licensed to transact business;

(f) Copies of its certificate forms; and

(g) Such other information as the commissioner may deem necessary; and upon a showing that its assets are invested in accordance with the provisions of this chapter.

(2) After June 30, 1997, a foreign or alien society which does not have unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340 may not issue any new policies or certificates until the society has unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340; however, a foreign or alien society may continue to issue new policies or certificates to members of the society who have an existing policy or certificate in force with the society on June 30, 1997. Once such a foreign or alien society obtains unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340, the society must continue to maintain unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340.

(3) After June 30, 1997, a foreign or alien society which had unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340 on December 31, 1996, must continue to maintain unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340.

(4) The commissioner may, by rule, require foreign or alien fraternal societies to have and maintain a larger amount of surplus than the minimum amount of capital and surplus prescribed under RCW 48.05.340, based upon the type, volume, and nature of insurance business transacted, consistent with the principles of risk-based capital modified to recognize the special characteristics of fraternal benefit societies. [1996 c 236 § 2; 1987 c 366 § 29.]

48.36A.310 Deficiencies, noncompliance by societies—Actions against license. (1) The commissioner may refuse, suspend, or revoke a fraternal benefit society's license, if the society:

(a) Has exceeded its powers;

(b) Has failed to comply with any of the provisions of this chapter;

(c) Is not fulfilling its contracts in good faith;

(d) Is conducting its business fraudulently;

(e) Has a membership of less than four hundred after an existence of one year or more;

(f) Is found by the commissioner to be in such a condition that its further transaction of insurance in this state would be hazardous to certificate holders and the people in this state;

(g) Refuses to remove or discharge a trustee, director, or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude;

(h) Refuses to be examined, or if its trustees, directors, officers, employees, or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination;

(i) Fails to pay any final judgment rendered against it in this state upon any certificate, or undertaking issued by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later;

(j) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its trustees, directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in fraternal benefit society managerial experience as to make a proposed operation hazardous to its members; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, or business relations, with any person or persons whose business operations are or have been found to be in violation of any law or rule, to the detriment of the members of the society or of the public, by bad faith or by manipulation of the assets, or of accounts, or of reinsurance of the society; or

(k) Does business through agents or other representatives in this state or in any other state who are not properly licensed under applicable laws and rules.

(2) Nothing in this section shall prevent a society from continuing, in good faith, all contracts made in this state during the time the society was legally authorized to transact business herein. [1996 c 236 § 3; 1987 c 366 § 31.]

48.36A.320 Requirements for injunction. No application or petition for injunction against any domestic, foreign, or alien society, or lodge thereof, shall be maintained in any court of this state unless made by the attorney general upon request of the commissioner. [1987 c 366 § 32.]

48.36A.330 Agents. (1) Agents of societies shall be licensed in accordance with the applicable provisions of chapter 48.17 RCW regulating the licensing, revocation, suspension, or termination of licenses of resident and nonresident agents. Persons who are so authorized by a fraternal benefit society for a period of one year immediately prior to June 13, 1963, shall not be required to take and pass an examination as required by RCW 48.17.110.

(2) The following individuals shall not be deemed an agent of a fraternal benefit society within the provisions of subsection (1) of this section:

(a) Any regular salaried officer or employee of a licensed society who devotes substantially all of their services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(b) Any agent or representative of a society who devotes, or intends to devote, less than fifty percent of their time to the

solicitation and procurement of insurance contracts for such society: PROVIDED, That any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars shall be conclusively presumed to be devoting, or intending to devote, fifty percent of the person's time to the solicitation or procurement of insurance contracts for such society. [1987 c 366 § 33.]

48.36A.340 Unfair trade practices. (1) Except as provided in subsection (2) of this section, every society authorized to do business in this state shall be subject to the provisions of chapter 48.30 RCW relating to unfair trade practices.

(2) Nothing in chapter 48.30 RCW shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society. [1987 c 366 § 34.]

48.36A.350 Service of process upon commissioner.

(1) Every society authorized to do business in this state shall:

(a) Appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served;

(b) Agree in writing that any lawful process against it which is served on the commissioner shall be of the same legal force and validity as if served upon the society; and

(c) Agree that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by said commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original.

(2) Service shall only be made upon the commissioner, or if absent, upon the person in charge of the commissioner's office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No service shall require a society to file its answer, pleading, or defense in less than forty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner provided in this section. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner the fee established pursuant to RCW 48.05.210. [1987 c 366 § 35.]

48.36A.360 Penalties. (1) Any person who wilfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society, shall upon conviction be fined not less than one hundred dollars nor more than five hundred dollars or imprisonment in the county jail not less than thirty days nor more than one year, or both.

(2) Any person who wilfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of false swearing and shall be subject to the penalties under RCW 9A.72.040.

(3) Any person who solicits membership for, or in any manner assists in procuring membership in, any society not licensed to do business in this state shall be guilty of a misdemeanor and upon conviction be fined not less than fifty dollars nor more than two hundred dollars.

(4) Any person guilty of a wilful violation of, or neglect or refusal to comply with, the provisions of this chapter for which a penalty is not otherwise prescribed, shall upon conviction, be subject to a fine not exceeding two hundred dollars. [1987 c 366 § 36.]

48.36A.370 Exemptions. (1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) Grand or subordinate lodges of Masons, Odd Fellows, Improved Order of Red Men, Fraternal Order of Eagles, Loyal Order of Moose, or Knights of Pythias, exclusive of the insurance department of the Supreme Lodge of Knights of Pythias, the Grand Aerie Fraternal Order of Eagles, and the Junior Order of United American Mechanics, exclusive of the beneficiary degree of insurance branch of the National Council Junior Order [of] United American Mechanics, or similar societies which do not issue insurance certificates;

(b) Orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies' societies or ladies' auxiliaries to such orders, societies, or associations;

(c) Any association of local lodges of a society now doing business in this state which provides death benefits not exceeding three hundred dollars to any one person, or disability benefit not exceeding three hundred dollars in any one year to any one person, or both; or any contracts of reinsurance business on such plan in this state;

(d) Domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house, or corporation;

(e) Domestic lodges, orders, or associations of a purely religious, charitable, and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred fifty dollars to any one person in any one year: PROVIDED, That any such domestic order or society which has more than five hundred members and provides for death or disability benefits, and any such domestic lodge, order, or society which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all the requirements of this chapter.

The commissioner may require from any society such information as will enable the commissioner to determine whether the society is exempt from the provisions of this chapter.

(2) No society, which is exempt by the provisions of this section from the requirements of this chapter shall give or allow or promise to give or allow to any person any compensation for procuring new members.

(3) Any fraternal benefit society, heretofore organized and incorporated and operating as set forth in RCW 48.36A.010, 48.36A.020, and 48.36A.030, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay other death or sick benefits, may be licensed under the provisions of this chapter, and shall have all the privileges and shall be subject to all the provisions and regulations of this chapter, except that the provisions of this chapter requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits, shall not apply to such society.

(4) The commissioner may require from any society or association, by examination or otherwise, such information as will enable the commissioner to determine whether the society or association is exempt from the provisions of this chapter.

(5) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this state. [1987 c 366 § 37.]

48.36A.380 World War I societies. Any corporation, society, order, or voluntary association operating as set forth in RCW 48.36A.010, 48.36A.020, and 48.36A.030, organized during the war in which the United States entered on April 6, 1917, with the purposes of assisting the government of the United States in maintaining and increasing the production of commodities essential for the prosecution of that war, and of developing loyalty to the United States, or whose membership is limited to veterans of that war, may be licensed under the provisions of this chapter and shall have all the privileges and shall be subject to all the provisions and regulations of this chapter, except that the provisions of this chapter requiring death benefits of at least one thousand dollars, medical examinations, and valuations of benefit certificates, shall not apply to such society, but the society may provide benefits in case of death or disability resulting solely from accidents in an amount not exceeding one thousand dollars and may also provide for death or funeral benefits, or both, not exceeding one hundred dollars each, and for sick or disability benefits not exceeding five hundred dollars to any one person, in any one year. Any corporation, society, order, or voluntary association organized under the provisions of this section shall file with the insurance commissioner a copy of all its rates and policy forms. Rates and policy forms must be approved by the insurance commissioner before becoming effective. All rates and forms approved by the commissioner shall be observed by the society until amended rates or forms shall have been filed with and approved by the insurance commissioner. [1987 c 366 § 38.]

48.36A.390 Fraternal mutual insurers. (1) A domestic mutual property insurer which is affiliated with and is comprised exclusively of members of a specified fraternal society that conducts its business and secures its membership

on the lodge system, having ritualistic work and ceremonies, is herein designated as a fraternal mutual insurer.

(2) Only fraternal mutual property insurers which were authorized insurers immediately prior to October 1, 1947, may hereafter be so authorized.

(3) A fraternal mutual insurer shall be subject to the applicable provisions of this title governing domestic mutual insurers except only as to the provisions relative to taxes, fees, and licenses. The bylaws of such insurer shall be as adopted or amended by majority vote of its members present at a duly held meeting of its members, and a copy thereof shall be filed with the commissioner. Such an insurer shall pay for its annual license and filing its annual statement, the sum of ten dollars. Such an insurer shall pay the expense of examinations of it by the commissioner. The payment shall be made upon receipt of statements furnished by the commissioner.

(4) A fraternal mutual insurer may insure corporations, associations, and firms owned by and affiliated with such society and operated for the benefit of its members, and may insure corporations and firms a majority of whose shareholders or members are members of such society.

(5) A fraternal mutual insurer shall participate in and accept its equitable share of insurance to be issued to applicants under any assigned risk plan operating pursuant to RCW 48.22.020, and may participate in and accept its equitable share of insurance to be issued to applicants under any similar plan lawfully existing in any state in which the insurer is authorized to transact insurance, notwithstanding that the applicants are not otherwise qualified for insurance under subsection (4) of this section. Applicants who are not qualified by membership or otherwise for acceptance by the insurer, shall be so assigned to the insurer except to make up the deficiency, if any, between the number of qualified applicants available for assignment and the maximum quota of applicants to be assigned to the insurer within the current period.

(6) A fraternal mutual insurer doing business on the assessment premium plan:

(a) Shall be exempt also from the provisions of this chapter governing financial qualifications;

(b) Shall not be authorized to transact any kind of insurance other than property insurance, nor have authority to accept reinsurance.

(7) A fraternal mutual insurer doing business on the cash premium plan:

(a) May be authorized to transact additional kinds of insurance, other than life or title insurance, subject to the same requirements as to surplus funds and reserves as apply to domestic mutual insurers on the cash premium plan;

(b) May accept reinsurance only of such kinds of insurance as it is authorized to transact direct and only from insurers likewise affiliated with and composed solely of the members of the same designated fraternal society. [1987 c 366 § 39.]

48.36A.400 Fraternal mutual life insurers. (1) A mutual life insurer which is affiliated with and insures exclusively members of a specified fraternal society, which society conducts its business and secures its membership on the

lodge system, having ritualistic work and ceremonies, is herein designated as a fraternal mutual life insurer.

(2) Such an insurer shall be subject to the applicable provisions of this title governing mutual life insurers except only as to the provisions relative to annual meeting, taxes, fees, and licenses. Such an insurer shall pay for its annual license and filing its annual statement, the sum of ten dollars. Such an insurer shall pay the expense of examinations of it by the commissioner, upon statement furnished by the commissioner. [1987 c 366 § 40.]

48.36A.410 Review of commissioner's decisions and findings. All decisions and findings of the commissioner made under the provisions of this chapter shall be subject to review as provided in chapter 34.05 RCW. [1987 c 366 § 41.]

48.36A.900 Severability—1987 c 366. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1987 c 366 § 43.]

48.36A.901 Effective date—1987 c 366. This act shall take effect January 1, 1988. [1987 c 366 § 45.]

Chapter 48.38 RCW

CHARITABLE GIFT ANNUITY BUSINESS

Sections

48.38.010	Certificate of exemption—Qualification for—Application, contents—Minimum unrestricted net assets—"Qualified actuary" defined.
48.38.012	Minimum unrestricted net assets required.
48.38.020	Separate reserve fund—Treatment of assets—Minimum amounts—Revocation of certificate upon violation—Purchase of single premium life annuity.
48.38.030	Charitable annuity contract or policy form—Contents.
48.38.040	Certificate holder exempt from certain title provisions—Chapter 48.31 RCW applies.
48.38.042	Certificate holder—Variable annuity business prohibited.
48.38.050	Grounds for denial, revocation, or suspension of certificate of exemption—Fine may be levied.
48.38.060	Hearings and appeals provisions inapplicable.
48.38.070	Enforcement powers and duties.
48.38.075	Rules.

48.38.010 Certificate of exemption—Qualification for—Application, contents—Minimum unrestricted net assets—"Qualified actuary" defined. The commissioner may grant a certificate of exemption to any insurer or educational, religious, charitable, or scientific institution conducting a charitable gift annuity business:

(1) Which is organized and operated exclusively as, or for the purpose of aiding, an educational, religious, charitable, or scientific institution which is organized as a nonprofit organization without profit to any person, firm, partnership, association, corporation, or other entity;

(2) Which possesses a current tax exempt status under the laws of the United States;

(3) Which serves such purpose by issuing charitable gift annuity contracts only for the benefit of such educational, religious, charitable, or scientific institution;

(4) Which appoints the insurance commissioner as its true and lawful attorney upon whom may be served lawful process in any action, suit, or proceeding in any court, which appointment shall be irrevocable, shall bind the insurer or institution or any successor in interest, shall remain in effect as long as there is in force in this state any contract made or issued by the insurer or institution, or any obligation arising therefrom, and shall be processed in accordance with RCW 48.05.210;

(5) Which is fully and legally organized and qualified to do business and has been actively doing business under the laws of the state of its domicile for a period of at least three years prior to its application for a certificate of exemption;

(6) Which has and maintains minimum unrestricted net assets of five hundred thousand dollars. "Unrestricted net assets" means the excess of total assets over total liabilities that are neither permanently restricted nor temporarily restricted by donor-imposed stipulations;

(7) Which files with the insurance commissioner its application for a certificate of exemption showing:

(a) Its name, location, and organization date;

(b) The kinds of charitable annuities it proposes to offer;

(c) A statement of the financial condition, management, and affairs of the organization and any affiliate thereof, as that term is defined in RCW 48.31B.005, on a form satisfactory to, or furnished by the insurance commissioner;

(d) Such other documents, stipulations, or information as the insurance commissioner may reasonably require to evidence compliance with the provisions of this chapter;

(8) Which subjects itself and any affiliate thereof, as that term is defined in RCW 48.31B.005, to periodic examinations conducted under chapter 48.03 RCW as may be deemed necessary by the insurance commissioner;

(9) Which files with the insurance commissioner for the commissioner's advance approval a copy of any policy or contract form to be offered or issued to residents of this state. The grounds for disapproval of the policy or contract form shall be those set forth in RCW 48.18.110; and

(10) Which:

(a) Files with the insurance commissioner on or before March 1 of each year a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, including the annual statement or other such financial materials as may be requested relating to any affiliate, as that term is defined in RCW 48.31B.005; and

(b) Coincident with the filing of its annual statement, pays an annual filing fee of twenty-five dollars plus five dollars for each charitable gift annuity contract written for residents of this state during the previous calendar year; and

(c) Which includes on or attaches to the first page of the annual statement the statement of a qualified actuary setting forth the actuary's opinion relating to annuity reserves and other actuarial items. "Qualified actuary" as used in this subsection means a member in good standing of the American academy of actuaries or a person who has otherwise demonstrated actuarial competence to the satisfaction of the insurance regulatory official of the domiciliary state. [1998 c 284 § 1; 1979 c 130 § 6.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.012 Minimum unrestricted net assets required.

After June 30, 1998, an insurer or institution which does not have the minimum unrestricted net assets required by RCW 48.38.010(6) may not issue any new charitable gift annuities until the insurer or institution has and maintains the minimum unrestricted net assets required by RCW 48.38.010(6). [1998 c 284 § 7.]

48.38.020 Separate reserve fund—Treatment of assets—Minimum amounts—Revocation of certificate upon violation—Purchase of single premium life annuity.

(1) Upon granting to such insurer or institution under RCW 48.38.010 a certificate of exemption to conduct a charitable gift annuity business, the insurance commissioner shall require it to establish and maintain a separate reserve fund adequate to meet the future payments under its charitable gift annuity contracts.

(2) The assets of the separate reserve fund:

(a) Shall be held legally and physically segregated from the other assets of the certificate of exemption holder;

(b) Shall be invested in the same manner that persons of reasonable prudence, discretion, and intelligence exercise in the management of a like enterprise, not in regard to speculating but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Investments shall be of sufficient value, liquidity, and diversity to assure the insurer or institution's ability to meet its outstanding obligations; and

(c) Shall not be liable for any debts of the insurer or institution holding a certificate of exemption under this chapter, other than those incurred pursuant to the issuance of charitable gift annuities.

(3) The amount of the separate reserve fund shall be:

(a) For contracts issued prior to July 1, 1998, not less than an amount computed in accordance with the standard of valuation based on the 1971 individual annuity mortality table with six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity contracts;

(b) For contracts issued on or after July 1, 1998, in an amount not less than the aggregate reserves calculated according to the standards set forth in RCW 48.74.030 for other annuities with no cash settlement options;

(c) Plus a surplus of ten percent of the combined amounts under (a) and (b) of this subsection.

(4) The general assets of the insurer or institution holding a certificate of exemption under this chapter shall be liable for the payment of annuities to the extent that the separate reserve fund is inadequate.

(5) For any failure on its part to establish and maintain the separate reserve fund, the insurance commissioner shall revoke its certificate of exemption.

(6) If an institution holding a certificate of exemption under RCW 48.38.010 has purchased a single premium life annuity that pays the entire amount stipulated in the gift annuity agreement or agreements from an insurer (a) holding a certificate of authority under chapter 48.05 RCW, (b) licensed in the state in which the institution has its principle office, and (c) licensed in the state in which the single premium life annuity is issued, then in determining the minimum reserve fund that must be maintained under this section, a

deduction shall be allowed from the minimum reserve fund in an amount not exceeding the reserve fund amount required for the annuity or annuities for which the single premium life annuity is purchased, subject to the following conditions:

(i) The institution has filed with the commissioner a copy of the single premium life annuity purchased and specifying which charitable gift annuity or annuities are being insured; and

(ii) The institution has entered into a written agreement with the annuitant and the insurer issuing the single premium life annuity providing that if for any reason the institution is unable to continue making the annuity payments required by its annuity agreements, the annuitants shall receive payments directly from the insurer and the insurer shall be credited with all of these direct payments in the accounts between the insurer and the institution. [2002 c 295 § 1; 1998 c 284 § 2; 1979 c 130 § 7.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.030 Charitable annuity contract or policy form—Contents. Each charitable annuity contract or policy form shall include the following information:

(1) The value of the property to be transferred;

(2) The amount of the annuity to be paid to the transferor or the transferor's nominee;

(3) The manner in which and the intervals at which payment is to be made;

(4) The age of the person during whose life payment is to be made; and

(5) The reasonable value as of the date of the agreement of the benefits thereby created. This value shall not exceed by more than fifteen percent the net single premium for the benefits, determined in accordance with the standard of valuation set forth in *RCW 48.38.020(1). [1979 c 130 § 8.]

***Reviser's note:** RCW 48.38.020 was amended by 1998 c 284 § 2, changing subsection (1) to subsection (3)(a).

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.040 Certificate holder exempt from certain title provisions—Chapter 48.31 RCW applies. (1) An insurer or institution holding a certificate of exemption under this chapter shall be exempt from all other provisions of this title except as specifically enumerated in this chapter by reference.

(2) An insurer or institution holding a certificate of exemption under this chapter is subject to chapter 48.31 RCW. [1998 c 284 § 3; 1979 c 130 § 9.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.042 Certificate holder—Variable annuity business prohibited. An insurer or institution holding a certificate of exemption to issue charitable gift annuities under this chapter shall not transact or be authorized to transact a variable annuity business as described in chapter 48.18A RCW. [1998 c 284 § 5.]**48.38.050 Grounds for denial, revocation, or suspension of certificate of exemption—Fine may be levied.** (1) The insurance commissioner may refuse to grant, or may revoke or suspend, a certificate of exemption if the insurance

commissioner finds that the insurer or institution does not meet the requirements of this chapter or if the insurance commissioner finds that the insurer or institution has violated RCW 48.01.030 or any provisions of chapter 48.30 RCW or is found by the insurance commissioner to be in such condition that its further issuance of charitable gift annuities would be hazardous to annuity contract holders and the people of this state.

(2) After hearing or with the consent of the insurer or institution and in addition to or in lieu of the suspension, revocation, or refusal to renew any certificate of exemption, the commissioner may levy a fine upon the insurer or institution in an amount not more than ten thousand dollars. The order levying such a fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay such a fine when due the commissioner shall revoke the certificate of exemption of the insurer or institution if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1998 c 284 § 4; 1979 c 130 § 10.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.060 Hearings and appeals provisions inapplicable. For purposes of this chapter, the provisions of chapter 48.04 RCW are applicable. [1979 c 130 § 11.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.070 Enforcement powers and duties. For the purposes of this chapter, the insurance commissioner has the same powers and duties of enforcement as are provided in RCW 48.02.080. [1979 c 130 § 12.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.075 Rules. The commissioner may adopt rules to implement and administer this chapter. [1998 c 284 § 6.]

Chapter 48.41 RCW

HEALTH INSURANCE COVERAGE ACCESS ACT

Sections

48.41.010	Short title.
48.41.020	Intent.
48.41.030	Definitions.
48.41.037	Washington state health insurance pool account.
48.41.040	Health insurance pool—Creation, membership, organization, operation, rules.
48.41.050	Operation plan—Contents.
48.41.060	Board powers and duties.
48.41.070	Examination and report.
48.41.080	Pool administrator—Selection, term, duties, pay.
48.41.090	Financial participation in pool—Computation, deficit assessments.
48.41.100	Eligibility for coverage.
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48.41.130	Policy forms—Approval required.
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48.41.160	Renewal, termination, dependents' coverage—Rate changes—Continuation.
48.41.170	Required rule making.

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48.41.190	Civil and criminal immunity.
48.41.200	Rates—Standard risk and maximum.
48.41.210	Last payor of benefits.
48.41.900	Federal supremacy.
48.41.910	Severability—1987 c 431.

Group stop loss insurance exemption: RCW 48.21.015.

48.41.010 Short title. This chapter shall be known and may be cited as the "Washington state health insurance coverage access act". [1987 c 431 § 1.]

48.41.020 Intent. It is the purpose and intent of the legislature to provide access to health insurance coverage to all residents of Washington who are denied health insurance. It is the intent of the Washington state health insurance coverage access act to provide a mechanism to ensure the availability of comprehensive health insurance to persons unable to obtain such insurance coverage on either an individual or group basis directly under any health plan. [2000 c 79 § 5; 1987 c 431 § 2.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accounting year" means a twelve-month period determined by the board for purposes of record-keeping and accounting. The first accounting year may be more or less than twelve months and, from time to time in subsequent years, the board may order an accounting year of other than twelve months as may be required for orderly management and accounting of the pool.

(2) "Administrator" means the entity chosen by the board to administer the pool under RCW 48.41.080.

(3) "Board" means the board of directors of the pool.

(4) "Commissioner" means the insurance commissioner.

(5) "Covered person" means any individual resident of this state who is eligible to receive benefits from any member, or other health plan.

(6) "Health care facility" has the same meaning as in RCW 70.38.025.

(7) "Health care provider" means any physician, facility, or health care professional, who is licensed in Washington state and entitled to reimbursement for health care services.

(8) "Health care services" means services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(9) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(10) "Health coverage" means any group or individual disability insurance policy, health care service contract, and health maintenance agreement, except those contracts entered into for the provision of health care services pursuant to Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term care, long-term care, dental, vision, accident, fixed indemnity, disability income contracts, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of the worker's compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which

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is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(11) "Health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under this pool, have access to hospital and medical benefits or reimbursement including any group or individual disability insurance policy; health care service contract; health maintenance agreement; uninsured arrangements of group or group-type contracts including employer self-insured, cost-plus, or other benefit methodologies not involving insurance or not governed by Title 48 RCW; coverage under group-type contracts which are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits. This term includes coverage through "health coverage" as defined under this section, and specifically excludes those types of programs excluded under the definition of "health coverage" in subsection (10) of this section.

(12) "Medical assistance" means coverage under Title XIX of the federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter 74.09 RCW.

(13) "Medicare" means coverage under Title XVIII of the Social Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

(14) "Member" means any commercial insurer which provides disability insurance or stop loss insurance, any health care service contractor, any health maintenance organization licensed under Title 48 RCW, and any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010. "Member" also means the Washington state health care authority as issuer of the state uniform medical plan. "Member" shall also mean, as soon as authorized by federal law, employers and other entities, including a self-funding entity and employee welfare benefit plans that provide health plan benefits in this state on or after May 18, 1987. "Member" does not include any insurer, health care service contractor, or health maintenance organization whose products are exclusively dental products or those products excluded from the definition of "health coverage" set forth in subsection (10) of this section.

(15) "Network provider" means a health care provider who has contracted in writing with the pool administrator or a health carrier contracting with the pool administrator to offer pool coverage to accept payment from and to look solely to the pool or health carrier according to the terms of the pool health plans.

(16) "Plan of operation" means the pool, including articles, by-laws, and operating rules, adopted by the board pursuant to RCW 48.41.050.

(17) "Point of service plan" means a benefit plan offered by the pool under which a covered person may elect to receive covered services from network providers, or nonnetwork providers at a reduced rate of benefits.

(18) "Pool" means the Washington state health insurance pool as created in RCW 48.41.040. [2004 c 260 § 25; 2001 c 196 § 2; 2000 c 79 § 6; 1997 c 337 § 6; 1997 c 231 § 210; 1989 c 121 § 1; 1987 c 431 § 3.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.037 Washington state health insurance pool account. The Washington state health insurance pool account is created in the custody of the state treasurer. All receipts from moneys specifically appropriated to the account must be deposited in the account. Expenditures from this account shall be used to cover deficits incurred by the Washington state health insurance pool under this chapter in excess of the threshold established in this section. To the extent funds are available in the account, funds shall be expended from the account to offset that portion of the deficit that would otherwise have to be recovered by imposing an assessment on members in excess of a threshold of seventy cents per insured person per month. The commissioner shall authorize expenditures from the account, to the extent that funds are available in the account, upon certification by the pool board that assessments will exceed the threshold level established in this section. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2000 c 79 § 36.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.040 Health insurance pool—Creation, membership, organization, operation, rules. (1) There is created a nonprofit entity to be known as the Washington state health insurance pool. All members in this state on or after May 18, 1987, shall be members of the pool. When authorized by federal law, all self-insured employers shall also be members of the pool.

(2) Pursuant to chapter 34.05 RCW the commissioner shall, within ninety days after May 18, 1987, give notice to all members of the time and place for the initial organizational meetings of the pool. A board of directors shall be established, which shall be comprised of ten members. The governor shall select one member of the board from each list of three nominees submitted by statewide organizations representing each of the following: (a) Health care providers; (b) health insurance agents; (c) small employers; and (d) large employers. The governor shall select two members of the board from a list of nominees submitted by statewide organizations representing health care consumers. In making these selections, the governor may request additional names from the statewide organizations representing each of the persons to be selected if the governor chooses not to select a member from the list submitted. The remaining four members of the board shall be selected by election from among the members of the pool. The elected members shall, to the extent possible, include at least one representative of health care service contractors, one representative of health maintenance organizations, and one representative of commercial insurers which provides disability insurance. The members of the board shall elect a chair from the voting members of the board. The insurance commissioner shall be a nonvoting, ex officio member. When self-insured organizations other than the Washington state health care authority become eligible for participation in the pool, the membership of the board shall

be increased to eleven and at least one member of the board shall represent the self-insurers.

(3) The original members of the board of directors shall be appointed for intervals of one to three years. Thereafter, all board members shall serve a term of three years. Board members shall receive no compensation, but shall be reimbursed for all travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The board shall submit to the commissioner a plan of operation for the pool and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing pursuant to chapter 34.05 RCW, approve the plan of operation if it is determined to assure the fair, reasonable, and equitable administration of the pool and provides for the sharing of pool losses on an equitable, proportionate basis among the members of the pool. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this chapter must be made available. If the board fails to submit a plan of operation within one hundred eighty days after the appointment of the board or any time thereafter fails to submit acceptable amendments to the plan, the commissioner shall, within ninety days after notice and hearing pursuant to chapters 34.05 and 48.04 RCW, adopt such rules as are necessary or advisable to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the board and approved by the commissioner. [2000 c 80 § 1; 2000 c 79 § 7; 1989 c 121 § 2; 1987 c 431 § 4.]

Board of directors—Dissolved—New members—2000 c 79: "Sixty days from March 23, 2000, the existing board of directors of the Washington state health insurance pool shall be dissolved, and the appointment or election of new members under RCW 48.41.040 shall be effective. For purposes of setting terms, the new members shall be treated as original members." [2000 c 79 § 8.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.050 Operation plan—Contents. The plan of operation submitted by the board to the commissioner shall:

(1) Establish procedures for the handling and accounting of assets and moneys of the pool;

(2) Establish regular times and places for meetings of the board of directors;

(3) Establish procedures for records to be kept of all financial transactions and for an annual fiscal reporting to the commissioner;

(4) Contain additional provisions necessary and proper for the execution of the powers and duties of the pool;

(5) Establish procedures for the collection of assessments from all members to provide for claims paid under the plan and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made;

(6) Establish the amount of assessment pursuant to RCW 48.41.060, which shall occur after March 1st of each calendar year, and which shall be due and payable within thirty days of the receipt of the assessment notice;

(7) Select an administrator in accordance with RCW 48.41.080;

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(8) Develop and implement a program to publicize the existence of the plan, the eligibility requirements and procedures for enrollment, and to maintain public awareness of the plan; and

(9) Establish procedures under which applicants and participants may have grievances reviewed by an impartial body and reported to the board. [1987 c 431 § 5.]

48.41.060 Board powers and duties. (1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds of health coverage defined under this title. In addition thereto, the board shall:

(a) Designate or establish the standard health questionnaire to be used under RCW 48.41.100 and 48.43.018, including the form and content of the standard health questionnaire and the method of its application. The questionnaire must provide for an objective evaluation of an individual's health status by assigning a discreet measure, such as a system of point scoring to each individual. The questionnaire must not contain any questions related to pregnancy, and pregnancy shall not be a basis for coverage by the pool. The questionnaire shall be designed such that it is reasonably expected to identify the eight percent of persons who are the most costly to treat who are under individual coverage in health benefit plans, as defined in RCW 48.43.005, in Washington state or are covered by the pool, if applied to all such persons;

(b) Obtain from a member of the American academy of actuaries, who is independent of the board, a certification that the standard health questionnaire meets the requirements of (a) of this subsection;

(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every eighteen months. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after March 23, 2000, may be used immediately following public notice of such approval;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

(e) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organiza-

tional or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year. Self-funded multiple employer welfare arrangements are subject to assessment under this subsection only in the event that assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing assessments on these arrangements before imposing the assessment. If there has not been a final determination by the United States department of labor or a federal court that the assessments are not preempted by federal law, the assessments provided for in this subsection become effective on March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later. During the time period between March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later, and the final determination by the United States department of labor or a federal court, any assessments shall be deposited in an interest bearing escrow account maintained by the [self-funded] multiple employer welfare arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;

(f) Issue policies of health coverage in accordance with the requirements of this chapter;

(g) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(h) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii);

(i) Set a reasonable fee to be paid to an insurance agent licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(j) Provide certification to the commissioner when assessments will exceed the threshold level established in RCW 48.41.037.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW. [2004 c 260 § 26; 2000 c 79 § 9; 1997 c 337 § 5; 1997 c 231 § 211; 1989 c 121 § 3; 1987 c 431 § 6.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Report on implementation of 1987 c 431: "The board shall report to the commissioner and the appropriate committees of the legislature by April 1, 1990, on the implementation of this act. The report shall include information regarding enrollment, coverage utilization, cost, and any problems with the program and suggest remedies." [1987 c 431 § 26.]

48.41.070 Examination and report. The pool shall be subject to examination by the commissioner as provided under chapter 48.03 RCW. The board of directors shall submit to the commissioner, not later than one hundred twenty days after the end of each accounting year, a financial report for the year in a form approved by the commissioner. [1998 c 245 § 98; 1989 c 121 § 4; 1987 c 431 § 7.]

48.41.080 Pool administrator—Selection, term, duties, pay. The board shall select an administrator through a competitive bidding process to administer the pool.

(1) The board shall evaluate bids based upon criteria established by the board, which shall include:

(a) The administrator's proven ability to handle health coverage;

(b) The efficiency of the administrator's claim-paying procedures;

(c) An estimate of the total charges for administering the plan; and

(d) The administrator's ability to administer the pool in a cost-effective manner.

(2) The administrator shall serve for a period of three years subject to removal for cause. At least six months prior to the expiration of each three-year period of service by the administrator, the board shall invite all interested parties, including the current administrator, to submit bids to serve as the administrator for the succeeding three-year period. Selection of the administrator for this succeeding period shall be made at least three months prior to the end of the current three-year period.

(3) The administrator shall perform such duties as may be assigned by the board including:

(a) Administering eligibility and administrative claim payment functions relating to the pool;

(b) Establishing a premium billing procedure for collection of premiums from covered persons. Billings shall be made on a periodic basis as determined by the board, which shall not be more frequent than a monthly billing;

(c) Performing all necessary functions to assure timely payment of benefits to covered persons under the pool including:

(i) Making available information relating to the proper manner of submitting a claim for benefits to the pool, and distributing forms upon which submission shall be made;

(ii) Taking steps necessary to offer and administer managed care benefit plans; and

(iii) Evaluating the eligibility of each claim for payment by the pool;

(d) Submission of regular reports to the board regarding the operation of the pool. The frequency, content, and form of the report shall be as determined by the board;

(e) Following the close of each accounting year, determination of net paid and earned premiums, the expense of administration, and the paid and incurred losses for the year and reporting this information to the board and the commissioner on a form as prescribed by the commissioner.

(4) The administrator shall be paid as provided in the contract between the board and the administrator for its expenses incurred in the performance of its services. [2000 c 79 § 10; 1997 c 231 § 212; 1989 c 121 § 5; 1987 c 431 § 8.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.090 Financial participation in pool—Computation, deficit assessments. (1) Following the close of each accounting year, the pool administrator shall determine the net premium (premiums less administrative expense allowances), the pool expenses of administration, and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(2)(a) Each member's proportion of participation in the pool shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the member with the commissioner; and shall be determined by multiplying the total cost of pool operation by a fraction. The numerator of the fraction equals that member's total number of resident insured persons, including spouse and dependents, covered under all health plans in the state by that member during the preceding calendar year. The denominator of the fraction equals the total number of resident insured persons, including spouses and dependents, covered under all health plans in the state by all pool members during the preceding calendar year.

(b) For purposes of calculating the numerator and the denominator under (a) of this subsection:

(i) All health plans in the state by the state health care authority include only the uniform medical plan; and

(ii) Each ten resident insured persons, including spouse and dependents, under a stop loss plan or the uniform medical plan shall count as one resident insured person.

(c) Except as provided in RCW 48.41.037, any deficit incurred by the pool shall be recouped by assessments among members apportioned under this subsection pursuant to the formula set forth by the board among members.

(3) The board may abate or defer, in whole or in part, the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. If an assessment against a member is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in subsection (2) of this section. The member receiving such abatement or deferment shall remain liable to the pool for the deficiency.

(4) If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims. [2000 c 79 § 11; 1989 c 121 § 6; 1987 c 431 § 9.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.100 Eligibility for coverage. (1) The following persons who are residents of this state are eligible for pool coverage:

(a) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

(b) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(c) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool; and

(d) Any medicare eligible person upon providing evidence of rejection for medical reasons, a requirement of restrictive riders, an up-rated premium, or a preexisting conditions limitation on a medicare supplemental insurance policy under chapter 48.66 RCW, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than non-payment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Any person on whose behalf the pool has paid out one million dollars in benefits;

(c) Inmates of public institutions and persons whose benefits are duplicated under public programs. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(d) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(d) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(c) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(c) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(c) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a), (b), or (d) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(b) of this section; and (iv) describe the enrollment process for the available options outside of the pool. [2001 c 196 § 3; 2000 c 79 § 12; 1995 c 34 § 5; 1989 c 121 § 7; 1987 c 431 § 10.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.110 Policy coverage—Eligible expenses, cost containment, limits—Explanatory brochure. (1) The pool shall offer one or more care management plans of coverage. Such plans may, but are not required to, include point of service features that permit participants to receive in-network benefits or out-of-network benefits subject to differential cost shares. Covered persons enrolled in the pool on January 1, 2001, may continue coverage under the pool plan in which they are enrolled on that date. However, the pool may incorporate managed care features into such existing plans.

(2) The administrator shall prepare a brochure outlining the benefits and exclusions of the pool policy in plain language. After approval by the board, such brochure shall be made reasonably available to participants or potential participants.

(3) The health insurance policy issued by the pool shall pay only reasonable amounts for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of illnesses, injuries, and conditions which are not otherwise limited or excluded. Eligible expenses are the reasonable amounts for the health care services and items for which benefits are extended under the pool policy. Such benefits shall at minimum include, but not be limited to, the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, but limited to a total of one hundred eighty inpatient days in a calendar year, and limited to thirty days inpatient care for mental and nervous conditions, or alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) The first twenty outpatient professional visits for the diagnosis or treatment of one or more mental or nervous conditions or alcohol, drug, or chemical dependency or abuse rendered during a calendar year by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners, in the case of mental or nervous conditions, and rendered by a state certified chemical dependency program approved under chapter 70.96A RCW, in the case of alcohol, drug, or chemical dependency or abuse;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not more than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

(g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;

(h) Oxygen;

(i) Anesthesia services;

(j) Prostheses, other than dental;

(k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;

(l) Diagnostic x-rays and laboratory tests;

(m) Oral surgery limited to the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;

(n) Maternity care services;

(o) Services of a physical therapist and services of a speech therapist;

(p) Hospice services;

(q) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury; and

(r) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

(4) The board shall design and employ cost containment measures and requirements such as, but not limited to, care coordination, provider network limitations, preadmission certification, and concurrent inpatient review which may make the pool more cost-effective.

(5) The pool benefit policy may contain benefit limitations, exceptions, and cost shares such as copayments, coin-

insurance, and deductibles that are consistent with managed care products, except that differential cost shares may be adopted by the board for nonnetwork providers under point of service plans. The pool benefit policy cost shares and limitations must be consistent with those that are generally included in health plans approved by the insurance commissioner; however, no limitation, exception, or reduction may be used that would exclude coverage for any disease, illness, or injury.

(6) The pool may not reject an individual for health plan coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall impose a six-month benefit waiting period for preexisting conditions for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. The pool may not avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. Credit against the waiting period shall be as provided in subsection (7) of this section.

(7)(a) Except as provided in (b) of this subsection, the pool shall credit any preexisting condition waiting period in its plans for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new pool plan. For the person previously enrolled in a group health benefit plan, the pool must credit the aggregate of all periods of preceding coverage not separated by more than sixty-three days toward the waiting period of the new health plan. For the person previously enrolled in an individual health benefit plan other than a catastrophic health plan, the pool must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(b) The pool shall waive any preexisting condition waiting period for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(8) If an application is made for the pool policy as a result of rejection by a carrier, then the date of application to the carrier, rather than to the pool, should govern for purposes of determining preexisting condition credit. [2001 c 196 § 4; 2000 c 80 § 2; 2000 c 79 § 13; 1997 c 231 § 213; 1987 c 431 § 11.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.120 Deductibles—Coinsurance—Carryover.

(1) Subject to the limitation provided in subsection (3) of this section, a pool policy offered in accordance with RCW 48.41.110(3) shall impose a deductible. Deductibles of five

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hundred dollars and one thousand dollars on a per person per calendar year basis shall initially be offered. The board may authorize deductibles in other amounts. The deductible shall be applied to the first five hundred dollars, one thousand dollars, or other authorized amount of eligible expenses incurred by the covered person.

(2) Subject to the limitations provided in subsection (3) of this section, a mandatory coinsurance requirement shall be imposed at the rate of twenty percent of eligible expenses in excess of the mandatory deductible.

(3) The maximum aggregate out of pocket payments for eligible expenses by the insured in the form of deductibles and coinsurance under a pool policy offered in accordance with RCW 48.41.110(3) shall not exceed in a calendar year:

(a) One thousand five hundred dollars per individual, or three thousand dollars per family, per calendar year for the five hundred dollar deductible policy;

(b) Two thousand five hundred dollars per individual, or five thousand dollars per family per calendar year for the one thousand dollar deductible policy; or

(c) An amount authorized by the board for any other deductible policy.

(4) Eligible expenses incurred by a covered person in the last three months of a calendar year, and applied toward a deductible, shall also be applied toward the deductible amount in the next calendar year. [2000 c 79 § 14; 1989 c 121 § 8; 1987 c 431 § 12.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.130 Policy forms—Approval required. All policy forms issued by the pool shall conform in substance to prototype forms developed by the pool, and shall in all other respects conform to the requirements of this chapter, and shall be filed with and approved by the commissioner before they are issued. [2000 c 79 § 15; 1997 c 231 § 215; 1987 c 431 § 13.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.140 Coverage for children, unmarried dependents. (1) Coverage shall provide that health insurance benefits are applicable to children of the person in whose name the policy is issued including adopted and newly born natural children. Coverage shall also include necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for the child, the policy may require that notification of the birth or adoption of a child and payment of the required premium must be furnished to the pool within thirty-one days after the date of birth or adoption in order to have the coverage continued beyond the thirty-one day period. For purposes of this subsection, a child is deemed to be adopted, and benefits are payable, when the child is physically placed for purposes of adoption under the laws of this state with the person in whose name the policy is issued; and, when the person in whose name the policy is issued assumes financial responsibility for the medical expenses of the child.

For purposes of this subsection, "newly born" means, and benefits are payable, from the moment of birth.

(2) A pool policy shall provide that coverage of a dependent, unmarried person shall terminate when the person becomes nineteen years of age: PROVIDED, That coverage of such person shall not terminate at age nineteen while he or she is and continues to be both (a) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (b) chiefly dependent upon the person in whose name the policy is issued for support and maintenance, provided proof of such incapacity and dependency is furnished to the pool by the policyholder within thirty-one days of the dependent's attainment of age nineteen and subsequently as may be required by the pool but not more frequently than annually after the two-year period following the dependent's attainment of age nineteen. [2000 c 79 § 16; 1987 c 431 § 14.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.150 Medical supplement policy. (1) The board shall offer a medical supplement policy for persons receiving medicare parts A and B. The supplement policy shall provide benefits of one hundred percent of the deductible and copayment required under medicare and eighty percent of the charges for covered services under this chapter that are not paid by medicare. The coverage shall include a limitation of one thousand dollars per person on total annual out-of-pocket expenses for the covered services.

(2) If federal law is adopted that addresses this subject, the board shall offer a policy that is consistent with that federal law. [1989 c 121 § 9; 1987 c 431 § 15.]

48.41.160 Renewal, termination, dependents' coverage—Rate changes—Continuation. (1) A pool policy offered under this chapter shall contain provisions under which the pool is obligated to renew the policy until the day on which the individual in whose name the policy is issued first becomes eligible for medicare coverage. At that time, coverage of dependents shall terminate if such dependents are eligible for coverage under a different health plan. Dependents who become eligible for medicare prior to the individual in whose name the policy is issued, shall receive benefits in accordance with RCW 48.41.150.

(2) The pool may not change the rates for pool policies except on a class basis, with a clear disclosure in the policy of the pool's right to do so.

(3) A pool policy offered under this chapter shall provide that, upon the death of the individual in whose name the policy is issued, every other individual then covered under the policy may elect, within a period specified in the policy, to continue coverage under the same or a different policy. [1987 c 431 § 16.]

48.41.170 Required rule making. The commissioner shall adopt rules pursuant to chapter 34.05 RCW that:

(1) Provide for disclosure by the member of the availability of insurance coverage from the pool; and

(2) Implement this chapter. [1987 c 431 § 17.]

48.41.190 Civil and criminal immunity. Neither the participation by members, the establishment of rates, forms, or procedures for coverages issued by the pool, nor any other joint or collective action required by this chapter or the state of Washington shall be the basis of any legal action, civil or criminal liability or penalty against the pool, any member of the board of directors, or members of the pool either jointly or separately. [1989 c 121 § 10; 1987 c 431 § 19.]

48.41.200 Rates—Standard risk and maximum. (1) The pool shall determine the standard risk rate by calculating the average individual standard rate charged for coverage comparable to pool coverage by the five largest members, measured in terms of individual market enrollment, offering such coverages in the state. In the event five members do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated experience and expenses for such coverage in the individual market.

(2) Subject to subsection (3) of this section, maximum rates for pool coverage shall be as follows:

(a) Maximum rates for a pool indemnity health plan shall be one hundred fifty percent of the rate calculated under subsection (1) of this section;

(b) Maximum rates for a pool care management plan shall be one hundred twenty-five percent of the rate calculated under subsection (1) of this section; and

(c) Maximum rates for a person eligible for pool coverage pursuant to RCW 48.41.100(1)(a) who was enrolled at any time during the sixty-three day period immediately prior to the date of application for pool coverage in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005, where such coverage was continuous for at least eighteen months, shall be:

(i) For a pool indemnity health plan, one hundred twenty-five percent of the rate calculated under subsection (1) of this section; and

(ii) For a pool care management plan, one hundred ten percent of the rate calculated under subsection (1) of this section.

(3)(a) Subject to (b) and (c) of this subsection:

(i) The rate for any person aged fifty to sixty-four whose current gross family income is less than two hundred fifty-one percent of the federal poverty level shall be reduced by thirty percent from what it would otherwise be;

(ii) The rate for any person aged fifty to sixty-four whose current gross family income is more than two hundred fifty but less than three hundred one percent of the federal poverty level shall be reduced by fifteen percent from what it would otherwise be;

(iii) The rate for any person who has been enrolled in the pool for more than thirty-six months shall be reduced by five percent from what it would otherwise be.

(b) In no event shall the rate for any person be less than one hundred ten percent of the rate calculated under subsection (1) of this section.

(c) Rate reductions under (a)(i) and (ii) of this subsection shall be available only to the extent that funds are specifically appropriated for this purpose in the omnibus appropriations act. [2000 c 79 § 17; 1997 c 231 § 214; 1987 c 431 § 20.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.210 Last payor of benefits. It is the express intent of this chapter that the pool be the last payor of benefits whenever any other benefit is available.

(1) Benefits otherwise payable under pool coverage shall be reduced by all amounts paid or payable through any other health insurance, or health benefit plans, including but not limited to self-insured plans and by all hospital and medical expense benefits paid or payable under any worker's compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(2) The administrator or the pool shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not for covered expenses. Benefits due from the pool may be reduced or refused as a set-off against any amount recoverable under this subsection. [1987 c 431 § 21.]

48.41.900 Federal supremacy. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1987 c 431 § 22.]

48.41.910 Severability—1987 c 431. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1987 c 431 § 25.]

Chapter 48.42 RCW

PERSONAL COVERAGE, GENERAL AUTHORITY

(Formerly: Health care coverage, general authority)

Sections

- 48.42.010 Personal coverage, authority of commissioner.
- 48.42.020 Showing regulation by other agency, how done.
- 48.42.030 Examination by commissioner—When required, scope of.
- 48.42.040 Application of this title to otherwise unregulated entities.
- 48.42.050 Notice to purchasers by uninsured production agency—Notice to production agency by administrator of coverage.
- 48.42.090 Prenatal testing—Limitation on changes to coverage.
- 48.42.100 Women's health care services—Duties of health care carriers.

48.42.010 Personal coverage, authority of commissioner. Notwithstanding any other provision of law, and except as provided in this chapter, any person or other entity which provides coverage in this state for life insurance, annuities, loss of time, medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the

coverage is by direct payment, reimbursement, the providing of services, or otherwise, shall be subject to the authority of the state insurance commissioner, unless the person or other entity shows that while providing the services it is subject to the jurisdiction and regulation of another agency of this state, any subdivisions thereof, or the federal government. [1985 c 264 § 15; 1983 c 36 § 1.]

48.42.020 Showing regulation by other agency, how done. A person or entity may show that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, by providing to the insurance commissioner the appropriate certificate, license, or other document issued by the other governmental agency which permits or qualifies it to provide the coverage as defined in RCW 48.42.010. [1983 c 36 § 2.]

48.42.030 Examination by commissioner—When required, scope of. Any person or entity which is unable to show under RCW 48.42.020 that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, shall submit to an examination by the insurance commissioner to determine the organization and solvency of the person or the entity, and to determine whether or not such person or entity complies with the applicable provisions of this title. [1983 c 36 § 3.]

48.42.040 Application of this title to otherwise unregulated entities. Any person or entity unable to show that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, shall be subject to all appropriate provisions of this title regarding the conduct of its business including, but not limited to, RCW 48.43.300 through 48.43.370. [1998 c 241 § 16; 1983 c 36 § 4.]

Severability—1998 c 241: See RCW 48.43.903.

48.42.050 Notice to purchasers by uninsured production agency—Notice to production agency by administrator of coverage. Any production agency or administrator which advertises, sells, transacts, or administers the coverage in this state described in RCW 48.42.010 and which is required to submit to an examination by the insurance commissioner under RCW 48.42.030, shall, if the coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer or health care service contractor or health maintenance organization agreement, advise every purchaser, prospective purchaser, and covered person of the lack of insurance or other coverage.

Any administrator which advertises or administers the coverage in this state described in RCW 48.42.010 and which is subject to an examination by the insurance commissioner under RCW 48.42.030 shall advise any production agency of the elements of the coverage, including the amount of "stop-loss" insurance in effect. [1983 c 36 § 5.]

48.42.090 Prenatal testing—Limitation on changes to coverage. The carrier or provider of any group disability contract, health care services contract or health maintenance agreement shall not cancel, reduce, limit or otherwise alter or

change the coverage provided solely on the basis of the result of any prenatal test. [1988 c 276 § 9.]

48.42.100 Women's health care services—Duties of health care carriers. (1) For purposes of this section, health care carriers includes disability insurers regulated under chapter 48.20 or 48.21 RCW, health care services contractors regulated under chapter 48.44 RCW, health maintenance organizations regulated under chapter 48.46 RCW, plans operating under the health care authority under chapter 41.05 RCW, the state health insurance pool operating under chapter 48.41 RCW, and insuring entities regulated under chapter 48.43 RCW.

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

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

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

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

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

(c) Nothing in this section shall prevent health care carriers from restricting women patients to seeing only health care practitioners who have signed participating provider agreements with the health care carrier. [2000 c 7 § 1; 1995 c 389 § 1.]

Chapter 48.43 RCW

INSURANCE REFORM

(Formerly: Certified health plans)

Sections

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48.43.902	Effective date—1996 c 312.
48.43.903	Severability—1998 c 241.

48.43.001 Intent. It is the intent of the legislature to ensure that all enrollees in managed care settings have access to adequate information regarding health care services covered by health carriers' health plans, and provided by health care providers and health care facilities. It is only through such disclosure that Washington state citizens can be fully informed as to the extent of health insurance coverage, availability of health care service options, and necessary treatment. With such information, citizens are able to make knowledgeable decisions regarding their health care. [1996 c 312 § 1.]

48.43.005 Definitions. Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(3) "Basic health plan model plan" means a health plan as required in *RCW 70.47.060(2)(d).

(4) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(5) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand dollars; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least five thousand five hundred dollars; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substan-

tially limits outpatient physician services and those services usually provided in an office setting.

(6) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(7) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(8) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(9) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(10) "Eligible employee" means an employee who works on a full-time basis with a normal work week of thirty or more hours. The term includes a self-employed individual, including a sole proprietor, a partner of a partnership, and may include an independent contractor, if the self-employed individual, sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not work less than thirty hours per week and derives at least seventy-five percent of his or her income from a trade or business through which he or she has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form. Persons covered under a health benefit plan pursuant to the consolidated omnibus budget reconciliation act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements of chapter 265, Laws of 1995.

(11) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(12) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(13) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(14) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(15) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under

chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(16) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(17) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(18) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(19) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(20) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(21) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(22) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(23) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(24) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, employed at least two but no more than fifty eligible employees, with a normal work week of thirty or more hours, the majority of whom were employed within this state, and is not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor must derive at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year except for a self-employed individual or sole proprietor in an agricultural trade or business, who must derive at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year. A self-employed individual or sole proprietor who is covered as a group of one on the day prior to June 10, 2004, shall also be considered a "small employer" to the extent that individual or group of one is entitled to have his or her coverage renewed as provided in RCW 48.43.035(6).

(25) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(26) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such

as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs. [2004 c 244 § 2. Prior: 2001 c 196 § 5; 2001 c 147 § 1; 2000 c 79 § 18; prior: 1997 c 231 § 202; 1997 c 55 § 1; 1995 c 265 § 4.]

***Reviser's note:** RCW 70.47.060 was amended by 2004 c 192 § 3, changing subsection (2)(d) to subsection (2)(e), effective January 1, 2005.

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—1997 c 231: "This act shall be known as the consumer assistance and insurance market stabilization act." [1997 c 231 § 402.]

Part headings and captions not law—1997 c 231: "Part headings and section captions used in this act are not part of the law." [1997 c 231 § 403.]

Severability—1997 c 231: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 231 § 404.]

Effective dates—1997 c 231: "(1) Sections 104 through 108 and 301 of this act take effect January 1, 1998.

(2) Section 111 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997.

(3) Section 205 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately." [1997 c 231 § 405.]

Effective date—1997 c 55: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 16, 1997]." [1997 c 55 § 2.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.012 Individual health benefit plans—Preexisting conditions. (1) No carrier may reject an individual for an individual health benefit plan based upon preexisting conditions of the individual except as provided in RCW 48.43.018.

(2) No carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions except as provided in this section.

(3) For an individual health benefit plan originally issued on or after March 23, 2000, preexisting condition waiting periods imposed upon a person enrolling in an individual health benefit plan shall be no more than nine months for a preexisting condition for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months prior to the effective date of the plan. No carrier may impose a preexisting condition waiting period on an individual health benefit plan issued to an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(4) Individual health benefit plan preexisting condition waiting periods shall not apply to prenatal care services.

(5) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the pro-

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visions of this section if the new or changed classification would substantially discourage applications for coverage from individuals who are higher than average health risks. These provisions apply only to individuals who are Washington residents. [2001 c 196 § 6; 2000 c 79 § 19.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.43.015 Health benefit plans—Preexisting conditions. (*Effective until January 1, 2005.*) (1) For a health benefit plan offered to a group, every health carrier shall reduce any preexisting condition exclusion, limitation, or waiting period in the group health plan in accordance with the provisions of section 2701 of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg).

(2) For a health benefit plan offered to a group other than a small group:

(a) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for at least three months, then the carrier shall not impose a waiting period for coverage of preexisting conditions under the new health plan.

(b) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for less than three months, then the carrier shall credit the time covered under the immediately preceding health plan toward any preexisting condition waiting period under the new health plan.

(c) For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan and plans of the Washington state health insurance pool.

(3) For a health benefit plan offered to a small group:

(a) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for at least nine months, then the carrier shall not impose a waiting period for coverage of preexisting conditions under the new health plan.

(b) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for less than nine months, then the carrier shall credit the time covered under the immediately preceding health plan toward any preexisting condition waiting period under the new health plan.

(c) For the purpose of this subsection, a preceding health plan includes an employer-provided self-funded health plan and plans of the Washington state health insurance pool.

(4) For a health benefit plan offered to an individual, other than an individual to whom subsection (5) of this section applies, every health carrier shall credit any preexisting condition waiting period in that plan for a person who was enrolled at any time during the sixty-three day period imme-

diately preceding the date of application for the new health plan in a group health benefit plan or an individual health benefit plan, other than a catastrophic health plan, and (a) the benefits under the previous plan provide equivalent or greater overall benefit coverage than that provided in the health benefit plan the individual seeks to purchase; or (b) the person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, if application for coverage is made within ninety days of relocation; or (c) the person is seeking an individual health benefit plan: (i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and (ii) his or her health care provider is part of another carrier's provider network; and (iii) application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network. The carrier must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection (4), a preceding health plan includes an employer-provided self-funded health plan and plans of the Washington state health insurance pool.

(5) Every health carrier shall waive any preexisting condition waiting period in its individual plans for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b)).

(6) Subject to the provisions of subsections (1) through (5) of this section, nothing contained in this section requires a health carrier to amend a health plan to provide new benefits in its existing health plans. In addition, nothing in this section requires a carrier to waive benefit limitations not related to an individual or group's preexisting conditions or health history. [2001 c 196 § 7; 2000 c 80 § 3; 2000 c 79 § 20; 1995 c 265 § 5.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.015 Health benefit plans—Preexisting conditions. (*Effective January 1, 2005.*) (1) For a health benefit plan offered to a group, every health carrier shall reduce any preexisting condition exclusion, limitation, or waiting period in the group health plan in accordance with the provisions of section 2701 of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg).

(2) For a health benefit plan offered to a group other than a small group:

(a) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for at least three months, then the carrier shall

not impose a waiting period for coverage of preexisting conditions under the new health plan.

(b) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for less than three months, then the carrier shall credit the time covered under the immediately preceding health plan toward any preexisting condition waiting period under the new health plan.

(c) For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan, the basic health plan's offering to health coverage tax credit eligible enrollees as established by chapter 192, Laws of 2004, and plans of the Washington state health insurance pool.

(3) For a health benefit plan offered to a small group:

(a) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for at least nine months, then the carrier shall not impose a waiting period for coverage of preexisting conditions under the new health plan.

(b) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for less than nine months, then the carrier shall credit the time covered under the immediately preceding health plan toward any preexisting condition waiting period under the new health plan.

(c) For the purpose of this subsection, a preceding health plan includes an employer-provided self-funded health plan, the basic health plan's offering to health coverage tax credit eligible enrollees as established by chapter 192, Laws of 2004, and plans of the Washington state health insurance pool.

(4) For a health benefit plan offered to an individual, other than an individual to whom subsection (5) of this section applies, every health carrier shall credit any preexisting condition waiting period in that plan for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new health plan in a group health benefit plan or an individual health benefit plan, other than a catastrophic health plan, and (a) the benefits under the previous plan provide equivalent or greater overall benefit coverage than that provided in the health benefit plan the individual seeks to purchase; or (b) the person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, if application for coverage is made within ninety days of relocation; or (c) the person is seeking an individual health benefit plan: (i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and (ii) his or her health care provider is part of another carrier's provider net-

work; and (iii) application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network. The carrier must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection (4), a preceding health plan includes an employer-provided self-funded health plan, the basic health plan's offering to health coverage tax credit eligible enrollees as established by chapter 192, Laws of 2004, and plans of the Washington state health insurance pool.

(5) Every health carrier shall waive any preexisting condition waiting period in its individual plans for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b)).

(6) Subject to the provisions of subsections (1) through (5) of this section, nothing contained in this section requires a health carrier to amend a health plan to provide new benefits in its existing health plans. In addition, nothing in this section requires a carrier to waive benefit limitations not related to an individual or group's preexisting conditions or health history. [2004 c 192 § 5; 2001 c 196 § 7; 2000 c 80 § 3; 2000 c 79 § 20; 1995 c 265 § 5.]

Effective date—2004 c 192: See note following RCW 70.47.020.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.018 Requirement to complete the standard health questionnaire—Exemptions—Results. (1) Except as provided in (a) through (e) of this subsection, a health carrier may require any person applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW.

(a) If a person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of relocation.

(b) If a person is seeking an individual health benefit plan:

(i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and

(ii) His or her health care provider is part of another carrier's provider network; and

(iii) Application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network; then completion of the standard health questionnaire shall not be a condition of coverage.

(c) If a person is seeking an individual health benefit plan due to his or her having exhausted continuation cover-

age provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of exhaustion of continuation coverage. A health carrier shall accept an application without a standard health questionnaire from a person currently covered by such continuation coverage if application is made within ninety days prior to the date the continuation coverage would be exhausted and the effective date of the individual coverage applied for is the date the continuation coverage would be exhausted, or within ninety days thereafter.

(d) If a person is seeking an individual health benefit plan due to his or her receiving notice that his or her coverage under a conversion contract is discontinued, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of discontinuation of eligibility under the conversion contract. A health carrier shall accept an application without a standard health questionnaire from a person currently covered by such conversion contract if application is made within ninety days prior to the date eligibility under the conversion contract would be discontinued and the effective date of the individual coverage applied for is the date eligibility under the conversion contract would be discontinued, or within ninety days thereafter.

(e) If a person is seeking an individual health benefit plan and, but for the number of persons employed by his or her employer, would have qualified for continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if: (i) Application for coverage is made within ninety days of a qualifying event as defined in 29 U.S.C. Sec. 1163; and (ii) the person had at least twenty-four months of continuous group coverage immediately prior to the qualifying event. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if application is made no more than ninety days prior to the date of a qualifying event and the effective date of the individual coverage applied for is the date of the qualifying event, or within ninety days thereafter.

(2) If, based upon the results of the standard health questionnaire, the person qualifies for coverage under the Washington state health insurance pool, the following shall apply:

(a) The carrier may decide not to accept the person's application for enrollment in its individual health benefit plan; and

(b) Within fifteen business days of receipt of a completed application, the carrier shall provide written notice of the decision not to accept the person's application for enrollment to both the person and the administrator of the Washington state health insurance pool. The notice to the person shall state that the person is eligible for health insurance provided by the Washington state health insurance pool, and shall include information about the Washington state health insurance pool and an application for such coverage. If the carrier does not provide or postmark such notice within fifteen business days, the application is deemed approved.

(3) If the person applying for an individual health benefit plan: (a) Does not qualify for coverage under the Washington state health insurance pool based upon the results of the

standard health questionnaire; (b) does qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire and the carrier elects to accept the person for enrollment; or (c) is not required to complete the standard health questionnaire designated under this chapter under subsection (1)(a) or (b) of this section, the carrier shall accept the person for enrollment if he or she resides within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The commissioner may grant a temporary exemption from this subsection if, upon application by a health carrier, the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals. [2004 c 244 § 3; 2001 c 196 § 8; 2000 c 80 § 4; 2000 c 79 § 21.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.43.021 Personally identifiable health information—Restrictions on release. Except as otherwise required by statute or rule, a carrier and the Washington state health insurance pool, and persons acting at the direction of or on behalf of a carrier or the pool, who are in receipt of an enrollee's or applicant's personally identifiable health information included in the standard health questionnaire shall not disclose the identifiable health information unless such disclosure is explicitly authorized in writing by the person who is the subject of the information. [2000 c 79 § 22.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.43.022 Enrollee identification card—Social security number restriction. After December 31, 2005, a health carrier that issues a card identifying a person as an enrollee, and requires the person to present the card to providers for purposes of claims processing, may not display on the card an identification number that includes more than a four-digit portion of the person's complete social security number. [2004 c 115 § 1.]

48.43.023 Pharmacy identification cards—Rules. (1) A health carrier that provides coverage for prescription drugs provided on an outpatient basis and issues a card or other technology for claims processing, or an administrator of a health benefit plan including, but not limited to, third-party administrators for self-insured plans, pharmacy benefits managers, and state administered plans, shall issue to its enrollees a pharmacy identification card or other technology containing all information required for proper prescription drug claims adjudication.

(2) Upon renewal of the health benefit plan, information on the pharmacy identification card or other technology shall be made current by the health carrier or other entity that issues the card.

(3) Nothing in this section shall be construed to require any health carrier or administrator of a health benefit plan to issue a pharmacy identification card or other technology separate from another identification card issued to an enrollee under the health benefit plan if the identification card contains all of the information required under subsection (1) of this section.

(4) This section applies to health benefit plans that are delivered, issued for delivery, or renewed on or after July 1, 2003. For the purposes of this section, renewal of a health benefit policy, contract, or plan occurs on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

(5) The insurance commissioner may adopt rules to implement chapter 106, Laws of 2001, taking into consideration any relevant standards developed by the national council for prescription drug programs and the requirements of the federal health insurance portability and accountability act of 1996. [2001 c 106 § 2.]

Intent—2001 c 106: "It is the intent of the legislature to improve care to patients by minimizing confusion, eliminating unnecessary paperwork, decreasing administrative burdens, and streamlining dispensing of prescription products paid for by third-party payors." [2001 c 106 § 1.]

48.43.025 Group health benefit plans—Preexisting conditions. (1) For group health benefit plans for groups other than small groups, no carrier may reject an individual for health plan coverage based upon preexisting conditions of the individual and no carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that a carrier may impose a three-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment within three months before the effective date of coverage. Any preexisting condition waiting period or limitation relating to pregnancy as a preexisting condition shall be imposed only to the extent allowed in the federal health insurance portability and accountability act of 1996.

(2) For group health benefit plans for small groups, no carrier may reject an individual for health plan coverage based upon preexisting conditions of the individual and no carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions. Except that a carrier may impose a nine-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment within six months before the effective date of coverage. Any preexisting condition waiting period or limitation relating to pregnancy as a preexisting condition shall be imposed only to the extent allowed in the federal health insurance portability and accountability act of 1996.

(3) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the provisions of this section if the new or changed classification would substantially discourage applications for coverage from individuals or groups who are higher than average health risks. These provisions apply only to individuals who

are Washington residents. [2001 c 196 § 9; 2000 c 79 § 23; 1995 c 265 § 6.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.028 Eligibility to purchase certain health benefit plans—Small employers and small groups. To the extent required of the federal health insurance portability and accountability act of 1996, the eligibility of an employer or group to purchase a health benefit plan set forth in RCW 48.21.045(1)(b), 48.44.023(1)(b), and 48.46.066(1)(b) must be extended to all small employers and small groups as defined in RCW 48.43.005. [2001 c 196 § 10.]

Effective date—2001 c 196: See note following RCW 48.20.025.

48.43.035 Group health benefit plans—Guaranteed issue and continuity of coverage—Exceptions—Group of one. For group health benefit plans, the following shall apply:

(1) All health carriers shall accept for enrollment any state resident within the group to whom the plan is offered and within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The insurance commissioner may grant a temporary exemption from this subsection, if, upon application by a health carrier the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals.

(2) Except as provided in subsection (5) of this section, all health plans shall contain or incorporate by endorsement a guarantee of the continuity of coverage of the plan. For the purposes of this section, a plan is "renewed" when it is continued beyond the earliest date upon which, at the carrier's sole option, the plan could have been terminated for other than nonpayment of premium. The carrier may consider the group's anniversary date as the renewal date for purposes of complying with the provisions of this section.

(3) The guarantee of continuity of coverage required in health plans shall not prevent a carrier from canceling or non-renewing a health plan for:

- (a) Nonpayment of premium;
- (b) Violation of published policies of the carrier approved by the insurance commissioner;
- (c) Covered persons entitled to become eligible for medicare benefits by reason of age who fail to apply for a medicare supplement plan or medicare cost, risk, or other plan offered by the carrier pursuant to federal laws and regulations;

(d) Covered persons who fail to pay any deductible or copayment amount owed to the carrier and not the provider of health care services;

(e) Covered persons committing fraudulent acts as to the carrier;

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(f) Covered persons who materially breach the health plan; or

(g) Change or implementation of federal or state laws that no longer permit the continued offering of such coverage.

(4) The provisions of this section do not apply in the following cases:

(a) A carrier has zero enrollment on a product;

(b) A carrier replaces a product and the replacement product is provided to all covered persons within that class or line of business, includes all of the services covered under the replaced product, and does not significantly limit access to the kind of services covered under the replaced product. The health plan may also allow unrestricted conversion to a fully comparable product;

(c) No sooner than January 1, 2005, a carrier discontinues offering a particular type of health benefit plan offered for groups of up to two hundred if: (i) The carrier provides notice to each group of the discontinuation at least ninety days prior to the date of the discontinuation; (ii) the carrier offers to each group provided coverage of this type the option to enroll, with regard to small employer groups, in any other small employer group plan, or with regard to groups of up to two hundred, in any other applicable group plan, currently being offered by the carrier in the applicable group market; and (iii) in exercising the option to discontinue coverage of this type and in offering the option of coverage under (c)(ii) of this subsection, the carrier acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for this coverage;

(d) A carrier discontinues offering all health coverage in the small group market or for groups of up to two hundred, or both markets, in the state and discontinues coverage under all existing group health benefit plans in the applicable market involved if: (i) The carrier provides notice to the commissioner of its intent to discontinue offering all such coverage in the state and its intent to discontinue coverage under all such existing health benefit plans at least one hundred eighty days prior to the date of the discontinuation of coverage under all such existing health benefit plans; and (ii) the carrier provides notice to each covered group of the intent to discontinue the existing health benefit plan at least one hundred eighty days prior to the date of discontinuation. In the case of discontinuation under this subsection, the carrier may not issue any group health coverage in this state in the applicable group market involved for a five-year period beginning on the date of the discontinuation of the last health benefit plan not so renewed. This subsection (4) does not require a carrier to provide notice to the commissioner of its intent to discontinue offering a health benefit plan to new applicants when the carrier does not discontinue coverage of existing enrollees under that health benefit plan; or

(e) A carrier is withdrawing from a service area or from a segment of its service area because the carrier has demonstrated to the insurance commissioner that the carrier's clinical, financial, or administrative capacity to serve enrollees would be exceeded.

(5) The provisions of this section do not apply to health plans deemed by the insurance commissioner to be unique or limited or have a short-term purpose, after a written request

for such classification by the carrier and subsequent written approval by the insurance commissioner.

(6) Notwithstanding any other provision of this section, the guarantee of continuity of coverage applies to a group of one only if: (a) The carrier continues to offer any other small employer group plan in which the group of one was eligible to enroll on the day prior to June 10, 2004; and (b) the person continues to qualify as a group of one under the criteria in place on the day prior to June 10, 2004. [2004 c 244 § 4; 2000 c 79 § 24; 1995 c 265 § 7.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.038 Individual health plans—Guarantee of continuity of coverage—Exceptions. (1) Except as provided in subsection (4) of this section, all individual health plans shall contain or incorporate by endorsement a guarantee of the continuity of coverage of the plan. For the purposes of this section, a plan is "renewed" when it is continued beyond the earliest date upon which, at the carrier's sole option, the plan could have been terminated for other than nonpayment of premium.

(2) The guarantee of continuity of coverage required in individual health plans shall not prevent a carrier from canceling or nonrenewing a health plan for:

- (a) Nonpayment of premium;
- (b) Violation of published policies of the carrier approved by the commissioner;
- (c) Covered persons entitled to become eligible for medicare benefits by reason of age who fail to apply for a medicare supplement plan or medicare cost, risk, or other plan offered by the carrier pursuant to federal laws and regulations;
- (d) Covered persons who fail to pay any deductible or copayment amount owed to the carrier and not the provider of health care services;
- (e) Covered persons committing fraudulent acts as to the carrier;
- (f) Covered persons who materially breach the health plan; or
- (g) Change or implementation of federal or state laws that no longer permit the continued offering of such coverage.

(3) This section does not apply in the following cases:

- (a) A carrier has zero enrollment on a product;
- (b) A carrier is withdrawing from a service area or from a segment of its service area because the carrier has demonstrated to the commissioner that the carrier's clinical, financial, or administrative capacity to serve enrollees would be exceeded;

(c) No sooner than the first day of the month following the expiration of a one hundred eighty-day period beginning on March 23, 2000, a carrier discontinues offering a particular type of health benefit plan offered in the individual market if: (i) The carrier provides notice to each covered individual provided coverage of this type of such discontinuation at least ninety days prior to the date of the discontinuation; (ii) the carrier offers to each individual provided coverage of this

type the option, without being subject to the standard health questionnaire, to enroll in any other individual health benefit plan currently being offered by the carrier; and (iii) in exercising the option to discontinue coverage of this type and in offering the option of coverage under (c)(ii) of this subsection, the carrier acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage; or

(d) A carrier discontinues offering all individual health coverage in the state and discontinues coverage under all existing individual health benefit plans if: (i) The carrier provides notice to the commissioner of its intent to discontinue offering all individual health coverage in the state and its intent to discontinue coverage under all existing health benefit plans at least one hundred eighty days prior to the date of the discontinuation of coverage under all existing health benefit plans; and (ii) the carrier provides notice to each covered individual of the intent to discontinue his or her existing health benefit plan at least one hundred eighty days prior to the date of such discontinuation. In the case of discontinuation under this subsection, the carrier may not issue any individual health coverage in this state for a five-year period beginning on the date of the discontinuation of the last health plan not so renewed. Nothing in this subsection (3) shall be construed to require a carrier to provide notice to the commissioner of its intent to discontinue offering a health benefit plan to new applicants where the carrier does not discontinue coverage of existing enrollees under that health benefit plan.

(4) The provisions of this section do not apply to health plans deemed by the commissioner to be unique or limited or have a short-term purpose, after a written request for such classification by the carrier and subsequent written approval by the commissioner. [2000 c 79 § 25.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.43.041 Individual health benefit plans—Mandatory benefits. (1) All individual health benefit plans, other than catastrophic health plans, offered or renewed on or after October 1, 2000, shall include benefits described in this section. Nothing in this section shall be construed to require a carrier to offer an individual health benefit plan.

(a) Maternity services that include, with no enrollee cost-sharing requirements beyond those generally applicable cost-sharing requirements: Diagnosis of pregnancy; prenatal care; delivery; care for complications of pregnancy; physician services; hospital services; operating or other special procedure rooms; radiology and laboratory services; appropriate medications; anesthesia; and services required under RCW 48.43.115; and

(b) Prescription drug benefits with at least a two thousand dollar benefit payable by the carrier annually.

(2) If a carrier offers a health benefit plan that is not a catastrophic health plan to groups, and it chooses to offer a health benefit plan to individuals, it must offer at least one health benefit plan to individuals that is not a catastrophic health plan. [2000 c 79 § 26.]

Effective dates—2000 c 79 §§ 26, 38, and 39: "(1) Section 38 of this act takes effect July 1, 2000.

(2) Section 39 of this act takes effect September 1, 2000.

(3) *Section 26 of this act takes effect on the first day of the month fol-

lowing the expiration of a one hundred eighty-day period beginning on the effective date of section 25 of this act." [2000 c 79 § 50.]

*Reviser's note: Section 26 of this act takes effect October 1, 2000.

Severability—2000 c 79: See note following RCW 48.04.010.

48.43.045 Health plan requirements—Annual reports—Exemptions. Every health plan delivered, issued for delivery, or renewed by a health carrier on and after January 1, 1996, shall:

(1) Permit every category of health care provider to provide health services or care for conditions included in the basic health plan services to the extent that:

(a) The provision of such health services or care is within the health care providers' permitted scope of practice; and

(b) The providers agree to abide by standards related to:

(i) Provision, utilization review, and cost containment of health services;

(ii) Management and administrative procedures; and

(iii) Provision of cost-effective and clinically efficacious health services.

(2) Annually report the names and addresses of all officers, directors, or trustees of the health carrier during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals. This requirement does not apply to a foreign or alien insurer regulated under chapter 48.20 or 48.21 RCW that files a supplemental compensation exhibit in its annual statement as required by law. [1997 c 231 § 205; 1995 c 265 § 8.]

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.055 Procedures for review and adjudication of health care provider complaints—Requirements. Each health carrier as defined under RCW 48.43.005 shall file with the commissioner its procedures for review and adjudication of complaints initiated by health care providers. Procedures filed under this section shall provide a fair review for consideration of complaints. Every health carrier shall provide reasonable means allowing any health care provider aggrieved by actions of the health carrier to be heard after submitting a written request for review. If the health carrier fails to grant or reject a request within thirty days after it is made, the complaining health care provider may proceed as if the complaint had been rejected. A complaint that has been rejected by the health carrier may be submitted to nonbinding mediation. Mediation shall be conducted under mediation rules similar to those of the American arbitration association, the center for public resources, the judicial arbitration and mediation service, RCW 7.70.100, or any other rules of mediation agreed to by the parties. This section is solely for resolution of provider complaints. Complaints by, or on behalf of, a covered person are subject to the grievance processes in RCW 48.43.530. [2002 c 300 § 6; 1995 c 265 § 20.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.065 Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or

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religion—Requirements. (1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with plans containing the basic health plan services to receive the full range of services covered under the plan.

(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.

(b) The provisions of this section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan services. Each health carrier shall:

(i) Provide written notice to enrollees, upon enrollment with the plan, listing services that the carrier refuses to cover for reason of conscience or religion;

(ii) Provide written information describing how an enrollee may directly access services in an expeditious manner; and

(iii) Ensure that enrollees refused services under this section have prompt access to the information developed pursuant to (b)(ii) of this subsection.

(c) The insurance commissioner shall establish by rule a mechanism or mechanisms to recognize the right to exercise conscience while ensuring enrollees timely access to services and to assure prompt payment to service providers.

(3)(a) No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

(b) The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause in (a) of this subsection.

(c) The insurance commissioner shall define by rule the process through which health carriers may offer the basic health plan services to individuals and organizations identified in (a) and (b) of this subsection in accordance with the provisions of subsection (2)(c) of this section.

(4) Nothing in this section requires a health carrier, health care facility, or health care provider to provide any health care services without appropriate payment of premium or fee. [1995 c 265 § 25.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.085 Health carrier may not prohibit its enrollees from contracting for services outside the health care plan. Notwithstanding any other provision of law, no health carrier subject to the jurisdiction of the state of Washington may prohibit directly or indirectly its enrollees from freely contracting at any time to obtain any health care services out-

side the health care plan on any terms or conditions the enrollees choose. Nothing in this section shall be construed to bind a carrier for any services delivered outside the health plan. The provisions of this section shall be disclosed pursuant to *RCW 48.43.095(2). The insurance commissioner is prohibited from adopting rules regarding this section. [1996 c 312 § 3.]

*Reviser's note: RCW 48.43.095 was repealed by 2000 c 5 § 29, effective July 1, 2001.

48.43.087 Contracting for services at enrollee's expense—Mental health care practitioner—Conditions—Exception. (1) For purposes of this section:

(a) "Health carrier" includes disability insurers regulated under chapter 48.20 or 48.21 RCW, health care services contractors regulated under chapter 48.44 RCW, plans operating under the health care authority under chapter 41.05 RCW, the basic health plan operating under chapter 70.47 RCW, the state health insurance pool operating under chapter 48.41 RCW, insuring entities regulated under this chapter, and health maintenance organizations regulated under chapter 48.46 RCW.

(b) "Intermediary" means a person duly authorized to negotiate and execute provider contracts with health carriers on behalf of mental health care practitioners.

(c) Consistent with their lawful scopes of practice, "mental health care practitioners" includes only the following: Any generally recognized medical specialty of practitioners licensed under chapter 18.57 or 18.71 RCW who provide mental health services, advanced practice psychiatric nurses as authorized by the nursing care quality assurance commission under chapter 18.79 RCW, psychologists licensed under chapter 18.83 RCW, and mental health counselors, marriage and family therapists, and social workers licensed under chapter 18.225 RCW.

(d) "Mental health services" means outpatient services.

(2) Consistent with federal and state law and rule, no contract between a mental health care practitioner and an intermediary or between a mental health care practitioner and a health carrier that is written, amended, or renewed after June 6, 1996, may contain a provision prohibiting a practitioner and an enrollee from agreeing to contract for services solely at the expense of the enrollee as follows:

(a) On the exhaustion of the enrollee's mental health care coverage;

(b) During an appeal or an adverse certification process;

(c) When an enrollee's condition is excluded from coverage; or

(d) For any other clinically appropriate reason at any time.

(3) If a mental health care practitioner provides services to an enrollee during an appeal or adverse certification process, the practitioner must provide to the enrollee written notification that the enrollee is responsible for payment of these services, unless the health carrier elects to pay for services provided.

(4) This section does not apply to a mental health care practitioner who is employed full time on the staff of a health carrier. [2001 c 251 § 33; 1996 c 304 § 1.]

Severability—2001 c 251: See RCW 18.225.900.

48.43.091 Health carrier coverage of outpatient mental health services—Requirements. Every health carrier that provides coverage for any outpatient mental health service shall comply with the following requirements:

(1) In performing a utilization review of mental health services for a specific enrollee, the utilization review is limited to accessing only the specific health care information contained in the enrollee's record.

(2) In performing an audit of a provider that has furnished mental health services to a carrier's enrollees, the audit is limited to accessing only the records of enrollees covered by the specific health carrier for which the audit is being performed, except as otherwise permitted by RCW 70.02.050 and 71.05.630. [1999 c 87 § 1.]

48.43.093 Health carrier coverage of emergency medical services—Requirements—Conditions. (1) When conducting a review of the necessity and appropriateness of emergency services or making a benefit determination for emergency services:

(a) A health carrier shall cover emergency services necessary to screen and stabilize a covered person if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. In addition, a health carrier shall not require prior authorization of such services provided prior to the point of stabilization if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. With respect to care obtained from a nonparticipating hospital emergency department, a health carrier shall cover emergency services necessary to screen and stabilize a covered person if a prudent layperson would have reasonably believed that use of a participating hospital emergency department would result in a delay that would worsen the emergency, or if a provision of federal, state, or local law requires the use of a specific provider or facility. In addition, a health carrier shall not require prior authorization of such services provided prior to the point of stabilization if a prudent layperson acting reasonably would have believed that an emergency medical condition existed and that use of a participating hospital emergency department would result in a delay that would worsen the emergency.

(b) If an authorized representative of a health carrier authorizes coverage of emergency services, the health carrier shall not subsequently retract its authorization after the emergency services have been provided, or reduce payment for an item or service furnished in reliance on approval, unless the approval was based on a material misrepresentation about the covered person's health condition made by the provider of emergency services.

(c) Coverage of emergency services may be subject to applicable copayments, coinsurance, and deductibles, and a health carrier may impose reasonable differential cost-sharing arrangements for emergency services rendered by nonparticipating providers, if such differential between cost-sharing amounts applied to emergency services rendered by participating provider versus nonparticipating provider does not exceed fifty dollars. Differential cost sharing for emergency services may not be applied when a covered person presents to a nonparticipating hospital emergency department rather than a participating hospital emergency department

when the health carrier requires preauthorization for postevaluation or poststabilization emergency services if:

(i) Due to circumstances beyond the covered person's control, the covered person was unable to go to a participating hospital emergency department in a timely fashion without serious impairment to the covered person's health; or

(ii) A prudent layperson possessing an average knowledge of health and medicine would have reasonably believed that he or she would be unable to go to a participating hospital emergency department in a timely fashion without serious impairment to the covered person's health.

(d) If a health carrier requires preauthorization for postevaluation or poststabilization services, the health carrier shall provide access to an authorized representative twenty-four hours a day, seven days a week, to facilitate review. In order for postevaluation or poststabilization services to be covered by the health carrier, the provider or facility must make a documented good faith effort to contact the covered person's health carrier within thirty minutes of stabilization, if the covered person needs to be stabilized. The health carrier's authorized representative is required to respond to a telephone request for preauthorization from a provider or facility within thirty minutes. Failure of the health carrier to respond within thirty minutes constitutes authorization for the provision of immediately required medically necessary postevaluation and poststabilization services, unless the health carrier documents that it made a good faith effort but was unable to reach the provider or facility within thirty minutes after receiving the request.

(e) A health carrier shall immediately arrange for an alternative plan of treatment for the covered person if a non-participating emergency provider and health plan cannot reach an agreement on which services are necessary beyond those immediately necessary to stabilize the covered person consistent with state and federal laws.

(2) Nothing in this section is to be construed as prohibiting the health carrier from requiring notification within the time frame specified in the contract for inpatient admission or as soon thereafter as medically possible but no less than twenty-four hours. Nothing in this section is to be construed as preventing the health carrier from reserving the right to require transfer of a hospitalized covered person upon stabilization. Follow-up care that is a direct result of the emergency must be obtained in accordance with the health plan's usual terms and conditions of coverage. All other terms and conditions of coverage may be applied to emergency services. [1997 c 231 § 301.]

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.43.097 Filing of financial statements—Every health carrier. Every health carrier holding a registration from the commissioner shall file its financial statements as required by this code and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law. [1999 c 33 § 3.]

48.43.105 Preparation of documents that compare health carriers—Immunity—Due diligence. (1) A public or private entity who exercises due diligence in preparing a

document of any kind that compares health carriers of any kind is immune from civil liability from claims based on the document and the contents of the document.

(2)(a) There is absolute immunity to civil liability from claims based on such a comparison document and its contents if the information was provided by the carrier, was substantially accurately presented, and contained the effective date of the information that the carrier supplied, if any.

(b) Where due diligence efforts to obtain accurate information have been taken, there is immunity from claims based on such a comparison document and its contents if the publisher of the comparison document asked for such information from the carrier, was refused, and relied on any usually reliable source for the information including, but not limited to, carrier enrollees, customers, agents, brokers, or providers. The carrier enrollees, customers, agents, brokers, or providers are likewise immune from civil liability on claims based on information they provided if they believed the information to be accurate and had exercised due diligence in their efforts to confirm the accuracy of the information provided.

(3) The immunity from liability contained in this section applies only if the comparison document contains the following in a conspicuous place and in easy to read typeface:

This comparison is based on information believed to be reliable by its publisher, but the accuracy of the information cannot be guaranteed. Caution is suggested to all readers who are encouraged to confirm data of importance to the reader before any purchasing or other decisions are made.

(4) The insurance commissioner is prohibited from adopting rules regarding this section. [1996 c 312 § 5.]

48.43.115 Maternity services—Intent—Definitions—Patient preference—Clinical sovereignty of provider—Notice to policyholders—Application. (1) The legislature recognizes the role of health care providers as the appropriate authority to determine and establish the delivery of quality health care services to maternity patients and their newly born children. It is the intent of the legislature to recognize patient preference and the clinical sovereignty of providers as they make determinations regarding services provided and the length of time individual patients may need to remain in a health care facility after giving birth. It is not the intent of the legislature to diminish a carrier's ability to utilize managed care strategies but to ensure the clinical judgment of the provider is not undermined by restrictive carrier contracts or utilization review criteria that fail to recognize individual postpartum needs.

(2) Unless otherwise specifically provided, the following definitions apply throughout this section:

(a) "Attending provider" means a provider who: Has clinical hospital privileges consistent with RCW 70.43.020; is included in a provider network of the carrier that is providing coverage; and is a physician licensed under chapter 18.57 or 18.71 RCW, a certified nurse midwife licensed under chapter 18.79 RCW, a midwife licensed under chapter 18.50 RCW, a physician's assistant licensed under chapter 18.57A or 18.71A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(b) "Health carrier" or "carrier" means disability insurers regulated under chapter 48.20 or 48.21 RCW, health care services contractors regulated under chapter 48.44 RCW, health maintenance organizations regulated under chapter 48.46 RCW, plans operating under the health care authority under chapter 41.05 RCW, the state health insurance pool operating under chapter 48.41 RCW, and insuring entities regulated under this chapter.

(3)(a) Every health carrier that provides coverage for maternity services must permit the attending provider, in consultation with the mother, to make decisions on the length of inpatient stay, rather than making such decisions through contracts or agreements between providers, hospitals, and insurers. These decisions must be based on accepted medical practice.

(b) Covered eligible services may not be denied for inpatient, postdelivery care to a mother and her newly born child after a vaginal delivery or a cesarean section delivery for such care as ordered by the attending provider in consultation with the mother.

(c) At the time of discharge, determination of the type and location of follow-up care must be made by the attending provider in consultation with the mother rather than by contract or agreement between the hospital and the insurer. These decisions must be based on accepted medical practice.

(d) Covered eligible services may not be denied for follow-up care, including in-person care, as ordered by the attending provider in consultation with the mother. Coverage for providers of follow-up services must include, but need not be limited to, attending providers as defined in this section, home health agencies licensed under chapter 70.127 RCW, and registered nurses licensed under chapter 18.79 RCW.

(e) This section does not require attending providers to authorize care they believe to be medically unnecessary.

(f) Coverage for the newly born child must be no less than the coverage of the child's mother for no less than three weeks, even if there are separate hospital admissions.

(4) A carrier that provides coverage for maternity services may not deselect, terminate the services of, require additional documentation from, require additional utilization review of, reduce payments to, or otherwise provide financial disincentives to any attending provider or health care facility solely as a result of the attending provider or health care facility ordering care consistent with this section. This section does not prevent any insurer from reimbursing an attending provider or health care facility on a capitated, case rate, or other financial incentive basis.

(5) Every carrier that provides coverage for maternity services must provide notice to policyholders regarding the coverage required under this section. The notice must be in writing and must be transmitted at the earliest of the next mailing to the policyholder, the yearly summary of benefits sent to the policyholder, or January 1 of the year following June 6, 1996.

(6) This section does not establish a standard of medical care.

(7) This section applies to coverage for maternity services under a contract issued or renewed by a health carrier after June 6, 1996, and applies to plans operating under the health care authority under chapter 41.05 RCW beginning January 1, 1998. [2003 c 248 § 14; 1996 c 281 § 1.]

Short title—1996 c 281: "This act shall be known as "the Erin Act."" [1996 c 281 § 3.]

48.43.125 Coverage at a long-term care facility following hospitalization—Definition. (1) A carrier that provides coverage for a person at a long-term care facility following the person's hospitalization shall, upon the request of the person or his or her legal representative as authorized in RCW 7.70.065, provide such coverage at the facility in which the person resided immediately prior to the hospitalization if:

(a) The person's primary care physician determines that the medical care needs of the person can be met at the requested facility;

(b) The requested facility has all applicable licenses and certifications, and is not under a stop placement order that prevents the person's readmission;

(c) The requested facility agrees to accept payment from the carrier for covered services at the rate paid to similar facilities that otherwise contract with the carrier to provide such services; and

(d) The requested facility, with regard to the following, agrees to abide by the standards, terms, and conditions required by the carrier of similar facilities with which the carrier otherwise contracts: (i) Utilization review, quality assurance, and peer review; and (ii) management and administrative procedures, including data and financial reporting that may be required by the carrier.

(2) For purposes of this section, "long-term care facility" or "facility" means a nursing facility licensed under chapter 18.51 RCW, continuing care retirement community defined under RCW 70.38.025, boarding home licensed under chapter 18.20 RCW, or assisted living facility. [1999 c 312 § 2.]

Findings—1999 c 312: "The legislature finds that a long-term care facility is home for any individual who resides there, and the individual has the right to receive services in his or her own home and to be cared for by the organization with which he or she has a contractual agreement to provide housing and related services. The legislature further finds that restricting individuals from returning to the long-term care facility in which they were residing prior to hospitalization may detrimentally impact the health and well-being of frail individuals and their families." [1999 c 312 § 1.]

Short title—1999 c 312: "This act may be known and cited as the Kitson act." [1999 c 312 § 3.]

48.43.180 Denturist services. Notwithstanding any provision of any certified health plan covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such plan would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 23 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.43.185 General anesthesia services for dental procedures. (1) Each group health benefit plan that provides coverage for hospital, medical, or ambulatory surgery center services must cover general anesthesia services and related facility charges in conjunction with any dental procedure performed in a hospital or ambulatory surgical center if such

anesthesia services and related facility charges are medically necessary because the covered person:

(a) Is under the age of seven, or physically or developmentally disabled, with a dental condition that cannot be safely and effectively treated in a dental office; or

(b) Has a medical condition that the person's physician determines would place the person at undue risk if the dental procedure were performed in a dental office. The procedure must be approved by the person's physician.

(2) Each group health benefit plan or group dental plan that provides coverage for dental services must cover medically necessary general anesthesia services in conjunction with any covered dental procedure performed in a dental office if the general anesthesia services are medically necessary because the covered person is under the age of seven or physically or developmentally disabled.

(3) This section does not prohibit a group health benefit plan or group dental plan from:

(a) Applying cost-sharing requirements, maximum annual benefit limitations, and prior authorization requirements to the services required under this section; or

(b) Covering only those services performed by a health care provider, or in a health care facility, that is part of its provider network; nor does it limit the health carrier in negotiating rates and contracts with specific providers.

(4) This section does not apply to medicare supplement policies, or supplemental contracts covering a specified disease or other limited benefits.

(5) For the purpose of this section, "general anesthesia services" means services to induce a state of unconsciousness accompanied by a loss of protective reflexes, including the ability to maintain an airway independently and respond purposefully to physical stimulation or verbal command.

(6) This section applies to group health benefit plans and group dental plans issued or renewed on or after January 1, 2002. [2001 c 321 § 2.]

48.43.200 Disclosure of certain material transactions—Report—Information is confidential. (1) Every certified health plan domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

(a) Commissioner; and

(b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.43.205 through 48.43.225 are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association

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of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the certified health plan to which it pertains unless the commissioner, after giving the certified health plan that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 7.]

48.43.205 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported pursuant to RCW 48.43.200 if the acquisitions or dispositions are not material. For purposes of RCW 48.43.200 through 48.43.225, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting certified health plan's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 8.]

48.43.210 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.43.200 through 48.43.225 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting certified health plan or the acquisition of materials for such purpose.

(2) Asset dispositions subject to RCW 48.43.200 through 48.43.225 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise. [1995 c 86 § 9.]

48.43.215 Report of a material acquisition or disposition of assets—Information required. (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

(a) Date of the transaction;

(b) Manner of acquisition or disposition;

(c) Description of the assets involved;

(d) Nature and amount of the consideration given or received;

(e) Purpose of or reason for the transaction;

(f) Manner by which the amount of consideration was determined;

(g) Gain or loss recognized or realized as a result of the transaction; and

(h) Names of the persons from whom the assets were acquired or to whom they were disposed.

(2) Certified health plans are required to report material acquisitions and dispositions on a nonconsolidated basis unless the certified health plan is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the certified health plan's reserves and such certi-

fied health plan ceded substantially all of its direct and assumed business to the pool. A certified health plan has ceded substantially all of its direct and assumed business to a pool if the certified health plan has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the certified health plan's net worth. [1995 c 86 § 10.]

48.43.220 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.43.200 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.43.200 through 48.43.225, a material nonrenewal, cancellation, or revision is one that affects:

(a) More than fifty percent of a certified health plan's total reserve credit taken for business ceded, on an annualized basis, as indicated in the certified health plan's most recent annual statement;

(b) More than ten percent of a certified health plan's total cession when it is replaced by one or more unauthorized reinsurers; or

(c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if the certified health plan's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 11.]

48.43.225 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. (1) The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(a) The effective date of the nonrenewal, cancellation, or revision;

(b) The description of the transaction with an identification of the initiator;

(c) The purpose of or reason for the transaction; and

(d) If applicable, the identity of the replacement reinsurers.

(2) Certified health plans are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the certified health plan is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the certified health plan's reserves and the certified health plan ceded substantially all of its direct and assumed business to the pool. A certified health plan has ceded substantially all of its direct and assumed business to a pool if the certified health plan has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents

less than five percent of the certified health plan's net worth. [1995 c 86 § 12.]

48.43.300 Definitions. The definitions in this section apply throughout RCW 48.43.300 through 48.43.370 unless the context clearly requires otherwise.

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with RCW 48.43.305(4).

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(3) "Domestic carrier" means any carrier domiciled in this state, or any person or entity subject to chapter 48.42 RCW domiciled in this state.

(4) "Foreign or alien carrier" means any carrier that is licensed to do business in this state but is not domiciled in this state, or any person or entity subject to chapter 48.42 RCW not domiciled in this state.

(5) "NAIC" means the national association of insurance commissioners.

(6) "Negative trend" means, with respect to a carrier, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions.

(7) "RBC" means risk-based capital.

(8) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(9) "RBC level" means a carrier's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company action level RBC" means, with respect to any carrier, the product of 2.0 and its authorized control level RBC;

(b) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(d) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(10) "RBC plan" means a comprehensive financial plan containing the elements specified in RCW 48.43.310(2). If the commissioner rejects the RBC plan, and it is revised by the carrier, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(11) "RBC report" means the report required in RCW 48.43.305.

(12) "Total adjusted capital" means the sum of:

(a) Either a carrier's statutory capital and surplus or net worth, or both, as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed with the commissioner; and

(b) Other items, if any, as the RBC instructions may provide. [1998 c 241 § 1.]

48.43.305 Report of RBC levels—Distribution of report—Formula for determination—Commissioner

may make adjustments. (1) Every domestic carrier shall, on or prior to the filing date of March 1st, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, every domestic carrier shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the carrier is authorized to do business, if the insurance commissioner has notified the carrier of its request in writing, in which case the carrier shall file its RBC report not later than the later of:

(i) Fifteen days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A carrier's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account (and may adjust for the covariance between):

(a) The risk with respect to the carrier's assets;

(b) The risk of adverse insurance experience with respect to the carrier's liabilities and obligations;

(c) The interest rate risk with respect to the carrier's business; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) An excess of capital over the amount produced by the risk-based capital requirements contained in RCW 48.43.300 through 48.43.370 and the formulas, schedules, and instructions referenced in RCW 48.43.300 through 48.43.370 is desirable in the business of insurance. Accordingly, carriers should seek to maintain capital above the RBC levels required by RCW 48.43.300 through 48.43.370. Additional capital is used and useful in the insurance business and helps to secure a carrier against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in RCW 48.43.300 through 48.43.370.

(4) If a domestic carrier files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the carrier of the adjustment. The notice shall contain a statement of the reason for the adjustment. [1998 c 241 § 2.]

48.43.310 Company action level event—Required RBC plan—Commissioner's review—Notification—Challenge by carrier. (1) "Company action level event" means any of the following events:

(a) The filing of an RBC report by a carrier which indicates that:

(i) The carrier's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(ii) The carrier has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and has a negative trend;

(b) The notification by the commissioner to the carrier of an adjusted RBC report that indicates an event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under RCW 48.43.330; or

(c) If, under RCW 48.43.330, a carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(2) In the event of a company action level event, the carrier shall prepare and submit to the commissioner an RBC plan that:

(a) Identifies the conditions that contribute to the company action level event;

(b) Contains proposals of corrective actions that the carrier intends to take and would be expected to result in the elimination of the company action level event;

(c) Provides projections of the carrier's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, surplus, capital and surplus, and net worth. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identifies the key assumptions impacting the carrier's projections and the sensitivity of the projections to the assumptions; and

(e) Identifies the quality of, and problems associated with, the carrier's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five days of the company action level event; or

(b) If the carrier challenges an adjusted RBC report under RCW 48.43.330, within forty-five days after notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(4) Within sixty days after the submission by a carrier of an RBC plan to the commissioner, the commissioner shall notify the carrier whether the RBC plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the carrier shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC plan satisfactory. Upon notification from the commissioner, the carrier shall prepare a revised RBC plan, that may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five days after the notification from the commissioner; or

(b) If the carrier challenges the notification from the commissioner under RCW 48.43.330, within forty-five days after a notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(5) In the event of a notification by the commissioner to a carrier that the carrier's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the carrier's rights to a hearing under RCW 48.43.330, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic carrier that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the carrier is authorized to do business if:

(a) Such state has an RBC provision substantially similar to RCW 48.43.335(1); and

(b) The insurance commissioner of that state has notified the carrier of its request for the filing in writing, in which case the carrier shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section. [1998 c 241 § 3.]

48.43.315 Regulatory action level event—Required RBC plan—Commissioner's review—Notification—Challenge by carrier. (1) "Regulatory action level event" means, with respect to any carrier, any of the following events:

(a) The filing of an RBC report by the carrier which indicates that the carrier's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner to a carrier of an adjusted RBC report that indicates the event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under RCW 48.43.330;

(c) If, under RCW 48.43.330, the carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge;

(d) The failure of the carrier to file an RBC report by the filing date, unless the carrier has provided an explanation for such failure that is satisfactory to the commissioner and has cured the failure within ten days after the filing date;

(e) The failure of the carrier to submit an RBC plan to the commissioner within the time period set forth in RCW 48.43.310(3);

(f) Notification by the commissioner to the carrier that:

(i) The RBC plan or revised RBC plan submitted by the carrier is, in the judgment of the commissioner, unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to the carrier, provided the carrier has not challenged the determination under RCW 48.43.330;

(g) If, under RCW 48.43.330, the carrier challenges a determination by the commissioner under (f) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the challenge;

(h) Notification by the commissioner to the carrier that the carrier has failed to adhere to its RBC plan or revised

RBC plan, but only if such failure has a substantial adverse effect on the ability of the carrier to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the carrier has not challenged the determination under RCW 48.43.330; or

(i) If, under RCW 48.43.330, the carrier challenges a determination by the commissioner under (h) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the carrier to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform the examination or analysis the commissioner deems necessary of the assets, liabilities, and operations of the carrier including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying those corrective actions the commissioner determines are required.

(3) In determining corrective actions, the commissioner may take into account those factors deemed relevant with respect to the carrier based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the carrier, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five days after the occurrence of the regulatory action level event;

(b) If the carrier challenges an adjusted RBC report under RCW 48.43.330 and the challenge is not frivolous in the judgment of the commissioner within forty-five days after the notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge; or

(c) If the carrier challenges a revised RBC plan under RCW 48.43.330 and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the carrier's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations of the carrier and formulate the corrective order with respect to the carrier. The fees, costs, and expenses relating to consultants shall be borne by the affected carrier or other party as directed by the commissioner. [1998 c 241 § 4.]

48.43.320 Authorized control level event—Commissioner's options. (1) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the carrier which indicates that the carrier's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the carrier of an adjusted RBC report that indicates the event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under RCW 48.43.330;

(c) If, under RCW 48.43.330, the carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge;

(d) The failure of the carrier to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the carrier has not challenged the corrective order under RCW 48.43.330; or

(e) If the carrier has challenged a corrective order under RCW 48.43.330 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the carrier to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to a carrier, the commissioner shall:

(a) Take those actions required under RCW 48.43.315 regarding a carrier with respect to which a regulatory action level event has occurred; or

(b) If the commissioner deems it to be in the best interests of either the policyholders or subscribers, or both, and creditors of the carrier and of the public, take those actions necessary to cause the carrier to be placed under regulatory control under chapter 48.31 RCW. In the event the commissioner takes such actions, the authorized control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner shall have the rights, powers, and duties with respect to the carrier as are set forth in chapter 48.31 RCW. In the event the commissioner takes actions under this subsection (2)(b) pursuant to an adjusted RBC report, the carrier is entitled to those protections afforded to carriers under the provisions of RCW 48.31.121 pertaining to summary proceedings. [1998 c 241 § 5.]

48.43.325 Mandatory control level event—Commissioner's duty—Regulatory control. (1) "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report which indicates that the carrier's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the commissioner to the carrier of an adjusted RBC report that indicates the event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under RCW 48.43.330; or

(c) If, under RCW 48.43.330, the carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(2) In the event of a mandatory control level event, with respect to a carrier, the commissioner shall take those actions necessary to place the carrier under regulatory control under chapter 48.31 RCW. In that event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner shall have the rights, powers, and duties with respect to the carrier as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the carrier is entitled to the protections of RCW 48.31.121 pertaining to

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summary proceedings. However, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period. [1998 c 241 § 6.]

48.43.330 Carrier's right to hearing—Request by carrier—Date set by commissioner. (1) Upon notification to a carrier by the commissioner of any of the following, the carrier shall have the right to a hearing, in accordance with chapters 48.04 and 34.05 RCW, at which the carrier may challenge any determination or action by the commissioner:

(a) Of an adjusted RBC report; or

(b)(i) That the carrier's RBC plan or revised RBC plan is unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to such carrier; or

(c) That the carrier has failed to adhere to its RBC plan or revised RBC plan and that such failure has a substantial adverse effect on the ability of the carrier to eliminate the company action level event with respect to the carrier in accordance with its RBC plan or revised RBC plan; or

(d) Of a corrective order with respect to the carrier.

(2) The carrier shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under this section. Upon receipt of the carrier's request for a hearing, the commissioner shall set a date for the hearing. The date shall be no less than ten nor more than thirty days after the date of the carrier's request. [1998 c 241 § 7.]

48.43.335 Confidentiality of RBC reports and plans—Use of certain comparisons prohibited—Certain information intended solely for use by commissioner. (1)

All RBC reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of a carrier and any corrective order issued by the commissioner, with respect to any domestic carrier or foreign carrier that are filed with the commissioner constitute information that might be damaging to the carrier if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of a carrier's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the carrier, and is not a means to rank carriers generally. Therefore, except as otherwise required under the provisions of RCW 48.43.300 through 48.43.370, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any

carrier, or of any component derived in the calculation, by any carrier, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a carrier's total adjusted capital to its RBC levels (or any of them) or an inappropriate comparison of any other amount to the carrier's RBC levels is published in any written publication and the carrier is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the carrier may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of carriers and the need for possible corrective action with respect to carriers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a carrier or any affiliate is authorized to write. [1998 c 241 § 8.]

48.43.340 Powers or duties of commissioner not limited—Rules. (1) The provisions of RCW 48.43.300 through 48.43.370 are supplemental to any other provisions of the laws and rules of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws and rules, including, but not limited to, chapter 48.31 RCW.

(2) The commissioner may adopt reasonable rules necessary for the implementation of RCW 48.43.300 through 48.43.370. [1998 c 241 § 9.]

48.43.345 Foreign or alien carriers—Required RBC report—Commissioner may require RBC plan—Mandatory control level event. (1) Any foreign or alien carrier shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended by the later of:

(a) The date an RBC report would be required to be filed by a domestic carrier under RCW 48.43.300 through 48.43.370; or

(b) Fifteen days after the request is received by the foreign or alien carrier. Any foreign or alien carrier shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to any foreign or alien carrier as determined under the RBC statute applicable in the state of domicile of the carrier or, if no RBC statute is in force in that state, under the provisions of RCW 48.43.300 through 48.43.370, if the insurance commissioner of the state of domicile of the foreign or alien carrier fails to require the foreign or alien carrier to file an RBC plan in the manner specified under that state's RBC statute or, if no RBC statute is in force in that state, under RCW 48.43.310, the commissioner may require the foreign or alien carrier to file an RBC plan with the commissioner. In this

event, the failure of the foreign or alien carrier to file an RBC plan with the commissioner is grounds to order the carrier to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to any foreign or alien carrier, if no domiciliary receiver has been appointed with respect to the foreign or alien carrier under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign or alien carrier, the commissioner may apply for an order under RCW 48.31.080 or 48.31.090 to conserve the assets within this state of foreign or alien carriers, and the occurrence of the mandatory control level event is considered adequate grounds for the application. [1998 c 241 § 10.]

48.43.350 No liability or cause of action against commissioner or department. There is no liability on the part of, and no cause of action shall arise against, the commissioner or insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under RCW 48.43.300 through 48.43.370. [1998 c 241 § 11.]

48.43.355 Notice by commissioner to carrier—When effective. All notices by the commissioner to a carrier that may result in regulatory action are effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission, are effective upon the carrier's receipt of such notice. [1998 c 241 § 12.]

48.43.360 Initial RBC reports—Calculation of initial RBC levels—Subsequent reports. For RBC reports to be filed by carriers commencing operations after June 11, 1998, those carriers shall calculate the initial RBC levels using financial projections, considering managed care arrangements, for its first full year in operation. Such projections, including the risk-based capital requirement, must be included as part of a comprehensive business plan that is submitted as part of the application for registration under RCW 48.44.040 and 48.46.030. The resulting RBC requirement shall be reported in the first RBC report submitted under RCW 48.43.305. For subsequent reports, the RBC results using actual financial data shall be included. [1998 c 241 § 13.]

48.43.365 RBC report for 1998 calendar year. The first RBC report required under RCW 48.43.305 shall be filed on or prior to March 1, 1999, for the 1998 calendar year. [1998 c 241 § 14.]

48.43.366 Self-funded multiple employer welfare arrangements. A self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, is subject to the same RBC reporting requirements as a domestic carrier under RCW 48.43.300 through 48.43.370. [2004 c 260 § 19.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

48.43.370 RBC standards not applicable to certain carriers. RCW 48.43.300 through 48.43.370 shall not apply

to a carrier which is subject to the provisions of RCW 48.05.430 through 48.05.490. [1998 c 241 § 15.]

48.43.500 Intent—Purpose—2000 c 5. It is the intent of the legislature that enrollees covered by health plans receive quality health care designed to maintain and improve their health. The purpose of chapter 5, Laws of 2000 is to ensure that health plan enrollees:

- (1) Have improved access to information regarding their health plans;
- (2) Have sufficient and timely access to appropriate health care services, and choice among health care providers;
- (3) Are assured that health care decisions are made by appropriate medical personnel;
- (4) Have access to a quick and impartial process for appealing plan decisions;
- (5) Are protected from unnecessary invasions of health care privacy; and
- (6) Are assured that personal health care information will be used only as necessary to obtain and pay for health care or to improve the quality of care. [2000 c 5 § 1.]

Application—2000 c 5: "This act applies to: Health plans as defined in RCW 48.43.005 offered, renewed, or issued by a carrier; medical assistance provided under RCW 74.09.522; the basic health plan offered under chapter 70.47 RCW; and health benefits provided under chapter 41.05 RCW." [2000 c 5 § 19.]

Short title—2000 c 5: "This act may be known and cited as the health care patient bill of rights." [2000 c 5 § 22.]

Captions not law—2000 c 5: "Captions used in this act are not any part of the law." [2000 c 5 § 24.]

Construction—2000 c 5: "To the extent permitted by law, if any provision of this act conflicts with state or federal law, such provision must be construed in a manner most favorable to the enrollee." [2000 c 5 § 26.]

Severability—2000 c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 5 § 27.]

Application to contracts—Effective dates—2000 c 5: "(1) Except as provided in subsections (2) and (3) of this section, this act applies to contracts entered into or renewing after June 30, 2001.

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

(3) Section 29 of this act takes effect July 1, 2001." [2000 c 5 § 28.]

48.43.505 Requirement to protect enrollee's right to privacy or confidential services—Rules. (1) Health carriers and insurers shall adopt policies and procedures that conform administrative, business, and operational practices to protect an enrollee's right to privacy or right to confidential health care services granted under state or federal laws.

(2) The commissioner may adopt rules to implement this section after considering relevant standards adopted by national managed care accreditation organizations and the national association of insurance commissioners, and after considering the effect of those standards on the ability of carriers to undertake enrollee care management and disease management programs. [2000 c 5 § 5.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.510 Carrier required to disclose health plan information—Marketing and advertising restrictions—Rules. (1) A carrier that offers a health plan may not offer to

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sell a health plan to an enrollee or to any group representative, agent, employer, or enrollee representative without first offering to provide, and providing upon request, the following information before purchase or selection:

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

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

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

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

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

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

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

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

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

(b) A full description of the procedures to be followed by an enrollee for consulting a provider other than the primary care provider and whether the enrollee's primary care provider, the carrier's medical director, or another entity must authorize the referral;

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

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

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

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

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

(h) Accreditation status with one or more national managed care accreditation organizations, and whether the carrier tracks its health care effectiveness performance using the

health employer data information set (HEDIS), whether it publicly reports its HEDIS data, and how interested persons can access its HEDIS data.

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

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

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

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

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

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

(6) No carrier may preclude or discourage its providers from informing an enrollee of the care he or she requires, including various treatment options, and whether in the providers' view such care is consistent with the plan's health coverage criteria, or otherwise covered by the enrollee's medical coverage agreement with the carrier. No carrier may prohibit, discourage, or penalize a provider otherwise practicing in compliance with the law from advocating on behalf of an enrollee with a carrier. Nothing in this section shall be construed to authorize a provider to bind a carrier to pay for any service.

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

(8) Each carrier must communicate enrollee information required in chapter 5, Laws of 2000 by means that ensure that a substantial portion of the enrollee population can make use of the information.

(9) The commissioner may adopt rules to implement this section. In developing rules to implement this section, the commissioner shall consider relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services. [2000 c 5 § 6.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.515 Access to appropriate health services—Enrollee options—Rules. (1) Each enrollee in a health plan must have adequate choice among health care providers.

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

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

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

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

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

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

(8) Every carrier shall meet the standards set forth in this section and any rules adopted by the commissioner to implement this section. In developing rules to implement this section, the commissioner shall consider relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services. [2000 c 5 § 7.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.520 Requirement to maintain a documented utilization review program description and written utilization review criteria—Rules. (1) Carriers that offer a health plan shall maintain a documented utilization review program description and written utilization review criteria based on reasonable medical evidence. The program must

include a method for reviewing and updating criteria. Carriers shall make clinical protocols, medical management standards, and other review criteria available upon request to participating providers.

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

(3) A carrier shall not be required to use medical evidence or standards in its utilization review of religious non-medical treatment or religious nonmedical nursing care. [2000 c 5 § 8.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.525 Prohibition against retrospective denial of health plan coverage—Rules. (1) A health carrier that offers a health plan shall not retrospectively deny coverage for emergency and nonemergency care that had prior authorization under the plan's written policies at the time the care was rendered.

(2) The commissioner shall adopt, in rule, standards for this section after considering relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services. [2000 c 5 § 9.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.530 Requirement for carriers to have a comprehensive grievance process—Carrier's duties—Procedures—Appeals—Rules. (1) Each carrier that offers a health plan must have a fully operational, comprehensive grievance process that complies with the requirements of this section and any rules adopted by the commissioner to implement this section. For the purposes of this section, the commissioner shall consider grievance process standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services.

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

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

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

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

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

(b) Assist the enrollee with the appeal process;

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

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

(e) Consider information submitted by the enrollee;

(f) Investigate and resolve the appeal; and

(g) Provide written notice of its resolution of the appeal to the enrollee and, with the permission of the enrollee, to the enrollee's providers. The written notice must explain the carrier's decision and the supporting coverage or clinical reasons and the enrollee's right to request independent review of the carrier's decision under RCW 48.43.535.

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

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

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

(7) When an enrollee requests that the carrier reconsider its decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving through the health plan and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide that health service until the appeal is resolved. If the resolution of the appeal or any review sought by the enrollee under RCW 48.43.535 affirms the carrier's decision, the enrollee may be responsible for the cost of this continued health service.

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

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

(10) Each carrier must: Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a log of all appeals; and identify and evaluate trends in appeals. [2000 c 5 § 10.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.535 Independent review of health care disputes—System for using certified independent review organizations—Rules. (1) There is a need for a process for the fair consideration of disputes relating to decisions by carriers that offer a health plan to deny, modify, reduce, or ter-

minate coverage of or payment for health care services for an enrollee.

(2) An enrollee may seek review by a certified independent review organization of a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for a health care service, after exhausting the carrier's grievance process and receiving a decision that is unfavorable to the enrollee, or after the carrier has exceeded the timelines for grievances provided in RCW 48.43.530, without good cause and without reaching a decision.

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

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

(a) Any medical records of the enrollee that are relevant to the review;

(b) Any documents used by the carrier in making the determination to be reviewed by the certified independent review organization;

(c) Any documentation and written information submitted to the carrier in support of the appeal; and

(d) A list of each physician or health care provider who has provided care to the enrollee and who may have medical records relevant to the appeal. Health information or other confidential or proprietary information in the custody of a carrier may be provided to an independent review organization, subject to rules adopted by the commissioner.

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

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

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

(8) When an enrollee requests independent review of a dispute under this section, and the dispute involves a carrier's decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving at the time the

request for review is submitted and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide the health service if requested by the enrollee until a determination is made under this section. If the determination affirms the carrier's decision, the enrollee may be responsible for the cost of the continued health service.

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

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

(b) This section is not intended to supplant any existing authority of the office of the insurance commissioner under this title to oversee and enforce carrier compliance with applicable statutes and rules. [2000 c 5 § 11.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.540 Requirement to designate a licensed medical director—Exemption. Any carrier that offers a health plan and any self-insured health plan subject to the jurisdiction of Washington state shall designate a medical director who is licensed under chapter 18.57 or 18.71 RCW. However, a naturopathic or complementary alternative health plan, which provides solely complementary alternative health care to individuals, groups, or health plans, may have a medical director licensed under chapter 18.36A RCW. A carrier that offers dental only coverage shall designate a dental director who is licensed under chapter 18.32 RCW, or licensed in a state that has been determined by the dental quality assurance commission to have substantially equivalent licensing standards to those of Washington. A health plan or self-insured health plan that offers only religious nonmedical treatment or religious nonmedical nursing care shall not be required to have a medical director. [2002 c 103 § 1; 2000 c 5 § 13.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.545 Standard of care—Liability—Causes of action—Defense—Exception. (1)(a) A health carrier shall adhere to the accepted standard of care for health care providers under chapter 7.70 RCW when arranging for the provision of medically necessary health care services to its enrollees. A health carrier shall be liable for any and all harm proximately caused by its failure to follow that standard of care when the failure resulted in the denial, delay, or modification of the health care service recommended for, or furnished to, an enrollee.

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

- (i) Employees;
- (ii) Agents; or

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

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

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

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

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

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

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

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

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

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

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

(ii) The affected enrollee or the enrollee's representative has exercised the opportunity established in RCW 48.43.535 to seek independent review of the health care treatment decision.

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

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

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

(10) This section does not apply to workers' compensation insurance under Title 51 RCW. [2000 c 5 § 17.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.550 Delegation of duties—Carrier accountability. Each carrier is accountable for and must oversee any activities required by chapter 5, Laws of 2000 that it delegates to any subcontractor. No contract with a subcontractor executed by the health carrier or the subcontractor may relieve the health carrier of its obligations to any enrollee for the provision of health care services or of its responsibility for compliance with statutes or rules. [2000 c 5 § 18.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.901 Captions not law—1996 c 312. Captions used in this act do not constitute part of the law. [1996 c 312 § 6.]

48.43.902 Effective date—1996 c 312. This act shall take effect July 1, 1996. [1996 c 312 § 8.]

48.43.903 Severability—1998 c 241. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 241 § 17.]

Chapter 48.44 RCW

HEALTH CARE SERVICES

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Agents of health care service contractors, additional regulations applicable: RCW 48.17.065.

48.44.010 Definitions. For the purposes of this chapter:

(1) "Health care services" means and includes medical, surgical, dental, chiropractic, hospital, optometric, podiatric, pharmaceutical, ambulance, custodial, mental health, and other therapeutic services.

(2) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes health care services and is licensed to furnish such services.

(3) "Health care service contractor" means any corporation, cooperative group, or association, which is sponsored by or otherwise intimately connected with a provider or group of providers, who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any health care services.

(4) "Participating provider" means a provider, who or which has contracted in writing with a health care service contractor to accept payment from and to look solely to such contractor according to the terms of the subscriber contract for any health care services rendered to a person who has previously paid, or on whose behalf prepayment has been made, to such contractor for such services.

(5) "Enrolled participant" means a person or group of persons who have entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health care service contractor to receive health care services.

(6) "Commissioner" means the insurance commissioner.

(7) "Uncovered expenditures" means the costs to the health care service contractor for health care services that are the obligation of the health care service contractor for which an enrolled participant would also be liable in the event of the health care service contractor's insolvency and for which no alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health care service contractor, or for services that are guaranteed, insured or assumed by a person or organization other than the health care service contractor.

(8) "Copayment" means an amount specified in a group or individual contract which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(9) "Deductible" means the amount an enrolled participant is responsible to pay before the health care service contractor begins to pay the costs associated with treatment.

(10) "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specific group. The group contract may include coverage for dependents.

(11) "Individual contract" means a contract for health care services issued to and covering an individual. An individual contract may include dependents.

(12) "Carrier" means a health maintenance organization, an insurer, a health care service contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract.

(13) "Replacement coverage" means the benefits provided by a succeeding carrier.

(14) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

(15) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.44.037(3) and are recorded as equity.

(16) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt. [1990 c 120 § 1; 1986 c 223 § 1. Prior: 1983 c 286 § 3; 1983 c 154 § 3; 1980 c 102 § 10; 1965 c 87 § 1; 1961 c 197 § 1; 1947 c 268 § 1; Rem. Supp. 1947 § 6131-10.]

Severability—1983 c 286: See note following RCW 48.44.309.

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.011 Agent—Definition—License required—Application, issuance, renewal, fees—Penalties involving license. (1) Agent, as used in this chapter, means any person appointed or authorized by a health care service contractor to solicit applications for health care service contracts on its behalf.

(2) No person shall act as or hold himself out to be an agent of a health care service contractor unless licensed as a disability insurance agent by this state and appointed by the health care service contractor on whose behalf solicitations are to be made.

(3) Applications, appointments, and qualifications for licenses, the renewal thereof, the fees and issuance of a license, and the renewal thereof shall be in accordance with the provisions of chapter 48.17 RCW that are applicable to a disability insurance agent.

(4) A person holding a valid license in this state as a health care service contractor agent on July 24, 1983, is not required to requalify by an examination for the renewal of the license.

(5) The commissioner may revoke, suspend, or refuse to issue or renew any agent's license, or levy a fine upon the licensee, in accordance with those provisions of chapter 48.17 RCW that are applicable to a disability insurance agent. [1983 c 202 § 1; 1969 c 115 § 7.]

48.44.013 Filings with secretary of state—Copy for commissioner. Health care service contractors and limited health care service contractors shall send a copy specifically

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for the office of the insurance commissioner to the secretary of state of any corporate document required to be filed in the office of the secretary of state, including articles of incorporation and bylaws, and any amendments thereto. The copy specifically provided for the office of the insurance commissioner shall be in addition to the copies required by the secretary of state and shall clearly indicate on the copy that it is for delivery to the office of the insurance commissioner. [1998 c 23 § 16.]

48.44.015 Registration by health care service contractors required—Penalty. (1) A person may not in this state, by mail or otherwise, act as or hold himself or herself out to be a health care service contractor, as defined in RCW 48.44.010 without first being registered with the commissioner.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health care service contractor domiciled in this state other than the memberships and bonds of a nonprofit corporation shall be subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health care service contractors were domestic insurers.

(3) Any person violating any provision of subsection (2) of this section is guilty of a gross misdemeanor and will, upon conviction, be fined not more than one thousand dollars or imprisoned for not more than six months, or both, for each violation. [2003 c 250 § 7; 1983 c 202 § 2; 1969 c 115 § 6.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.44.016 Unregistered activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves a health care services contract.

(3) Any person who knowingly violates RCW 48.44.015(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.44.015(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 8.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.44.017 Schedule of rates for individual contracts—Loss ratio—Remittance of premiums—Definitions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health care service contractor of health care services, as defined in RCW 48.43.005, provided to a contract holder or paid to or on behalf of a contract holder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(d) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(e) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(f) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health care service contractor shall file, for informational purposes only, a notice of its schedule of rates for its individual contracts with the commissioner prior to use.

(3) A health care service contractor shall file with the notice required under subsection (2) of this section supporting documentation of its method of determining the rates charged. The commissioner may request only the following supporting documentation:

(a) A description of the health care service contractor's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health care service contractor's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard established in subsection (7) of this section.

(4) The commissioner may not disapprove or otherwise impede the implementation of the filed rates.

(5) By the last day of May each year any health care service contractor issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered or renewed in this state in aggregate for the preceding calendar year. The filing shall include aggregate earned pre-

miums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health care service contractor.

(c) Any dispute regarding the calculation of the actual loss ratio shall upon written demand of either the commissioner or the health care service contractor be submitted to hearing under chapters 48.04 and 34.05 RCW.

(6) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (7) of this section, a remittance is due and the following shall apply:

(a) The health care service contractor shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (7) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (5)(a) of this section or the determination by an administrative law judge under subsection (5)(c) of this section.

(7) The loss ratio applicable to this section shall be seventy-four percent minus the premium tax rate applicable to the health care service contractor's individual health benefit plans under RCW 48.14.0201. [2001 c 196 § 11; 2000 c 79 § 29.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.44.020 Contracts for services—Examination of contract forms by commissioner—Grounds for disapproval—Liability of participant. (1) Any health care service contractor may enter into contracts with or for the benefit of persons or groups of persons which require prepayment for health care services by or for such persons in consideration of such health care service contractor providing one or more health care services to such persons and such activity shall not be subject to the laws relating to insurance if the health care services are rendered by the health care service contractor or by a participating provider.

(2) The commissioner may on examination, subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, disapprove any individual or group contract form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(b) If it has any title, heading, or other indication of its provisions which is misleading; or

(c) If purchase of health care services thereunder is being solicited by deceptive advertising; or

(d) If it contains unreasonable restrictions on the treatment of patients; or

(e) If it violates any provision of this chapter; or

(f) If it fails to conform to minimum provisions or standards required by regulation made by the commissioner pursuant to chapter 34.05 RCW; or

(g) If any contract for health care services with any state agency, division, subdivision, board, or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law.

(3) In addition to the grounds listed in subsection (2) of this section, the commissioner may disapprove any group contract if the benefits provided therein are unreasonable in relation to the amount charged for the contract.

(4)(a) Every contract between a health care service contractor and a participating provider of health care services shall be in writing and shall state that in the event the health care service contractor fails to pay for health care services as provided in the contract, the enrolled participant shall not be liable to the provider for sums owed by the health care service contractor. Every such contract shall provide that this requirement shall survive termination of the contract.

(b) No participating provider, agent, trustee, or assignee may maintain any action against an enrolled participant to collect sums owed by the health care service contractor. [2000 c 79 § 28; 1990 c 120 § 5; 1986 c 223 § 2; 1985 c 283 § 1; 1983 c 286 § 4; 1973 1st ex.s. c 65 § 1; 1969 c 115 § 1; 1961 c 197 § 2; 1947 c 268 § 2; Rem. Supp. 1947 § 6131-11.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Severability—1983 c 286: See note following RCW 48.44.309.

48.44.022 Calculation of premiums—Adjusted community rate—Definitions. (1) Premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health care service contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

(i) Geographic area;

(ii) Family size;

(iii) Age;

(iv) Tenure discounts; and

(v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-

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five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health care service contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the family composition;

(ii) Changes to the health benefit plan requested by the individual; or

(iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.44.023.

(3) As used in this section and RCW 48.44.023 "health benefit plan," "small employer," "adjusted community rates," and "wellness activities" mean the same as defined in RCW 48.43.005. [2004 c 244 § 6; 2000 c 79 § 30; 1997 c 231 § 208; 1995 c 265 § 15.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.44.023 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (1)(a) A health care services contractor offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of

covered health care services. Nothing in this subsection shall preclude a contractor from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A contractor offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.340, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460.

(2) Nothing in this section shall prohibit a health care service contractor from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a contractor in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A contractor shall not require a minimum participation level greater than:

- (i) One hundred percent of eligible employees working for groups with three or less employees; and
- (ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A contractor may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) A contractor must offer coverage to all eligible employees of a small employer and their dependents. A contractor may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the

group. A contractor may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan. [2004 c 244 § 7; 1995 c 265 § 16; 1990 c 187 § 3.]

Application—2004 c 244: See note following RCW 48.21.045.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.44.024 Requirements for plans offered to small employers—Definitions. (1) A health care service contractor may not offer any health benefit plan to any small employer without complying with RCW 48.44.023(3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and the plans are not subject to RCW 48.44.023(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [2003 c 248 § 15; 1995 c 265 § 23.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.44.026 Payment for certain health care services.

Checks in payment for claims pursuant to any health care service contract for health care services provided by persons licensed or regulated under chapters 18.25, 18.29, 18.30, 18.32, 18.53, 18.57, 18.64, 18.71, 18.73, 18.74, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners, where the provider is not a participating provider under a contract with the health care service contractor, shall be made out to both the provider and the enrolled participant with the provider as the first named payee, jointly, to require endorsement by each: PROVIDED, That payment shall be made in the single name of the enrolled participant if the enrolled participant as part of his or her claim furnishes evidence of prepayment to the health care service provider: AND PROVIDED FURTHER, That nothing in this section shall preclude a health care service contractor from voluntarily issuing payment in the single name of the provider. [1999 c 130 § 1; 1994 sp.s. c 9 § 732; 1990 c 120 § 6; 1989 c 122 § 1; 1984 c 283 § 1; 1982 c 168 § 1.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

48.44.030 Underwriting of indemnity by insurance policy, bond, securities, or cash deposit. If any of the health care services which are promised in any such agreement are not to be performed by the health care service contractor, or by a participating provider, such activity shall not be subject to the laws relating to insurance, provided provision is made for reimbursement or indemnity of the persons who have previously paid, or on whose behalf prepayment has been made, for such services. Such reimbursement or indemnity shall either be underwritten by an insurance company authorized to write accident, health and disability insur-

ance in the state or guaranteed by a surety company authorized to do business in this state, or guaranteed by a deposit of cash or securities eligible for investment by insurers pursuant to chapter 48.13 RCW, with the insurance commissioner, as hereinafter provided. If the reimbursement or indemnity is underwritten by an insurance company, the contract or policy of insurance may designate the health care service contractor as the named insured, but shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services. If the reimbursement or indemnity is guaranteed by a surety company, the surety bond shall designate the state of Washington as the named obligee, but shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services, and shall be in such amount as the insurance commissioner shall direct, but in no event in a sum greater than the amount of one hundred fifty thousand dollars or the amount necessary to cover incurred but unpaid reimbursement or indemnity benefits as reported in the last annual statement filed with the insurance commissioner, and adjusted to reflect known or anticipated increases or decreases during the ensuing year, plus an amount of unearned prepayments applicable to reimbursement or indemnity benefits satisfactory to the insurance commissioner, whichever amount is greater. A copy of such insurance policy or surety bond, as the case may be, and any modification thereof, shall be filed with the insurance commissioner. If the reimbursement or indemnity is guaranteed by a deposit of cash or securities, such deposit shall be in such amount as the insurance commissioner shall direct, but in no event in a sum greater than the amount of one hundred fifty thousand dollars or the amount necessary to cover incurred but unpaid reimbursement or indemnity benefits as reported in the last annual statement filed with the insurance commissioner, and adjusted to reflect known or anticipated increases or decreases during the ensuing year, plus an amount of unearned prepayments applicable to reimbursement or indemnity benefits satisfactory to the insurance commissioner, whichever amount is greater. Such cash or security deposit shall be held in trust by the insurance commissioner and shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services. [1990 c 120 § 7; 1986 c 223 § 3; 1981 c 339 § 22; 1969 c 115 § 2; 1961 c 197 § 3; 1947 c 268 § 3; Rem. Supp. 1947 § 6131-12.]

48.44.033 Financial failure—Supervision of commissioner—Priority of distribution of assets. (1) Any rehabilitation, liquidation, or conservation of a health care service contractor shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a health care service contractor upon any one or more grounds set out in RCW 48.31.030, 48.31.050, and 48.31.080.

(2) For purpose of determining the priority of distribution of general assets, claims of enrolled participants and enrolled participants' beneficiaries shall have the same prior-

ity as established by RCW 48.31.280 for policyholders and beneficiaries of insureds of insurance companies. If an enrolled participant is liable to any provider for services provided pursuant to and covered by the health care plan, that liability shall have the status of an enrolled participant claim for distribution of general assets.

(3) Any provider who is obligated by statute or agreement to hold enrolled participants harmless from liability for services provided pursuant to and covered by a health care plan shall have a priority of distribution of the general assets immediately following that of enrolled participants and enrolled participants' beneficiaries as described herein, and immediately preceding the priority of distribution described in chapter 48.31 RCW. [1990 c 120 § 2.]

48.44.035 Limited health care service—Uncovered expenditures—Minimum net worth requirements. (1) For purposes of this section only, "limited health care service" means dental care services, vision care services, mental health services, chemical dependency services, pharmaceutical services, podiatric care services, and such other services as may be determined by the commissioner to be limited health services, but does not include hospital, medical, surgical, emergency, or out-of-area services except as those services are provided incidentally to the limited health services set forth in this subsection.

(2) For purposes of this section only, a "limited health care service contractor" means a health care service contractor that offers one and only one limited health care service.

(3) Except as provided in subsection (4) of this section, every limited health care service contractor must have and maintain a minimum net worth of three hundred thousand dollars.

(4) A limited health care service contractor registered before July 27, 1997, that, on July 27, 1997, has a minimum net worth equal to or greater than that required by subsection (3) of this section must continue to have and maintain the minimum net worth required by subsection (3) of this section. A limited health care service contractor registered before July 27, 1997, that, on July 27, 1997, does not have the minimum net worth required by subsection (3) of this section must have and maintain a minimum net worth of:

(a) Thirty-five percent of the amount required by subsection (3) of this section by December 31, 1997;

(b) Seventy percent of the amount required by subsection (3) of this section by December 31, 1998; and

(c) One hundred percent of the amount required by subsection (3) of this section by December 31, 1999.

(5) For all limited health care service contractors that have had a certificate of registration for less than three years, their uncovered expenditures shall be either insured or guaranteed by a foreign or domestic carrier admitted in the state of Washington or by another carrier acceptable to the commissioner. All such contractors shall also deposit with the commissioner one-half of one percent of their projected premium for the next year in cash, approved surety bond, securities, or other form acceptable to the commissioner.

(6) For all limited health care service contractors that have had a certificate of registration for three years or more, their uncovered expenditures shall be assured by depositing with the insurance commissioner twenty-five percent of their

last year's uncovered expenditures as reported to the commissioner and adjusted to reflect any anticipated increases or decreases during the ensuing year plus an amount for unearned prepayments; in cash, approved surety bond, securities, or other form acceptable to the commissioner. Compliance with subsection (5) of this section shall also constitute compliance with this requirement.

(7) Limited health service contractors need not comply with RCW 48.44.030 or 48.44.037. [1997 c 212 § 1; 1990 c 120 § 3.]

48.44.037 Minimum net worth—Requirement to maintain—Determination of amount. (1) Except as provided in subsection (2) of this section, every health care service contractor must have and maintain a minimum net worth equal to the greater of:

(a) Three million dollars; or

(b) Two percent of the annual premium earned, as reported on the most recent annual financial statement filed with the commissioner, on the first one hundred fifty million dollars of premium and one percent of the annual premium on the premium in excess of one hundred fifty million dollars.

(2) A health care service contractor registered before July 27, 1997, that, on July 27, 1997, has a minimum net worth equal to or greater than that required by subsection (1) of this section must continue to have and maintain the minimum net worth required by subsection (1) of this section. A health care service contractor registered before July 27, 1997, that, on July 27, 1997, does not have the minimum net worth required by subsection (1) of this section must have and maintain a minimum net worth of:

(a) The amount required immediately prior to July 27, 1997, until December 31, 1997;

(b) Fifty percent of the amount required by subsection (1) of this section by December 31, 1997;

(c) Seventy-five percent of the amount required by subsection (1) of this section by December 31, 1998; and

(d) One hundred percent of the amount required by subsection (1) of this section by December 31, 1999.

(3)(a) In determining net worth, no debt shall be considered fully subordinated unless the subordination is in a form acceptable to the commissioner. An interest obligation relating to the repayment of a subordinated debt must be similarly subordinated.

(b) The interest expenses relating to the repayment of a fully subordinated debt shall not be considered uncovered expenditures.

(c) A subordinated debt incurred by a note meeting the requirement of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(4) Every health care service contractor shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of the claims.

Liabilities shall be computed in accordance with regulations adopted by the commissioner upon reasonable consider-

ation of the ascertained experience and character of the health care service contractor.

(5) All income from reserves on deposit with the commissioner shall belong to the depositing health care service contractor and shall be paid to it as it becomes available.

(6) Any funded reserve required by this chapter shall be considered an asset of the health care service contractor in determining the organization's net worth.

(7) A health care service contractor that has made a securities deposit with the commissioner may, at its option, withdraw the securities deposit or any part thereof after first having deposited or provided in lieu thereof an approved surety bond, a deposit of cash or securities, or any combination of these or other deposits of equal amount and value to that withdrawn. Any securities and surety bond shall be subject to approval by the commissioner before being substituted. [1997 c 212 § 2; 1990 c 120 § 4.]

48.44.039 Minimum net worth—Domestic or foreign health care service contractor. (1) For purposes of this section:

(a) "Domestic health care service contractor" means a health care service contractor formed under the laws of this state; and

(b) "Foreign health care service contractor" means a health care service contractor formed under the laws of the United States, of a state or territory of the United States other than this state, or of the District of Columbia.

(2) If the minimum net worth of a domestic health care service contractor falls below the minimum net worth required by this chapter, the commissioner shall at once ascertain the amount of the deficiency and serve notice upon the domestic health care service contractor to cure the deficiency within ninety days after that service of notice.

(3) If the deficiency is not cured, and proof thereof filed with the commissioner within the ninety-day period, the domestic health care service contractor shall be declared insolvent and shall be proceeded against as authorized by this code, or the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the registration of the domestic health care service contractor as being hazardous to its subscribers and the people in this state.

(4) If the deficiency is not cured the domestic health care service contractor shall not issue or deliver any individual or group contract after the expiration of the ninety-day period.

(5) If the minimum net worth of a foreign health care service contractor falls below the minimum net worth required by this chapter, the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the foreign health care service contractor's registration as being hazardous to its subscribers or the people in this state. [1997 c 212 § 3.]

48.44.040 Registration with commissioner—Fee. Every health care service contractor who or which enters into agreements which require prepayment for health care services shall register with the insurance commissioner on forms to be prescribed and provided by him. Such registrants shall state their name, address, type of organization, area of operation, type or types of health care services provided, and such

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other information as may reasonably be required by the insurance commissioner and shall file with such registration a copy of all contracts being offered and a schedule of all rates charged. No registrant shall change any rates, modify any contract, or offer any new contract, until he has filed a copy of the changed rate schedule, modified contract, or new contract with the insurance commissioner. The insurance commissioner shall charge a fee of ten dollars for the filing of each original registration statement and may require each registrant to file a current reregistration statement annually thereafter. [1947 c 268 § 4; Rem. Supp. 1947 § 6131-13.]

48.44.050 Rules and regulations. The insurance commissioner shall make reasonable regulations in aid of the administration of this chapter which may include, but shall not be limited to regulations concerning the maintenance of adequate insurance, bonds, or cash deposits, information required of registrants, and methods of expediting speedy and fair payments to claimants. [1947 c 268 § 5; Rem. Supp. 1947 § 6131-14.]

48.44.055 Plan for handling insolvency—Commissioner's review. Each health care service contractor shall have a plan for handling insolvency that allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. The commissioner shall approve such a plan if it includes:

(1) Insurance to cover the expenses to be paid for continued benefits after insolvency;

(2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health care service contractor's insolvency for which premium payment has been made and until the enrolled participants are discharged from inpatient facilities;

(3) Use of insolvency reserves established under RCW 48.44.030;

(4) Acceptable letters of credit or approved surety bonds; or

(5) Any other arrangements the commissioner and the organization mutually agree are appropriate to assure that the benefits are continued. [1990 c 120 § 11.]

48.44.057 Insolvency—Commissioner's duties—Participants' options—Allocation of coverage. (1)(a) In the event of insolvency of a health services contractor or health maintenance organization and upon order of the commissioner, all other carriers then having active enrolled participants under a group plan with the affected agreement holder that participated in the enrollment process with the insolvent health services contractor or health maintenance organization at a group's last regular enrollment period shall offer the eligible enrolled participants of the insolvent health services contractor or health maintenance organization the opportunity to enroll in an existing group plan without medical underwriting during a thirty-day open enrollment period, commencing on the date of the insolvency. Eligible enrolled participants shall not be subject to preexisting condition lim-

itations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. An open enrollment shall not be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule, unless the plan administrator and agreement holder voluntarily agree to offer a simultaneous open enrollment and extend coverage under the same enrollment terms and conditions as are applicable to carriers under this title and rules adopted under this title. If an exempt plan was offered during the last regular open enrollment period, then the carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(b) For purposes of this subsection only, the term "carrier" means a health maintenance organization or a health care services contractor. In the event of insolvency of a carrier and if no other carrier has active enrolled participants under a group plan with the affected agreement holder, or if the commissioner determines that the other carriers lack sufficient health care delivery resources to assure that health services will be available or accessible to all of the group enrollees of the insolvent carrier, then the commissioner shall allocate equitably the insolvent carrier's group agreements for these groups among all carriers that operate within a portion of the insolvent carrier's area, taking into consideration the health care delivery resources of each carrier. Each carrier to which a group or groups are allocated shall offer the agreement holder, without medical underwriting, the carrier's existing coverage that is most similar to each group's coverage with the insolvent carrier at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. No offering by a carrier shall be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule. The carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(2) The commissioner shall also allocate equitably the insolvent carrier's nongroup enrolled participants who are unable to obtain coverage among all carriers that operate within a portion of the insolvent carrier's service area, taking into consideration the health care delivery resources of the carrier. Each carrier to which nongroup enrolled participants are allocated shall offer the nongroup enrolled participants the carrier's existing comprehensive conversion plan, without additional medical underwriting, at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's plan.

(3) Any agreements covering participants allocated pursuant to subsections (1)(b) and (2) of this section to carriers

pursuant to this section may be rerated after ninety days of coverage.

(4) A limited health care service contractor shall not be required to offer services other than its one limited health care service to any enrolled participant of an insolvent carrier. [1990 c 120 § 8.]

48.44.060 Penalty. Except as otherwise provided in this chapter, any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor. [2003 c 250 § 9; 1947 c 268 § 6; Rem. Supp. 1947 § 6131-15.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.44.070 Contracts to be filed with commissioner.

(1) Forms of contracts between health care service contractors and participating providers shall be filed with the insurance commissioner prior to use.

(2) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(3) Subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW. [1990 c 120 § 9; 1965 c 87 § 2; 1961 c 197 § 4.]

48.44.080 Master lists of contractor's participating providers—Filing with commissioner—Notice of termination or participation. Every health care service contractor shall file with its annual statement with the insurance commissioner a master list of the participating providers with whom or with which such health care service contractor has executed contracts of participation, certifying that each such participating provider has executed such contract of participation. The health care service contractor shall on the first day of each month notify the insurance commissioner in writing in case of the termination of any such contract, and of any participating provider who has entered into a participating contract during the preceding month. [1990 c 120 § 10; 1986 c 223 § 4; 1965 c 87 § 3; 1961 c 197 § 5.]

48.44.090 Refusal to register corporate, etc., contractor if name confusing with existing contractor or insurance company. The insurance commissioner shall refuse to accept the registration of any corporation, cooperative group, or association seeking to act as a health care service contractor if, in his discretion, the insurance commissioner deems that the name of the corporation, cooperative group, or association would be confused with the name of an existing registered health care service contractor or authorized insurance company. [1961 c 197 § 6.]

48.44.095 Annual financial statement—Filings—Contents—Fee—Penalty for failure to file. (1) Every

health care service contractor shall annually, before the first day of March, file with the commissioner a statement verified by at least two of the principal officers of the health care service contractor showing its financial condition as of the last day of the preceding calendar year. The statement shall be in such form as is furnished or prescribed by the commissioner. The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed.

(2) In addition to the requirements of subsection (1) of this section, every health care service contractor that is registered in this state shall annually, on or before March 1st of each year, file with the national association of insurance commissioners a copy of its annual statement, along with those additional schedules as prescribed by the commissioner for the preceding year. The information filed with the national association of insurance commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

(3) Coincident with the filing of its annual statement and other schedules, each health care service contractor shall pay a reasonable fee directly to the national association of insurance commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement.

(4) Foreign health care service contractors that are domiciled in a state that has a law substantially similar to subsection (2) of this section are considered to be in compliance with this section.

(5) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, national association of insurance commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected for the filings required under this section.

(6) The commissioner may suspend or revoke the certificate of registration of any health care service contractor failing to file its annual statement or pay the fees when due or during any extension of time therefor which the commissioner, for good cause, may grant. [1997 c 212 § 4; 1993 c 492 § 295; 1983 c 202 § 3; 1969 c 115 § 5.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.44.100 Filing inaccurate financial statement prohibited. No person shall knowingly file with any public official or knowingly make, publish, or disseminate any financial statement of a health care service contractor which does not

accurately state the health care service contractor's financial condition. [1961 c 197 § 7.]

48.44.110 False representation, advertising. No person shall knowingly make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a health care service contractor, or relative to the business of a health care service contractor or to any person engaged therein. [1961 c 197 § 8.]

48.44.120 Misrepresentations of contract terms, benefits, etc. No person shall knowingly make, issue, or circulate, or cause to be made, issued, or circulated, a misrepresentation of the terms of any contract, or the benefits or advantages promised thereby, or use the name or title of any contract or class of contract misrepresenting the nature thereof. [1961 c 197 § 9.]

48.44.130 Future dividends or refunds—When permissible. No health care service contractor nor any individual acting on behalf thereof shall guarantee or agree to the payment of future dividends or future refunds of unused charges or savings in any specific or approximate amounts or percentages in respect to any contract being offered to the public, except in a group contract containing an experience refund provision. [1961 c 197 § 10.]

48.44.140 Misleading comparisons to terminate or retain contract. No health care service contractor nor any person representing a health care service contractor shall by misrepresentation or misleading comparisons induce or attempt to induce any member of any health care service contractor to terminate or retain a contract or membership. [1961 c 197 § 11.]

48.44.145 Examination of contractors—Duties of contractor, powers of commissioner—Independent audit reports. (1) The commissioner may make an examination of the operations of any health care service contractor as often as he deems necessary in order to carry out the purposes of this chapter.

(2) Every health care service contractor shall submit its books and records relating to its operation for financial condition and market conduct examinations and in every way facilitate them. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health care service contractor.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health care service contractor in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his report of the examination.

(4) Whenever any health care service contractor applies for initial admission, the commissioner may make, or cause to be made, an examination of the applicant's business and affairs. Whenever such an examination is made, all of the provisions of chapter 48.03 RCW not inconsistent with this

chapter shall be applicable. In lieu of making an examination himself the commissioner may, in the case of a foreign health care service contractor, accept an examination report of the applicant by the regulatory official in its state of domicile. [1986 c 296 § 8; 1983 c 63 § 1; 1969 c 115 § 12.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

48.44.150 Certificate of registration not an endorsement—Display in solicitation prohibited. The granting of a certificate of registration to a health care service contractor is permissive only, and shall not constitute an endorsement by the insurance commissioner of any person or thing related to the health care service contractor, and no person shall advertise or display a certificate of registration for use as an inducement in any solicitation. [1961 c 197 § 12.]

48.44.160 Revocation, suspension, refusal of registration—Hearing—Cease and desist orders, injunctive action—Grounds. The insurance commissioner may, subject to a hearing if one is demanded pursuant to chapters 48.04 and 34.05 RCW, revoke, suspend, or refuse to accept or renew registration from any health care service contractor, or he may issue a cease and desist order, or bring an action in any court of competent jurisdiction to enjoin a health care service contractor from doing further business in this state, if such health care service contractor:

(1) Fails to comply with any provision of chapter 48.44 RCW or any proper order or regulation of the commissioner.

(2) Is found by the commissioner to be in such financial condition that its further transaction of business in this state would jeopardize the payment of claims and refunds to subscribers.

(3) Has refused to remove or discharge a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude, after written request by the commissioner for such removal, and expiration of a reasonable time therefor as specified in such request.

(4) Usually compels claimants under contracts either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due.

(5) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another health care contractor which operates in this state without having registered therefor, except as is permitted by this chapter.

(6) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(7) Fails to pay any final judgment rendered against it in this state upon any contract, bond, recognizance, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(8) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its directors, officers, or by any other

means, who are incompetent or untrustworthy or so lacking in health care contracting or related managerial experience as to make the operation hazardous to the subscribing public; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, or other business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders, or investors or creditors or subscribers or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance. [1988 c 248 § 19; 1973 1st ex.s. c 65 § 2; 1969 c 115 § 3; 1961 c 197 § 13.]

48.44.164 Notice of suspension, revocation, or refusal to be given contractor—Authority of agents. Upon the suspension, revocation or refusal of a health care service contractor's registration, the commissioner shall give notice thereof to such contractor and shall likewise suspend, revoke or refuse the authority of its agents to represent it in this state and give notice thereof to the agents. [1969 c 115 § 10.]

48.44.166 Fine in addition to or in lieu of suspension, revocation, or refusal. After hearing or upon stipulation by the registrant and in addition to or in lieu of the suspension, revocation or refusal to renew any registration of a health care service contractor the commissioner may levy a fine against the party involved for each offense in an amount not less than fifty dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the registration of the registrant, if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1983 c 202 § 4; 1969 c 115 § 11.]

48.44.170 Hearings and appeals. For the purposes of this chapter, the insurance commissioner shall be subject to and may avail himself of the provisions of chapter 48.04 RCW, which relate to hearings and appeals. [1961 c 197 § 14.]

48.44.180 Enforcement. For the purposes of this chapter, the insurance commissioner shall have the same powers and duties of enforcement as are provided in RCW 48.02.080. [1961 c 197 § 15.]

48.44.200 Individual health care service plan contracts—Coverage of dependent child not to terminate because of developmental disability or physical handicap. An individual health care service plan contract, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of

self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the health care service plan corporation by the subscriber within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the corporation but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1977 ex.s. c 80 § 33; 1969 ex.s. c 128 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

48.44.210 Group health care service plan contracts—Coverage of dependent child not to terminate because of developmental disability or physical handicap. A group health care service plan contract, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the health care service plan corporation by the employee or member within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the corporation, but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1977 ex.s. c 80 § 34; 1969 ex.s. c 128 § 2.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

48.44.212 Coverage of dependent children to include newborn infants and congenital anomalies from moment of birth—Notification period. (1) Any health care service plan contract under this chapter delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for dependent children of the insured or covered group member, shall provide coverage for newborn infants of the insured or covered group member from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium must be furnished to the contractor. The notification period shall be no less than sixty days from the date of birth. This subsection applies to policies issued or renewed on or after January 1, 1984. [1984 c 4 § 1; 1983 c 202 § 5; 1974 ex.s. c 139 § 3.]

48.44.220 Discrimination prohibited. No health care service contractor shall deny coverage to any person solely

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on account of race, religion, national origin, or the presence of any sensory, mental, or physical handicap. Nothing in this section shall be construed as limiting a health care service contractor's authority to deny or otherwise limit coverage to a person when the person because of a medical condition does not meet the essential eligibility requirements established by the health care service contractor for purposes of determining coverage for any person.

No health care service contractor shall refuse to provide reimbursement or indemnity to any person for covered health care services for reasons that the health care services were provided by a holder of a license under chapter 18.22 RCW. [1983 c 154 § 4; 1979 c 127 § 1; 1969 c 115 § 4.]

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.225 *Podiatrists not excluded. A health care service contractor which provides foot care services shall not exclude any individual doctor who is licensed to perform podiatric health care services from being a participant for reason that the doctor is licensed under chapter 18.22 RCW. Rejections of requests by doctors to be participants must be in writing stating the cause for the rejection. [1983 c 154 § 5.]

***Reviser's note:** The term "podiatrists" was changed to "podiatric physicians and surgeons" by 1990 c 147.

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.230 Individual health service plan contract—Return within ten days of delivery—Refunds—Void from beginning—Notice required. Every subscriber of an individual health care service plan contract issued after September 1, 1973, may return the contract to the health care service contractor or the agent through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the contract, he is not satisfied with it for any reason, and the health care service contractor shall refund promptly any fee paid for such contract. Upon such return of the contract it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. Notice of the substance of this section shall be printed on the face of each such contract or be attached thereto. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. [1983 1st ex.s. c 32 § 11; 1973 1st ex.s. c 65 § 4.]

48.44.240 Chemical dependency benefits—Provisions of group contracts delivered or renewed after January 1, 1988. Each group contract for health care services which is delivered or issued for delivery or renewed, on or after January 1, 1988, shall contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by a provider which is an "approved treatment facility or program" under *RCW 70.96A.020(3). [1990 1st ex.s. c 3 § 12; 1987 c 458 § 16; 1975 1st ex.s. c 266 § 14; 1974 ex.s. c 119 § 4.]

***Reviser's note:** RCW 70.96A.020(3) defines "approved treatment program."

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

Legislative declaration—1974 ex.s. c 119: See RCW 48.21.160.

Chemical dependency benefits, rules: RCW 48.21.197.

48.44.241 Chemical dependency benefits—RCW 48.21.160 through 48.21.190, 48.44.240 inapplicable, when. See RCW 48.21.190.

48.44.245 "Chemical dependency" defined. For the purposes of RCW 48.44.240, "chemical dependency" means an illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. [1987 c 458 § 17.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

48.44.250 Payment of premium by employee in event of suspension of compensation due to labor dispute. Any employee whose compensation includes a health care services contract providing health care services expenses, the premiums for which are paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the premiums as they become due directly to the contract holder whenever the employee's compensation is suspended or terminated directly or indirectly as the result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the health care services contract provides. During that period of time such contract may not be altered or changed. Nothing in this section shall be deemed to impair the right of the health care service contractor to make normal decreases or increases of the premium rate upon expiration and renewal of the contract, in accordance with the provisions of the contract. Thereafter, if such health care services coverage is no longer available, then the employee shall be given the opportunity to purchase an individual health care services contract at a rate consistent with rates filed by the health care service contractor with the commissioner. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the contract holder in writing, by mail addressed to the address last of record with the contract holder, that the employee may pay the premiums to the contract holder as they become due as provided in this section.

Payment of the premiums must be made when due or the coverage may be terminated by the health care service contractor.

The provisions of any health care services contract contrary to provisions of this section are void and unenforceable after May 29, 1975. [1982 c 149 § 1; 1975 1st ex.s. c 117 § 3.]

Severability—1975 1st ex.s. c 117: See note following RCW 48.21.075.

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48.44.260 Notice of reason for cancellation, denial, or refusal to renew contract. Every authorized health care service contractor, upon canceling, denying, or refusing to renew any individual health care service contract, shall, upon written request, directly notify in writing the applicant or subscriber, as the case may be, of the reasons for the action by the health care service contractor. Any benefits, terms, rates, or conditions of such a contract which are restricted, excluded, modified, increased, or reduced shall, upon written request, be set forth in writing and supplied to the subscriber. The written communications required by this section shall be phrased in simple language which is readily understandable to a person of average intelligence, education, and reading ability. [1993 c 492 § 290; 1979 c 133 § 3.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.44.270 Immunity from libel or slander. With respect to health care service contracts as defined in RCW 48.44.260, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, the commissioner's agents, or members of the commissioner's staff, or against any health care service contractor, its authorized representative, its agents, its employees, furnishing to the health care service contractor information as to reasons for cancellation or refusal to issue or renew, for libel or slander on the basis of any statement made by any of them in any written notice of cancellation or refusal to issue or renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to issue or renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith. [1979 c 133 § 4.]

48.44.290 Registered nurses or advanced registered nurses. Notwithstanding any provision of this chapter, for any health care service contract thereunder which is entered into or renewed after July 26, 1981, benefits shall not be denied under such contract for any health care service performed by a holder of a license for registered nursing practice or advanced registered nursing practice issued pursuant to chapter 18.79 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent that they do not impair the obligation of any existing contract. [1994 sp.s. c 9 § 733; 1986 c 223 § 6; 1981 c 175 § 1.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

48.44.299 Legislative finding. The legislature finds and declares that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired by prepaid agreements which provide bene-

fits, reimbursement, or indemnity by health care service contractors, whether for profit or for nonprofit, which do not provide parity of reimbursement among licensed health care providers performing the same health care services. It is further the intent of the legislature not to mandate the providing of any health care benefit, but rather to require parity of reimbursement for the same health care services performed by all licensees who perform such services within the scope of their respective licenses thereby assuring the people of the state access to health care services of their choice. [1983 c 154 § 1.]

Severability—1983 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 154 § 6.]

48.44.300 *Podiatry—Benefits not to be denied. Benefits shall not be denied under a contract for any health care service performed by a holder of a license issued under chapter 18.22 RCW if (1) the service performed was within the lawful scope of the person's license, and (2) the contract would have provided benefits if the service had been performed by a holder of a license issued under chapter 18.71 RCW. There shall not be imposed upon one class of doctors providing health care services as defined by this chapter any requirement that is not imposed upon all other doctors providing the same or similar health care services within the scope of their license.

The provisions of this section are intended to be procedural to the extent that they do not impair the obligation of any existing contract. [1986 c 223 § 7; 1983 c 154 § 2.]

***Reviser's note:** The term "podiatry" was changed to "podiatric medicine and surgery" by 1990 c 147.

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.305 When injury caused by intoxication or use of narcotics. A health care service contractor may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the enrolled participant's being intoxicated or under the influence of a narcotic. [2004 c 112 § 4.]

Finding—Application—2004 c 112: See notes following RCW 48.20.385.

48.44.309 Legislative finding. The legislature finds and declares that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired. The legislature further finds that there is a heavy reliance by the public upon prepaid health care service agreements and insurance, whether profit or nonprofit, as the only effective manner in which the large majority of the people can obtain access to quality health care. Further, the legislature finds that health care service agreements may be anti-competitive because of the exclusion of other licensed forms of health care and that because of the high costs of health care, there is a need for competition to reduce these costs. It is, therefore, declared to be in the public interest that these contracts as a form of insurance be regulated under the police power of the state to assure that all the people have the greatest access to health care services. [1983 c 286 § 1.]

Severability—1983 c 286: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 286 § 5.]

48.44.310 Chiropractic care, coverage required, exceptions. (1) Each group contract for comprehensive health care service which is entered into, or renewed, on or after September 8, 1983, between a health care service contractor and the person or persons to receive such care shall offer coverage for chiropractic care on the same basis as any other care.

(2) A patient of a chiropractor shall not be denied benefits under a contract because the practitioner is not licensed under chapter 18.57 or 18.71 RCW.

(3) This section shall not apply to a group contract for comprehensive health care services entered into in accordance with a collective bargaining agreement between management and labor representatives. Benefits for chiropractic care shall be offered by the employer in good faith on the same basis as any other care as a subject for collective bargaining for group contracts for health care services. [1986 c 223 § 8; 1983 c 286 § 2.]

Severability—1983 c 286: See note following RCW 48.44.309.

48.44.315 Diabetes coverage—Definitions. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, non-insulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All health benefit plans offered by health care service contractors, issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For health benefit plans that include coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all health benefit plans, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the health care services

contractor from restricting patients to seeing only health care providers who have signed participating provider agreements with the health care services contractor or an insuring entity under contract with the health care services contractor.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The health care service contractor need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plans that provide benefits identical to the schedule of services covered by the basic health plan. [2004 c 244 § 12; 1997 c 276 § 4.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—1997 c 276: See note following RCW 41.05.185.

48.44.320 Home health care, hospice care, optional coverage required—Standards, limitations, restrictions—Rules—Medicare supplemental contracts excluded.

(1) Every health care service contractor entering into or renewing a group health care service contract governed by this chapter shall offer optional coverage for home health care and hospice care for persons who are homebound and would otherwise require hospitalization. Such optional coverage need only be offered in conjunction with a policy that provides payment for hospitalization as a part of health care coverage.

(2) Home health care and hospice care coverage offered under subsection (1) of this section shall conform to the following standards, limitations, and restrictions in addition to those set forth in chapters 70.126 and 70.127 RCW:

(a) The coverage may include reasonable deductibles, coinsurance provisions, and internal maximums;

(b) The coverage should be structured to create incentives for the use of home health care and hospice care as an alternative to hospitalization;

(c) The coverage may contain provisions for utilization review and quality assurance;

(d) The coverage may require that home health agencies and hospices have written treatment plans approved by a physician licensed under chapter 18.57 or 18.71 RCW, and may require such treatment plans to be reviewed at designated intervals;

(e) The coverage shall provide benefits for, and restrict benefits to, services rendered by home health and hospice agencies licensed under chapter 70.127 RCW;

(f) Hospice care coverage shall provide benefits for terminally ill patients for an initial period of care of not less than six months and may provide benefits for an additional six months of care in cases where the patient is facing imminent

death or is entering remission if certified in writing by the attending physician;

(g) Home health care coverage shall provide benefits for a minimum of one hundred thirty health care visits per calendar year. However, a visit of any duration by an employee of a home health agency for the purpose of providing services under the plan of treatment constitutes one visit;

(h) The coverage may be structured so that services or supplies included in the primary contract are not duplicated in the optional home health and hospice coverage.

(3) The insurance commissioner shall adopt any rules necessary to implement this section.

(4) The requirements of this section shall not apply to contracts or policies governed by chapter 48.66 RCW.

(5) An insurer, as a condition of reimbursement, may require compliance with home health and hospice certification regulations established by the United States department of health and human services. [1989 1st ex.s. c 9 § 222; 1988 c 245 § 33; 1984 c 22 § 3; 1983 c 249 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

Home health care, hospice care, rules: Chapter 70.126 RCW.

48.44.325 Mammograms—Insurance coverage.

Each health care service contract issued or renewed after January 1, 1990, that provides benefits for hospital or medical care shall provide benefits for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the nursing care quality assurance commission pursuant to chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard contract provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of a contractor to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 734; 1989 c 338 § 3.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

48.44.330 Reconstructive breast surgery. (1) Each contract for health care entered into or renewed after July 24, 1983, between a health care services contractor and the person or persons to receive the care shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Each contract for health care entered into or renewed after January 1, 1986, between a health care services contractor and the person or persons to receive the care shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the

diseased breast has been performed. [1985 c 54 § 7; 1983 c 113 § 3.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.44.335 Mastectomy, lumpectomy. No health care service contractor under this chapter may refuse to issue any contract or cancel or decline to renew the contract solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 3.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.44.340 Mental health treatment, optional supplemental coverage—Waiver. (1) Each health care service contractor providing hospital or medical services or benefits in this state under group contracts for health care services under this chapter which are issued, delivered, or renewed in this state on or after July 1, 1986, shall offer optional supplemental coverage for mental health treatment for the insured and the insured's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by: (a) A physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83 RCW; (c) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (d) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer, health care service contractor, or health maintenance organization providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW.

(3) The group contract for health care services may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the health care service contractor.

(4) This section shall not apply to a group health care service contract that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987. [1987 c 283 § 4; 1986 c 184 § 3; 1983 c 35 § 2.]

(2004 Ed.)

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Legislative intent—Effective date—Severability—1986 c 184: See notes following RCW 48.21.240.

Effective date—Severability—1983 c 35: See notes following RCW 48.21.240.

48.44.342 Mental health treatment—Waiver of preauthorization for persons involuntarily committed. A health care service contractor providing hospital or medical services or benefits in this state shall waive a preauthorization from the contractor before an insured or an insured's covered dependents receive mental health treatment rendered by a state hospital as defined in RCW 72.23.010 if the insured or the insured's covered dependents are involuntarily committed to a state hospital as defined in RCW 72.23.010. [1993 c 272 § 4.]

Savings—Severability—1993 c 272: See notes following RCW 43.20B.347.

48.44.344 Benefits for prenatal diagnosis of congenital disorders—Contracts entered into or renewed on or after January 1, 1990. On or after January 1, 1990, every group health care services contract entered into or renewed that covers hospital, medical, or surgical expenses on a group basis, and which provides benefits for pregnancy, childbirth, or related medical conditions to enrollees of such groups, shall offer benefits for prenatal diagnosis of congenital disorders of the fetus by means of screening and diagnostic procedures during pregnancy to such enrollees when those services are determined to be medically necessary by the health care service contractor in accord with standards set in rule by the board of health. Every group health care services contractor shall communicate the availability of such coverage to all group health care service contract holders and to all groups with whom they are negotiating. [1988 c 276 § 7.]

Prenatal testing—Limitation on changes to coverage: RCW 48.42.090.

48.44.350 Financial interests of health care service contractors, restricted—Exceptions, regulations. (1) No person having any authority in the investment or disposition of the funds of a health care service contractor and no officer or director of a health care service contractor shall accept, except for the health care service contractor, or be the beneficiary of any fee, brokerage, gift, commission, or other emolument because of any sale of health care service agreements or any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the health care service contractor, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the health care service contractor directly upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the health care service contractor's funds under this title.

(2) The commissioner may, by regulations, from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the health care service contractor, or to a corporation or firm in which the director is interested, for necessary services performed or

sales or purchases made to or for the health care service contractor in the ordinary course of the health care service contractor's business and in the usual private professional or business capacity of the director or the corporation or firm. [1986 c 223 § 9; 1983 c 202 § 6.]

48.44.360 Continuation option to be offered. Every health care service contractor that issues group contracts providing group coverage for hospital or medical expense shall offer the contract holder an option to include a contract provision granting a person who becomes ineligible for coverage under the group contract, the right to continue the group benefits for a period of time and at a rate agreed upon. The contract provision shall provide that when such coverage terminates, the covered person may convert to a contract as provided in RCW 48.44.370. [1984 c 190 § 5.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

Application—1984 c 190 §§ 2, 5, and 8: See note following RCW 48.21.250.

48.44.370 Conversion contract to be offered—Exceptions, conditions. (1) Except as otherwise provided by this section, any group health care service contract entered into or renewed on or after January 1, 1985, that provides benefits for hospital or medical expenses shall contain a provision granting a person covered by the group contract the right to obtain a conversion contract from the contractor upon termination of the person's eligibility for coverage under the group contract.

(2) A contractor need not offer a conversion contract to:

(a) A person whose coverage under the group contract ended when the person's employment or membership was terminated for misconduct: PROVIDED, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal Medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion contract, a person must submit a written application and the first premium payment for the conversion contract not later than thirty-one days after the date the person's eligibility for group coverage terminates. The conversion contract shall become effective, without lapse of coverage, immediately following termination of coverage under the group contract.

(4) If a health care service contractor or group contract holder does not renew, cancels, or otherwise terminates the group contract, the health care service contractor shall offer a conversion contract to any person who was covered under the terminated contract unless the person is eligible to obtain group hospital or medical expense coverage within thirty-one days after such nonrenewal, cancellation, or termination of the group contract.

(5) The health care service contractor shall determine the premium for the conversion contract in accordance with the contractor's table of premium rates applicable to the age and class of risk of each person to be covered under the contract and the type and amount of benefits provided. [1984 c 190 § 6.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.44.380 Conversion contract—Restrictions and requirements. (1) A health care service contractor shall not require proof of insurability as a condition for issuance of the conversion contract.

(2) A conversion contract may not contain an exclusion for preexisting conditions except to the extent that a waiting period for a preexisting condition has not been satisfied under the group contract.

(3) A health care service contractor must offer at least three contract benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible and a lifetime benefit maximum of two hundred fifty thousand dollars per person;

(b) A comprehensive medical plan with a five hundred dollar deductible and a lifetime benefit maximum of five hundred thousand dollars per person; and

(c) A basic medical plan with a one thousand dollar deductible and a lifetime maximum of seventy-five thousand dollars per person.

(4) The insurance commissioner may revise the deductibles and lifetime benefit amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion contracts.

(6) The commissioner shall adopt rules to establish specific standards for conversion contract provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms. [1984 c 190 § 7.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.44.390 Modification of basis of agreement, endorsement required. If an individual health care service agreement is issued on any basis other than as applied for, an endorsement setting forth such modification must accompany and be attached to the agreement. No agreement shall be effective unless the endorsement is signed by the applicant, and a signed copy thereof returned to the health care service contractor. [1986 c 223 § 10.]

48.44.400 Continuance provisions for former family members. After July 1, 1986, or on the next renewal date of the agreement, whichever is later, every health care service agreement issued, amended, or renewed for an individual and his or her dependents shall contain provisions to assure that the covered spouse and/or dependents, in the event that any cease to be a qualified family member by reason of termina-

tion of marriage or death of the principal enrollee, shall have the right to continue the health care service agreement without a physical examination, statement of health, or other proof of insurability. [1986 c 223 § 11.]

48.44.420 Coverage for adopted children. (1) Any health care service contract under this chapter delivered or issued for delivery in this state, which provides coverage for dependent children, as defined in the contract of the subscriber, shall cover adoptive children placed with the subscriber on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the health care services contractor. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 4.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.44.430 Cancellation of rider. Upon application by a subscriber, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the subscriber during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the subscriber from that condition, such agreement not to be unreasonably withheld. The option of the subscriber to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 3.]

48.44.440 Phenylketonuria. (1) The legislature finds that:

- (a) Phenylketonuria is a rare inherited genetic disorder.
- (b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.
- (c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.
- (d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.
- (e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any contract for health care services delivered or issued for delivery or renewed in this state on or after September 1, 1988, shall provide coverage for the formulas necessary for the treatment of phenylketonuria. [1988 c 173 § 3.]

48.44.450 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each employer-sponsored group contract for comprehensive health care ser-

vice which is entered into, or renewed, on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. Nothing in this section shall prohibit a health care service contractor from requiring that covered services be delivered by a provider who participates by contract with the health care service contractor unless no participating provider is available to deliver covered services. Nothing in this section shall prohibit a health care service contractor from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the health care service contractor. Benefits shall be payable for services for the maintenance of a covered individual in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be payable to restore and improve function.

(4) It is the intent of this section that employers purchasing comprehensive group coverage including the benefits required by this section, together with the health care service contractor, retain authority to design and employ utilization and cost controls. Therefore, benefits delivered under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the employer purchasing coverage and the health care service contractor. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available or may limit the number of services delivered as agreed by the employer purchasing coverage and the health care service contractor. [1989 c 345 § 1.]

48.44.460 Temporomandibular joint disorders—Insurance coverage. (1) Except as provided in this section, a group health care service contract entered into or renewed after December 31, 1989, shall offer optional coverage for the treatment of temporomandibular joint disorders.

(a) Health care service contractors offering medical coverage only may limit benefits in such coverages to medical services related to treatment of temporomandibular joint disorders. Health care service contractors offering dental coverage only may limit benefits in such coverage to dental services related to treatment of temporomandibular joint disorders. No health care service contractor offering medical coverage only may define all temporomandibular joint disorders as purely dental in nature, and no health care service contractor offering dental coverage only may define all temporomandibular joint disorders as purely medical in nature.

(b) Health care contractors offering optional temporomandibular joint disorder coverage as provided in this section may, but are not required to, offer lesser or no temporomandibular joint disorder coverage as part of their basic group disability contract.

(c) Benefits and coverage offered under this section may be subject to negotiation to promote broad flexibility in potential benefit coverage. This flexibility shall apply to services to be reimbursed, determination of treatments to be considered medically necessary, systems through which services are to be provided, including referral systems and use of other providers, and related issues.

(2) Unless otherwise directed by law, the insurance commissioner shall adopt rules, to be implemented on January 1, 1993, establishing minimum benefits, terms, definitions, conditions, limitations, and provisions for the use of reasonable deductibles and copayments.

(3) A contractor need not make the offer of coverage required by this section to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefit statutes under Title 48 RCW that does not provide coverage for temporomandibular joint disorders. [1989 c 331 § 3.]

Legislative finding—Effective date—1989 c 331: See notes following RCW 48.21.320.

48.44.465 Prescriptions—Preapproval of individual claims—Subsequent rejection prohibited—Written record required. Health care service contractors who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim. [1993 c 253 § 4.]

Findings—Effective date—1993 c 253: See notes following RCW 48.20.525.

48.44.470 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health care service contractor providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health care service contractors shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health care service contractor the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has

been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [1991 c 87 § 9.]

Effective date—1991 c 87: See note following RCW 18.64.350.

48.44.500 Denturist services. Notwithstanding any provision of any health care service contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 24 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.44.530 Disclosure of certain material transactions—Report—Information is confidential. (1) Every health care service contractor domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.44.535 through 48.44.555 are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health care service contractor to which it pertains unless the commissioner, after giving the health care service contractor that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 13.]

48.44.535 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported pursuant to RCW 48.44.530 if the acquisitions or dispositions are not material. For purposes of RCW 48.44.530 through 48.44.555, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related disposi-

tions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting health care service contractor's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 14.]

48.44.540 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.44.530 through 48.44.555 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting health care service contractor or the acquisition of materials for such purpose.

(2) Asset dispositions subject to RCW 48.44.530 through 48.44.555 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise. [1995 c 86 § 15.]

48.44.545 Report of a material acquisition or disposition of assets—Information required. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (1) Date of the transaction;
- (2) Manner of acquisition or disposition;
- (3) Description of the assets involved;
- (4) Nature and amount of the consideration given or received;
- (5) Purpose of or reason for the transaction;
- (6) Manner by which the amount of consideration was determined;
- (7) Gain or loss recognized or realized as a result of the transaction; and
- (8) Names of the persons from whom the assets were acquired or to whom they were disposed. [1995 c 86 § 16.]

48.44.550 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.44.530 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.44.530 through 48.44.555, a material nonrenewal, cancellation, or revision is one that affects:

- (a) More than fifty percent of a health care service contractor's total reserve credit taken for business ceded, on an annualized basis, as indicated in the health care service contractor's most recent annual statement;
- (b) More than ten percent of a health care service contractor's total cession when it is replaced by one or more unauthorized reinsurers; or
- (c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if a health care service contractor's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 17.]

(2004 Ed.)

48.44.555 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

- (1) The effective date of the nonrenewal, cancellation, or revision;
- (2) The description of the transaction with an identification of the initiator;
- (3) The purpose of or reason for the transaction; and
- (4) If applicable, the identity of the replacement reinsurers. [1995 c 86 § 18.]

Chapter 48.45 RCW RURAL HEALTH CARE

Sections

48.45.005	Findings.
48.45.010	Definitions.
48.45.020	Rural health care service arrangements.
48.45.030	Rule making.

48.45.005 Findings. The legislature finds that the residents of rural communities are having difficulties in locating and purchasing affordable health insurance. The legislature further finds that many rural communities have sufficient funds to pay for needed services, but those funds are being expended elsewhere causing insufficient funding of local health services. As part of the solution to this problem, rural communities need to be able to structure the financing of local health services to better serve local residents. The legislature further finds that as rural communities need well financed and organized health care, it is in the interest of residents of rural communities that existing unauthorized entities comply with appropriate fiscal solvency standards and consumer safeguards, and that those entities be given an opportunity to come into compliance with existing state laws. [1990 c 271 § 20.]

48.45.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Rural community" means any grouping of consumers, seventy-five percent of whom reside in areas outside of a standard metropolitan statistical area as defined by the United States bureau of census.

(2) "Consumer" means any person enrolled and eligible to receive benefits in the rural health care arrangement.

(3) "Rural health care service arrangement" or "arrangement" means any arrangement which is established or maintained for the purpose of offering or providing through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits in the event of sickness, accident, or disability in a rural community, as defined in this section, that is subject to the jurisdiction of the insurance commissioner but is not now a currently authorized carrier. [1990 c 271 § 22.]

48.45.020 Rural health care service arrangements. Rural health care service arrangements existing on March 29, 1990, may continue in full operation only so long as they comply with all of the following:

(1) Within ten days following March 29, 1990, all rural health care service arrangements shall inform the insurance commissioner of their intent to apply for approval to operate as an entity authorized under chapter 48.44 RCW or intend to merge with an entity authorized under Title 48 RCW or merge with an entity defined in this section;

(2) The arrangement submits an application for approval as an entity authorized under chapter 48.44 RCW by May 1, 1990;

(3) The arrangement has one hundred thousand dollars on deposit with the insurance commissioner by July 1, 1990;

(4) The arrangement has one hundred fifty thousand dollars on deposit with the insurance commissioner by September 1, 1990; and

(5) The arrangement complies with all reasonable requirements of the insurance commissioner excluding the deposit requirement, except as outlined in this section.

If such rural health care service arrangements fail to comply with any of the above requirements, or if during the application process an entity engages in any activities which the insurance commissioner reasonably determines may cause imminent harm to consumers, the entity may be subject to appropriate legal action by the insurance commissioner pursuant to the authority provided in Title 48 RCW.

A rural health care service arrangement which comes into compliance with Title 48 RCW through the method outlined in this chapter shall be subject to all applicable requirements of Title 48 RCW except that the deposit requirements shall not be increased until May 1, 1991. [1990 c 271 § 23.]

48.45.030 Rule making. The insurance commissioner, pursuant to chapter 34.05 RCW, may promulgate rules to implement RCW 48.45.010 and 48.45.020. [1990 c 271 § 24.]

Chapter 48.46 RCW

HEALTH MAINTENANCE ORGANIZATIONS

Sections

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48.46.575	Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited.
48.46.580	When injury caused by intoxication or use of narcotics.
48.46.600	Disclosure of certain material transactions—Report—Information is confidential.
48.46.605	Material acquisitions or dispositions.
48.46.610	Asset acquisitions—Asset dispositions.
48.46.615	Report of a material acquisition or disposition of assets—Information required.
48.46.620	Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements.
48.46.625	Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required.
48.46.900	Liberal construction.
48.46.910	Severability—1975 1st ex.s. c 290.
48.46.920	Short title.

Agencies of health maintenance organizations, additional regulations applicable: RCW 48.17.065.

Health care assistants: Chapter 18.135 RCW.

48.46.010 Legislative declaration—Purpose. In affirmation of the declared principle that health care is a right of every citizen of the state, the legislature expresses its concern that the present high costs of health care in Washington may be preventing or inhibiting a large segment of the people from obtaining access to quality health care services.

The legislature declares that the establishment of qualified prepaid group and individual practice health care delivery systems should be encouraged in order to provide all citizens of the state with the freedom of choice between competitive, alternative health care delivery systems necessary to realize their right to health. It is the purpose and policy of this chapter to provide for the development and registration of prepaid group and individual practice health care plans as health maintenance organizations, which the legislature declares to be in the interest of the health, safety and welfare of the people. [1975 1st ex.s. c 290 § 2.]

48.46.012 Filings with secretary of state—Copy for commissioner. Health maintenance organizations shall send a copy specifically for the office of the insurance commissioner to the secretary of state of any corporate document required to be filed in the office of the secretary of state, including articles of incorporation and bylaws, and any amendments thereto. The copy specifically provided for the office of the insurance commissioner shall be in addition to the copies required by the secretary of state and shall clearly indicate on the copy that it is for delivery to the office of the insurance commissioner. [1998 c 23 § 17.]

48.46.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context indicates otherwise.

(1) "Health maintenance organization" means any organization receiving a certificate of registration by the commissioner under this chapter which provides comprehensive health care services to enrolled participants of such organization on a group practice per capita prepayment basis or on a prepaid individual practice plan, except for an enrolled participant's responsibility for copayments and/or deductibles, either directly or through contractual or other arrangements with other institutions, entities, or persons, and which qualifies as a health maintenance organization pursuant to RCW 48.46.030 and 48.46.040.

(2) "Comprehensive health care services" means basic consultative, diagnostic, and therapeutic services rendered by licensed health professionals together with emergency and preventive care, inpatient hospital, outpatient and physician care, at a minimum, and any additional health care services offered by the health maintenance organization.

(3) "Enrolled participant" means a person who or group of persons which has entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care services.

(4) "Health professionals" means health care practitioners who are regulated by the state of Washington.

(5) "Health maintenance agreement" means an agreement for services between a health maintenance organization which is registered pursuant to the provisions of this chapter and enrolled participants of such organization which provides enrolled participants with comprehensive health services rendered to enrolled participants by health professionals, groups, facilities, and other personnel associated with the health maintenance organization.

(6) "Consumer" means any member, subscriber, enrollee, beneficiary, or other person entitled to health care services under terms of a health maintenance agreement, but not including health professionals, employees of health maintenance organizations, partners, or shareholders of stock corporations licensed as health maintenance organizations.

(7) "Meaningful role in policy making" means a procedure approved by the commissioner which provides consumers or elected representatives of consumers a means of submitting the views and recommendations of such consumers to the governing board of such organization coupled with reasonable assurance that the board will give regard to such views and recommendations.

(8) "Meaningful grievance procedure" means a procedure for investigation of consumer grievances in a timely manner aimed at mutual agreement for settlement according to procedures approved by the commissioner, and which may include arbitration procedures.

(9) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes any health care services and is licensed or otherwise authorized to furnish such services.

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

(11) "Commissioner" means the insurance commissioner.

(12) "Group practice" means a partnership, association, corporation, or other group of health professionals:

(a) The members of which may be individual health professionals, clinics, or both individuals and clinics who engage in the coordinated practice of their profession; and

(b) The members of which are compensated by a prearranged salary, or by capitation payment or drawing account that is based on the number of enrolled participants.

(13) "Individual practice health care plan" means an association of health professionals in private practice who associate for the purpose of providing prepaid comprehensive health care services on a fee-for-service or capitation basis.

(14) "Uncovered expenditures" means the costs to the health maintenance organization of health care services that

are the obligation of the health maintenance organization for which an enrolled participant would also be liable in the event of the health maintenance organization's insolvency and for which no alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health maintenance organization, or for services that are guaranteed, insured, or assumed by a person or organization other than the health maintenance organization.

(15) "Copayment" means an amount specified in a subscriber agreement which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(16) "Deductible" means the amount an enrolled participant is responsible to pay out-of-pocket before the health maintenance organization begins to pay the costs associated with treatment.

(17) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.46.235(3) and are recorded as equity.

(18) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt.

(19) "Participating provider" means a provider as defined in subsection (9) of this section who contracts with the health maintenance organization or with its contractor or subcontractor and has agreed to provide health care services to enrolled participants with an expectation of receiving payment, other than copayment or deductible, directly or indirectly, from the health maintenance organization.

(20) "Carrier" means a health maintenance organization, an insurer, a health care services contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual agreement.

(21) "Replacement coverage" means the benefits provided by a succeeding carrier.

(22) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction. [1990 c 119 § 1; 1983 c 106 § 1; 1982 c 151 § 1; 1975 1st ex.s. c 290 § 3.]

Effective date—1982 c 151: "This act shall take effect on January 1, 1983." [1982 c 151 § 5.]

48.46.023 Agent—Definition—License required—Application, issuance, renewal, fees—Penalties involving license. (1) Agent, as used in this chapter, means any person appointed or authorized by a health maintenance organization to solicit applications for health care service agreements on its behalf.

(2) No person shall act as or hold himself out to be an agent of a health maintenance organization unless licensed as a disability insurance agent by this state and appointed or authorized by the health maintenance organization on whose behalf solicitations are to be made.

(3) Applications, appointments, and qualifications for licenses, the renewal thereof, the fees and issuance of a license, and the renewal thereof shall be in accordance with the provisions of chapter 48.17 RCW that are applicable to a disability insurance agent.

(4) A person holding a valid license in this state as a health maintenance organization agent on July 24, 1983, is not required to requalify by an examination for the renewal of the license.

(5) The commissioner may revoke, suspend, or refuse to issue or renew any agent's license, or levy a fine upon the licensee, in accordance with those provisions of chapter 48.17 RCW that are applicable to a disability insurance agent. [1983 c 202 § 8.]

48.46.027 Registration, required—Issuance of securities—Penalty. (1) A person may not in this state, by mail or otherwise, act as or hold himself or herself out to be a health maintenance organization as defined in RCW 48.46.020 without first being registered with the commissioner.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health maintenance organization domiciled in this state other than the memberships and bonds of a nonprofit corporation is subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health maintenance organizations were domestic insurers.

(3) Any person violating any provision of subsection (2) of this section is guilty of a gross misdemeanor and will, upon conviction, be fined not more than one thousand dollars, or imprisoned for not more than six months, or both, for each violation. [2003 c 250 § 10; 1983 c 202 § 9.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.46.030 Eligibility requirements for certificate of registration—Application requirements, information. Any corporation, cooperative group, partnership, individual, association, or groups of health professionals licensed by the state of Washington, public hospital district, or public institutions of higher education shall be entitled to a certificate of registration from the insurance commissioner as a health maintenance organization if it:

(1) Provides comprehensive health care services to enrolled participants on a group practice per capita prepayment basis or on a prepaid individual practice plan and provides such health services either directly or through arrangements with institutions, entities, and persons which its enrolled population might reasonably require as determined by the health maintenance organization in order to be maintained in good health; and

(2) Is governed by a board elected by enrolled participants, or otherwise provides its enrolled participants with a meaningful role in policy making procedures of such organization, as defined in RCW 48.46.020(7), and 48.46.070; and

(3) Affords enrolled participants with a meaningful grievance procedure aimed at settlement of disputes between such persons and such health maintenance organization, as defined in RCW 48.46.020(8) and 48.46.100; and

(4) Provides enrolled participants, or makes available for inspection at least annually, financial statements pertaining to health maintenance agreements, disclosing income and expenses, assets and liabilities, and the bases for proposed rate adjustments for health maintenance agreements relating to its activity as a health maintenance organization; and

(5) Demonstrates to the satisfaction of the commissioner that its facilities and personnel are reasonably adequate to provide comprehensive health care services to enrolled participants and that it is financially capable of providing such members with, or has made adequate contractual arrangements through insurance or otherwise to provide such members with, such health services; and

(6) Substantially complies with administrative rules and regulations of the commissioner for purposes of this chapter; and

(7) Submits an application for a certificate of registration which shall be verified by an officer or authorized representative of the applicant, being in form as the commissioner prescribes, and setting forth:

(a) A copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(b) A copy of the bylaws, rules and regulations, or similar documents, if any, which regulate the conduct of the internal affairs of the applicant, and all amendments thereto;

(c) A list of the names, addresses, members of the board of directors, board of trustees, executive committee, or other governing board or committee and the principal officers, partners, or members;

(d) A full and complete disclosure of any financial interests held by any officer, or director in any provider associated with the applicant or any provider of the applicant;

(e) A description of the health maintenance organization, its facilities and its personnel, and the applicant's most recent financial statement showing such organization's assets, liabilities, income, and other sources of financial support;

(f) A description of the geographic areas and the population groups to be served and the size and composition of the anticipated enrollee population;

(g) A copy of each type of health maintenance agreement to be issued to enrolled participants;

(h) A schedule of all proposed rates of reimbursement to contracting health care facilities or providers, if any, and a schedule of the proposed charges for enrollee coverage for health care services, accompanied by data relevant to the formulation of such schedules;

(i) A description of the proposed method and schedule for soliciting enrollment in the applicant health maintenance organization and the basis of compensation for such solicitation services;

(j) A copy of the solicitation document to be distributed to all prospective enrolled participants in connection with any solicitation;

(k) A financial projection which sets forth the anticipated results during the initial two years of operation of such organization, accompanied by a summary of the assumptions and relevant data upon which the projection is based. The projection should include the projected expenses, enrollment trends, income, enrollee utilization patterns, and sources of working capital;

(l) A detailed description of the enrollee complaint system as provided by RCW 48.46.100;

(m) A detailed description of the procedures and programs to be implemented to assure that the health care ser-

vices delivered to enrolled participants will be of professional quality;

(n) A detailed description of procedures to be implemented to meet the requirements to protect against insolvency in RCW 48.46.245;

(o) Documentation that the health maintenance organization has an initial net worth of one million dollars and shall thereafter maintain the minimum net worth required under RCW 48.46.235; and

(p) Such other information as the commissioner shall require by rule or regulation which is reasonably necessary to carry out the provisions of this section.

A health maintenance organization shall, unless otherwise provided for in this chapter, file a notice describing any modification of any of the information required by subsection (7) of this section. Such notice shall be filed with the commissioner. [1990 c 119 § 2; 1985 c 320 § 1; 1983 c 106 § 2; 1975 1st ex.s. c 290 § 4.]

48.46.033 Unregistered activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves a health maintenance agreement.

(3) Any person who knowingly violates RCW 48.46.027(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.46.027(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 11.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.46.040 Certificate of registration—Issuance—Grounds for refusal—Name restrictions—Inspection and review of facilities. The commissioner shall issue a certificate of registration to the applicant within sixty days of such filing unless he notifies the applicant within such time that such application is not complete and the reasons therefor; or that he is not satisfied that:

(1) The basic organizational document of the applicant permits the applicant to conduct business as a health maintenance organization;

(2) The organization has demonstrated the intent and ability to assure that comprehensive health care services will

be provided in a manner to assure both their availability and accessibility;

(3) The organization is financially responsible and may be reasonably expected to meet its obligations to its enrolled participants. In making this determination, the commissioner shall consider among other relevant factors:

(a) Any agreements with an insurer, a medical or hospital service bureau, a government agency or any other organization paying or insuring payment for health care services;

(b) Any agreements with providers for the provision of health care services;

(c) Any arrangements for liability and malpractice insurance coverage; and

(d) Adequate procedures to be implemented to meet the protection against insolvency requirements in RCW 48.46.245.

(4) The procedures for offering health care services and offering or terminating contracts with enrolled participants are reasonable and equitable in comparison with prevailing health insurance subscription practices and health maintenance organization enrollment procedures; and, that

(5) Procedures have been established to:

(a) Monitor the quality of care provided by such organization, including, as a minimum, procedures for internal peer review;

(b) Resolve complaints and grievances initiated by enrolled participants in accordance with RCW 48.46.010 and 48.46.100;

(c) Offer enrolled participants an opportunity to participate in matters of policy and operation in accordance with RCW 48.46.020(7) and 48.46.070.

No person to whom a certificate of registration has not been issued, except a health maintenance organization certified by the secretary of the department of health and human services, pursuant to Public Law 93-222 or its successor, shall use the words "health maintenance organization" or the initials "HMO" in its name, contracts, or literature. Persons who are contracting with, operating in association with, recruiting enrolled participants for, or otherwise authorized by a health maintenance organization possessing a certificate of registration to act on its behalf may use the terms "health maintenance organization" or "HMO" for the limited purpose of denoting or explaining their relationship to such health maintenance organization.

The department of health, at the request of the insurance commissioner, shall inspect and review the facilities of every applicant health maintenance organization to determine that such facilities are reasonably adequate to provide the health care services offered in their contracts. If the commissioner has information to indicate that such facilities fail to continue to be adequate to provide the health care services offered, the department of health, upon request of the insurance commissioner, shall reinspect and review the facilities and report to the insurance commissioner as to their adequacy or inadequacy. [1990 c 119 § 3; 1989 1st ex.s. c 9 § 223; 1983 c 106 § 3; 1975 1st ex.s. c 290 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

48.46.045 Catastrophic health plans permitted. Notwithstanding the provisions of this chapter, a health maintenance

organization may offer catastrophic health plans as defined in RCW 48.43.005. [2000 c 79 § 27.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.46.060 Prepayment agreements—Standards for forms and documents—Grounds for disapproval—Cancellation or failure to renew—Filing of agreement forms.

(1) Any health maintenance organization may enter into agreements with or for the benefit of persons or groups of persons, which require prepayment for health care services by or for such persons in consideration of the health maintenance organization providing health care services to such persons. Such activity is not subject to the laws relating to insurance if the health care services are rendered directly by the health maintenance organization or by any provider which has a contract or other arrangement with the health maintenance organization to render health services to enrolled participants.

(2) All forms of health maintenance agreements issued by the organization to enrolled participants or other marketing documents purporting to describe the organization's comprehensive health care services shall comply with such minimum standards as the commissioner deems reasonable and necessary in order to carry out the purposes and provisions of this chapter, and which fully inform enrolled participants of the health care services to which they are entitled, including any limitations or exclusions thereof, and such other rights, responsibilities and duties required of the contracting health maintenance organization.

(3) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove an individual or group agreement form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous, or misleading clauses, or exceptions or conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the agreement;

(b) If it has any title, heading, or other indication which is misleading;

(c) If purchase of health care services thereunder is being solicited by deceptive advertising;

(d) If it contains unreasonable restrictions on the treatment of patients;

(e) If it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW; or

(f) If any agreement for health care services with any state agency, division, subdivision, board, or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law.

(4) In addition to the grounds listed in subsection (2) of this section, the commissioner may disapprove any group agreement if the benefits provided therein are unreasonable in relation to the amount charged for the agreement.

(5) No health maintenance organization authorized under this chapter shall cancel or fail to renew the enrollment on any basis of an enrolled participant or refuse to transfer an

enrolled participant from a group to an individual basis for reasons relating solely to age, sex, race, or health status. Nothing contained herein shall prevent cancellation of an agreement with enrolled participants (a) who violate any published policies of the organization which have been approved by the commissioner, or (b) who are entitled to become eligible for medicare benefits and fail to enroll for a medicare supplement plan offered by the health maintenance organization and approved by the commissioner, or (c) for failure of such enrolled participant to pay the approved charge, including cost-sharing, required under such contract, or (d) for a material breach of the health maintenance agreement.

(6) No agreement form or amendment to an approved agreement form shall be used unless it is first filed with the commissioner. [2000 c 79 § 31; 1989 c 10 § 10. Prior: 1985 c 320 § 2; 1985 c 283 § 2; 1983 c 106 § 4; 1975 1st ex.s. c 290 § 7.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.46.062 Schedule of rates for individual agreements—Loss ratio—Remittance of premiums—Definitions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health maintenance organization of health care services, as defined in RCW 48.43.005, provided to an enrollee or paid to or on behalf of the enrollee in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(d) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(e) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(f) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health maintenance organization shall file, for informational purposes only, a notice of its schedule of rates for its individual agreements with the commissioner prior to use.

(3) A health maintenance organization shall file with the notice required under subsection (2) of this section supporting documentation of its method of determining the rates charged. The commissioner may request only the following supporting documentation:

(a) A description of the health maintenance organization's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and

justifications of the health maintenance organization's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard established in subsection (7) of this section.

(4) The commissioner may not disapprove or otherwise impede the implementation of the filed rates.

(5) By the last day of May each year any health maintenance organization issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health maintenance organization.

(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the health maintenance organization, be submitted to hearing under chapters 48.04 and 34.05 RCW.

(6) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (7) of this section, a remittance is due and the following shall apply:

(a) The health maintenance organization shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (7) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (5)(a) of this section or the determination by an administrative law judge under subsection (5)(c) of this section.

(7) The loss ratio applicable to this section shall be seventy-four percent minus the premium tax rate applicable to the health maintenance organization's individual health benefit plans under RCW 48.14.0201. [2001 c 196 § 12; 2000 c 79 § 32.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.46.064 Calculation of premiums—Adjusted community rate—Definitions. (1) Premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with

the medical experience of health benefit plans offered to small employers under RCW 48.46.066.

(3) As used in this section and RCW 48.46.066, "health benefit plan," "adjusted community rate," "small employer," and "wellness activities" mean the same as defined in RCW 48.43.005. [2004 c 244 § 8; 2000 c 79 § 33; 1997 c 231 § 209; 1995 c 265 § 17.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.46.066 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (1)(a) A health maintenance organization offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a health maintenance organization from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A health maintenance organization offering a health benefit plan under this subsection shall clearly disclose all the covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, 48.46.290, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530.

(2) Nothing in this section shall prohibit a health maintenance organization from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-

five. Employees under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the enrollment of the small employer;

(ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(2004 Ed.)

(5)(a) Except as provided in this subsection, requirements used by a health maintenance organization in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A health maintenance organization shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A health maintenance organization may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) A health maintenance organization must offer coverage to all eligible employees of a small employer and their dependents. A health maintenance organization may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A health maintenance organization may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan. [2004 c 244 § 9; 1995 c 265 § 18; 1990 c 187 § 4.]

Application—2004 c 244: See note following RCW 48.21.045.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.46.068 Requirements for plans offered to small employers—Definitions. (1) A health maintenance organization may not offer any health benefit plan to any small employer without complying with RCW 48.46.066(3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and are not subject to RCW 48.46.066(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [2003 c 248 § 16; 1995 c 265 § 24.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.46.070 Governing body. (1) The members of the governing body of a health maintenance organization shall be nominated by the voting members or by the enrolled participants and providers, and shall be elected by the enrolled participants or voting members pursuant to the provisions of their bylaws, which shall not be restricted to providers. At least one-third of such body shall consist of consumers who are substantially representative of the enrolled population of

such organization: PROVIDED, HOWEVER, That any organization that is a qualified health maintenance organization under P.L. 93-222 (Title XIII, section 1310(d) of the public health services act) is deemed to have satisfied these governing body requirements and the requirements of RCW 48.46.030(2).

(2) For health maintenance organizations formed by public institutions of higher education or public hospital districts, the governing body shall be advised by an advisory board consisting of at least two-thirds consumers who are elected by the voting members or the enrolled participants and are substantially representative of the enrolled population. [1985 c 320 § 3; 1983 c 106 § 5; 1975 1st ex.s. c 290 § 8.]

48.46.080 Annual statement—Filings—Contents—Fee—Penalty for failure to file—Accuracy required. (1) Every health maintenance organization shall annually, before the first day of March, file with the commissioner a statement verified by at least two of the principal officers of the health maintenance organization showing its financial condition as of the last day of the preceding calendar year.

(2) Such annual report shall be in such form as the commissioner shall prescribe and shall include:

(a) A financial statement of such organization, including its balance sheet and receipts and disbursements for the preceding year, which reflects at a minimum;

(i) All prepayments and other payments received for health care services rendered pursuant to health maintenance agreements;

(ii) Expenditures to all categories of health care facilities, providers, insurance companies, or hospital or medical service plan corporations with which such organization has contracted to fulfill obligations to enrolled participants arising out of its health maintenance agreements, together with all other direct expenses including depreciation, enrollment, and commission; and

(iii) Expenditures for capital improvements, or additions thereto, including but not limited to construction, renovation, or purchase of facilities and capital equipment;

(b) The number of participants enrolled and terminated during the report period. Every employer offering health care benefits to their employees through a group contract with a health maintenance organization shall furnish said health maintenance organization with a list of their employees enrolled under such plan;

(c) The number of doctors by type of practice who, under contract with or as an employee of the health maintenance organization, furnished health care services to consumers during the past year;

(d) A report of the names and addresses of all officers, directors, or trustees of the health maintenance organization during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals for services to such organization. For partnership and professional service corporations, a report shall be made for partners or shareholders as to any compensation or expense reimbursement received by them for services, other than for services and expenses relating directly for patient care;

(e) Such other information relating to the performance of the health maintenance organization or the health care facili-

ties or providers with which it has contracted as reasonably necessary to the proper and effective administration of this chapter, in accordance with rules and regulations; and

(f) Disclosure of any financial interests held by officers and directors in any providers associated with the health maintenance organization or any provider of the health maintenance organization.

(3) The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed.

(4) In addition to the requirements of subsections (1) and (2) of this section, every health maintenance organization that is registered in this state shall annually, on or before March 1st of each year, file with the national association of insurance commissioners a copy of its annual statement, along with those additional schedules as prescribed by the commissioner for the preceding year. The information filed with the national association of insurance commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

(5) Coincident with the filing of its annual statement and other schedules, each health maintenance organization shall pay a reasonable fee directly to the national association of insurance commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement.

(6) Foreign health maintenance organizations that are domiciled in a state that has a law substantially similar to subsection (4) of this section are considered to be in compliance with this section.

(7) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, national association of insurance commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected for the filings required under this section.

(8) The commissioner may suspend or revoke the certificate of registration of any health maintenance organization failing to file its annual statement or pay the fees when due or during any extension of time therefor which the commissioner, for good cause, may grant.

(9) No person shall knowingly file with any public official or knowingly make, publish, or disseminate any financial statement of a health maintenance organization which does not accurately state the health maintenance organization's financial condition. [1997 c 212 § 5; 1993 c 492 § 296. Prior: 1983 c 202 § 10; 1983 c 106 § 6; 1975 1st ex.s. c 290 § 9.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.46.090 Standard of services provided. A health maintenance organization, and the health care facilities and providers with which such organization has entered into contracts to provide health care services to its enrolled participants, shall provide such services in a manner consistent with the dignity of each enrolled participant as a human being. [1975 1st ex.s. c 290 § 10.]

48.46.100 Grievance procedure. A health maintenance organization shall establish and maintain a grievance procedure, approved by the commissioner, to provide reasonable and effective resolution of complaints initiated by enrolled participants concerning any matter relating to the interpretation of any provision of such enrolled participants' health maintenance contracts, including, but not limited to, claims regarding the scope of coverage for health care services; denials, cancellations, or nonrenewals of enrolled participants' coverage; and the quality of the health care services rendered, and which may include procedures for arbitration. [1975 1st ex.s. c 290 § 11.]

48.46.110 Name restrictions—Discrimination—Recovery of costs of health care services participant not entitled to. (1) No health maintenance organization may refer to itself in its name or advertising with any of the words: "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business, or deceptively similar to the name or description of any insurance or surety corporation or health care service contractor or other health maintenance organization doing business in this state.

(2) No health maintenance organization, nor any health care facility or provider with which such organization has contracted to provide health care services, shall discriminate against any person from whom or on whose behalf, payment to meet the required charge is available, with regard to enrollment, disenrollment, or the provision of health care services, on the basis of such person's race, color, sex, religion, place of residence if there is reasonable access to the facility of the health maintenance organization, socioeconomic status, or status as a recipient of medicare under Title XVIII of the Social Security Act, 42 U.S.C. section 1396, et seq.

(3) Where a health maintenance organization determines that an enrolled participant has received health care services to which such enrolled participant is not entitled under the terms of his health maintenance agreement, neither such organization, nor any health care facility or provider with which such organization has contracted to provide health care services, shall have recourse against such enrolled participant for any amount above the actual cost of providing such service, if any, specified in such agreement, unless the enrolled participant or a member of his family has given or withheld information to the health maintenance organization, the effect of which is to mislead or misinform the health maintenance organization as to the enrolled participant's right to receive such services. [1983 c 202 § 11; 1975 1st ex.s. c 290 § 12.]

(2004 Ed.)

48.46.120 Examination of health maintenance organizations—Duties of organizations, powers of commissioner—Independent audit reports—Assessment of organizations for costs, conditions. (1) The commissioner may make an examination of the operations of any health maintenance organization as often as he deems necessary in order to carry out the purposes of this chapter.

(2) Every health maintenance organization shall submit its books and records relating its operation for financial condition and market conduct examinations and in every way facilitate them. The quality or appropriateness of medical services or systems shall not be examined except to the extent that such items are incidental to an examination of the financial condition or the market conduct of a health maintenance organization. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health maintenance organization and the principals of such providers concerning their business.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health maintenance organization in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his report of the examination.

(4) Health maintenance organizations licensed in the state shall be equitably assessed to cover the cost of financial condition and market conduct examinations, the costs of promulgating rules, and the costs of enforcing the provisions of this chapter. The assessments shall be levied not less frequently than once every twelve months and shall be in an amount expected to fund the examinations, promulgation of rules, and enforcement of the provisions of this chapter, including a reasonable margin for cost variations. The assessments shall be established by rules promulgated by the commissioner but shall not exceed five and one-half cents per month per person entitled to health care services pursuant to a health maintenance agreement, excluding such persons who are not residents of this state: PROVIDED, That the minimum fee shall be one thousand dollars. Assessment receipts shall be deposited in the insurance commissioner's regulatory account in the state treasury; shall be used for the purpose of funding the examinations authorized in subsection (1) of this section, the costs of promulgating rules, and the costs of enforcing the provisions of this chapter; and shall be accounted for jointly with fees from health care service contractors but separately from insurers. Assessment receipts received from health maintenance organizations shall be used to pay a pro rata share of the costs, including overhead, of regulating health care service contractors and health maintenance organizations. Amounts remaining in the separate account at the end of a biennium shall be applied to reduce the assessments in the succeeding biennium. [1987 c 83 § 1; 1986 c 296 § 9; 1985 c 7 § 115; 1983 c 63 § 2; 1975 1st ex.s. c 290 § 13.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

48.46.130 Investigation of violations—Hearing—Findings—Penalties—Order requiring compliance,

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etc.—Suspension or revocation of certificate, effect—Application to courts. (1) The commissioner may, consistent with the provisions of the administrative procedure act, chapter 34.05 RCW, initiate proceedings to determine whether a health maintenance organization has:

(a) Operated in a manner that materially violates its organizational documents;

(b) Materially breached its obligation to furnish the health care services specified in its contracts with enrolled participants;

(c) Violated any provision of this chapter, or any rules and regulations promulgated thereunder;

(d) Made any false statement with respect to any report or statement required by this chapter or by the commissioner under this chapter;

(e) Advertised or marketed, or attempted to market, its services in such a manner as to misrepresent its services or capacity for services, or engaged in deceptive, misleading, or unfair practices with respect to advertising or marketing;

(f) Prevented the commissioner from the performance of any duty imposed by this chapter; or

(g) Fraudulently procured or attempted to procure any benefit under this chapter.

(2) After providing written notice and an opportunity for a hearing to be scheduled no sooner than ten days following such notice, the commissioner shall make administrative findings and may, as appropriate:

(a) Impose a penalty of not more than ten thousand dollars for each and every unlawful act committed which materially affects the health services offered or furnished;

(b) Issue an administrative order requiring the health maintenance organization to:

(i) Cease or modify inappropriate conduct or practices by it or any of the personnel employed or associated with it;

(ii) Fulfill its contractual obligations;

(iii) Provide a service which has been improperly denied;

(iv) Take steps to provide or arrange for any service which it has agreed to make available; or

(v) Abide by the terms of an arbitration proceeding, if any;

(c) Suspend or revoke the certificate of authority of the health maintenance organization:

(i) If its certificate of authority is suspended, the organization shall not, during the period of such suspension, enroll any additional participants except newborn children or other newly acquired dependents of existing enrolled participants, and shall not engage in any advertising or solicitation whatsoever;

(ii) If its certificate of authority is revoked, the organization shall proceed under the supervision of the commissioner immediately following the effective date of the order of revocation to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of such affairs: PROVIDED, That the commissioner may, by written order, permit such further operation of the organization as it may find to be in the best interest of enrolled participants, to the end that such enrolled participants will be afforded the greatest practical opportunity to obtain continuing health care coverage: PROVIDED, FURTHER, That if the organization is qualified to operate as a health care ser-

vice contractor under chapter 48.44 RCW, it may continue to operate as such when it obtains the appropriate license.

(3) The commissioner may apply to any court for such legal or equitable relief as it deems necessary to effectively carry out the purposes of this chapter, including, but not limited to, an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. [1975 1st ex.s. c 290 § 14.]

48.46.135 Fine in addition to or in lieu of suspension, revocation, or refusal. After hearing or upon stipulation by the registrant and in addition to or in lieu of the suspension, revocation, or refusal to renew any registration of a health maintenance organization, the commissioner may levy a fine against the party involved for each offense in an amount not less than fifty dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the registration of the registrant, if not already revoked, and the fine shall be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1983 c 202 § 15.]

48.46.140 Fees. Every organization subject to this chapter shall pay to the commissioner the following fees:

(1) For filing a copy of its application for a certificate of registration or amendment thereto, one hundred dollars;

(2) For filing each annual report pursuant to RCW 48.46.080, ten dollars. [1975 1st ex.s. c 290 § 15.]

48.46.170 Effect of chapter as to other laws—Construction. (1) Solicitation of enrolled participants by a health maintenance organization granted a certificate of registration, or its agents or representatives, does not violate any provision of law relating to solicitation or advertising by health professionals.

(2) Any health maintenance organization authorized under this chapter is not violating any law prohibiting the practice by unlicensed persons of podiatric medicine and surgery, chiropractic, dental hygiene, opticianry, dentistry, optometry, osteopathic medicine and surgery, pharmacy, medicine and surgery, physical therapy, nursing, or psychology. This subsection does not expand a health professional's scope of practice or allow employees of a health maintenance organization to practice as a health professional unless licensed.

(3) This chapter does not alter any statutory obligation, or rule adopted thereunder, in chapter 70.38 RCW.

(4) Any health maintenance organization receiving a certificate of registration pursuant to this chapter is exempt from

chapter 48.05 RCW. [2003 c 248 § 17; 1996 c 178 § 13; 1983 c 106 § 7; 1975 1st ex.s. c 290 § 18.]

Effective date—1996 c 178: See note following RCW 18.35.110.

48.46.180 Duty of employer to inform and make available to employees option of enrolling in health maintenance organization. (1) The state government, or any political subdivision thereof, which offers its employees a health benefits plan shall make available to and inform its employees or members of the option to enroll in at least one health maintenance organization holding a valid certificate of authority which provides health care services in the geographic areas in which such employees or members reside.

(2) Each employer, public or private, having more than fifty employees in this state which offers its employees a health benefits plan, and each employee benefits fund in this state having more than fifty members which offers its members any form of health benefits shall make available to and inform its employees or members of the option to enroll in at least one health maintenance organization holding a valid certificate of authority which provides health care services in the geographic areas in which a substantial number of such employees or members reside: PROVIDED, That unless at least twenty-five employees agree to participate in a health maintenance organization the employer need not provide such an option: PROVIDED FURTHER, That where such employees are members of a bona fide bargaining unit covered by a labor-management collective bargaining agreement, the selection of the options required by this section may be specified in such agreement: AND PROVIDED FURTHER, That the provisions of this section shall not be mandatory where such members are covered by a Taft-Hartley health care trust, except that the labor-management trustees may contract with a health maintenance organization if a feasibility study determines it is to the advantage of the members to so contract.

(3) Subsections (1) and (2) of this section shall impose no responsibilities or duties upon state government or any political subdivision thereof or any other employer, either public or private, to provide health maintenance organization coverage when no health maintenance organization exists for the purpose of providing health care services in the geographic areas in which the employees or members reside.

(4) No employer in this state shall in any way be required to pay more for health benefits as a result of the application of this section than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract of obligation for the provision of health benefits between such employer and its employees. [1975 1st ex.s. c 290 § 19.]

48.46.190 Payroll deductions for capitation payments to health maintenance organizations. See RCW 41.04.233.

48.46.200 Rules and regulations. The commissioner may, in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW, promulgate rules and regulations as necessary or proper to carry out the provisions of this chapter. Nothing in this chapter shall be construed to pro-

hibit the commissioner from requiring changes in procedures previously approved by him. [1975 1st ex.s. c 290 § 21.]

48.46.210 Compliance with federal funding requirements—Construction. Nothing in this chapter shall prohibit any health maintenance organization from meeting the requirements of any federal law which would authorize such health maintenance organization to receive federal financial assistance or enroll beneficiaries assisted by federal funds. [1975 1st ex.s. c 290 § 22.]

48.46.220 Review of administrative action. Any party aggrieved by a decision, order, or regulation made under this chapter by the commissioner shall have the right to have such reviewed pursuant to the provisions of the administrative procedure act, chapter 34.05 RCW. [1975 1st ex.s. c 290 § 23.]

48.46.225 Financial failure—Supervision of commissioner—Priority of distribution of assets. (1) Any rehabilitation, liquidation, or conservation of a health maintenance organization is the same as the rehabilitation, liquidation, or conservation of an insurance company and must be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in RCW 48.31.030, 48.31.050, and 48.31.080. Enrolled participants have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(2) For purposes of determining the priority of distribution of general assets, claims of enrolled participants and enrolled participants' beneficiaries have the same priority as established by RCW 48.31.280 for policyholders and beneficiaries of insureds of insurance companies. If an enrolled participant is liable to any provider for services provided pursuant to and covered by the health maintenance agreement, that liability has the status of an enrolled participant claim for distribution of general assets.

(3) A provider who is obligated by statute or agreement to hold enrolled participants harmless from liability for services provided pursuant to and covered by a health care plan has a priority of distribution of the general assets immediately following that of enrolled participants and enrolled participants' beneficiaries under this section. [2003 c 248 § 18; 1990 c 119 § 4.]

48.46.235 Minimum net worth—Requirement to maintain—Determination of amount. (1) Except as provided in subsection (2) of this section, every health maintenance organization must have and maintain a minimum net worth equal to the greater of:

(a) Three million dollars; or

(b) Two percent of annual premium earned as reported on the most recent annual financial statement filed with the commissioner on the first one hundred fifty million dollars of premium and one percent of annual premium on the premium in excess of one hundred fifty million dollars; or

(c) An amount equal to the sum of three months' uncovered expenditures as reported on the most recent financial statement filed with the commissioner.

(2) A health maintenance organization registered before July 27, 1997, that, on July 27, 1997, has a minimum net worth equal to or greater than that required by subsection (1) of this section must continue to have and maintain the minimum net worth required by subsection (1) of this section. A health maintenance organization registered before July 27, 1997, that, on July 27, 1997, does not have the minimum net worth required by subsection (1) of this section must have and maintain a minimum net worth of:

(a) The amount required immediately prior to July 27, 1997, until December 31, 1997;

(b) Fifty percent of the amount required by subsection (1) of this section by December 31, 1997;

(c) Seventy-five percent of the amount required by subsection (1) of this section by December 31, 1998; and

(d) One hundred percent of the amount required by subsection (1) of this section by December 31, 1999.

(3)(a) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the commissioner. An interest obligation relating to the repayment of a subordinated debt must be similarly subordinated.

(b) The interest expenses relating to the repayment of a fully subordinated debt shall not be considered uncovered expenditures.

(c) A subordinated debt incurred by a note meeting the requirement of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(4) Every health maintenance organization shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, which are unpaid and for which such organization is or may be liable, and to provide for the expense of adjustment or settlement of such claims.

Such liabilities shall be computed in accordance with rules promulgated by the commissioner upon reasonable consideration of the ascertained experience and character of the health maintenance organization. [1997 c 212 § 6; 1990 c 119 § 5.]

48.46.237 Minimum net worth—Domestic or foreign health maintenance organization. (1) For purposes of this section:

(a) "Domestic health maintenance organization" means a health maintenance organization formed under the laws of this state; and

(b) "Foreign health maintenance organization" means a health maintenance organization formed under the laws of the United States, of a state or territory of the United States other than this state, or of the District of Columbia.

(2) If the minimum net worth of a domestic health maintenance organization falls below the minimum net worth required by this chapter, the commissioner shall at once ascertain the amount of the deficiency and serve notice upon

the domestic health maintenance organization to cure the deficiency within ninety days after that service of notice.

(3) If the deficiency is not cured, and proof thereof filed with the commissioner within the ninety-day period, the domestic health maintenance organization shall be declared insolvent and shall be proceeded against as authorized by this code or the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the registration of the domestic health maintenance organization as being hazardous to its subscribers and the people in this state.

(4) If the deficiency is not cured the domestic health maintenance organization shall not issue or deliver any health maintenance agreement after the expiration of the ninety-day period.

(5) If the minimum net worth of a foreign health maintenance organization falls below the minimum net worth required by this chapter, the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the foreign health maintenance organization's registration as being hazardous to its subscribers, enrollees, or the people in this state. [1997 c 212 § 7.]

48.46.240 Funded reserve requirements. (1) Each health maintenance organization obtaining a certificate of registration from the commissioner shall provide and maintain a funded reserve of one hundred fifty thousand dollars. The funded reserve shall be deposited with the commissioner or with any organization/trustee acceptable to him in the form of cash, securities eligible for investment by the health maintenance organization pursuant to chapter 48.13 RCW, approved surety bond or any combination of these, and must equal or exceed one hundred fifty thousand dollars. The funded reserve shall be established as an assurance that the uncovered expenditure obligations of the health maintenance organization to the enrolled participants will be performed.

(2) All income from reserves on deposit with the commissioner shall belong to the depositing health maintenance organization and shall be paid to it as it becomes available.

(3) Any funded reserve required by this section shall be considered an asset of the health maintenance organization in determining the organization's net worth.

(4) A health maintenance organization that has made a securities deposit with the commissioner may, at its option, withdraw the securities deposit or any part of the deposit after first having deposited or provided in lieu thereof an approved surety bond, a deposit of cash or securities, or any combination of these or other deposits of equal amount and value to that withdrawn. Any securities and surety bond shall be subject to approval by the commissioner before being substituted. [1990 c 119 § 6; 1985 c 320 § 4; 1982 c 151 § 3.]

Effective date—1982 c 151: See note following RCW 48.46.020.

48.46.243 Contract—Participant liability—Commissioner's review. (1) Subject to subsection (2) of this section, every contract between a health maintenance organization and its participating providers of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the agreement, the enrolled participant shall not be liable to the provider for any sums owed by the health

maintenance organization. Every such contract shall provide that this requirement shall survive termination of the contract.

(2) The provisions of subsection (1) of this section shall not apply to emergency care from a provider who is not a participating provider, to out-of-area services or, in exceptional situations approved in advance by the commissioner, if the health maintenance organization is unable to negotiate reasonable and cost-effective participating provider contracts.

(3)(a) Each participating provider contract form shall be filed with the commissioner fifteen days before it is used.

(b) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(c) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW.

(4) No participating provider, or agent, trustee, or assignee thereof, may maintain an action against an enrolled participant to collect sums owed by the health maintenance organization. [1990 c 119 § 7.]

48.46.245 Plan for handling insolvency—Commissioner's review. Each health maintenance organization shall have a plan for handling insolvency which allows for continuation of benefits for the duration of the agreement period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. The commissioner shall approve such a plan if it includes:

(1) Insurance to cover the expenses to be paid for continued benefits after insolvency;

(2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health maintenance organization's insolvency for which premium payment has been made and until the enrolled participants' discharge from inpatient facilities;

(3) Use of insolvency reserves established under RCW 48.46.240;

(4) Acceptable letters of credit or approved surety bonds; or

(5) Any other arrangements the commissioner and the organization mutually agree are appropriate to assure that benefits are continued. [1990 c 119 § 8.]

48.46.247 Insolvency—Commissioner's duties—Participants' options—Allocation of coverage. (1)(a) In the event of insolvency of a health care service contractor or health maintenance organization and upon order of the commissioner, all other carriers then having active enrolled participants under a group plan with the affected agreement holder that participated in the enrollment process with the

insolvent health care service contractor or health maintenance organization at a group's last regular enrollment period shall offer the eligible enrolled participants of the insolvent health services contractor or health maintenance organization the opportunity to enroll in an existing group plan without medical underwriting during a thirty-day open enrollment period, commencing on the date of the insolvency. Eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. An open enrollment shall not be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule, unless the plan administrator and agreement holder voluntarily agree to offer a simultaneous open enrollment and extend coverage under the same enrollment terms and conditions as are applicable to carriers under this title and rules adopted under this title. If an exempt plan was offered during the last regular open enrollment period, then the carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(b) For purposes of this subsection only, the term "carrier" means a health maintenance organization or a health care service contractor. In the event of insolvency of a carrier and if no other carrier has active enrolled participants under a group plan with the affected agreement holder, or if the commissioner determines that the other carriers lack sufficient health care delivery resources to assure that health services will be available or accessible to all of the group enrollees of the insolvent carrier, then the commissioner shall allocate equitably the insolvent carrier's group agreements for these groups among all carriers that operate within a portion of the insolvent carrier's area, taking into consideration the health care delivery resources of each carrier. Each carrier to which a group or groups are allocated shall offer the agreement holder, without medical underwriting, the carrier's existing coverage that is most similar to each group's coverage with the insolvent carrier at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. No offering by a carrier shall be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule. The carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(2) The commissioner shall also allocate equitably the insolvent carrier's nongroup enrolled participants who are unable to obtain coverage among all carriers that operate within a portion of the insolvent carrier's service area, taking into consideration the health care delivery resources of the carrier. Each carrier to which nongroup enrolled participants are allocated shall offer the nongroup enrolled participants the carrier's existing comprehensive conversion plan, without

additional medical underwriting, at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's plan.

(3) Any agreements covering participants allocated pursuant to subsections (1)(b) and (2) of this section to carriers pursuant to this section may be rerated after ninety days of coverage.

(4) A limited health care service contractor shall not be required to offer services other than its one limited health care service to any enrolled participant of an insolvent carrier. [1990 c 119 § 9.]

48.46.250 Coverage of dependent children—Newborn infants, congenital anomalies—Notification period.

(1) Any health maintenance agreement under this chapter which provides coverage for dependent children of the enrolled participant shall provide the same coverage for newborn infants of the enrolled participant from and after the moment of birth. Coverage provided under this section shall include, but not be limited to, coverage for congenital anomalies of such children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the agreement may require that notification of birth of a newly born child and payment of the required premiums must be furnished to the health maintenance organization. The notification period shall be no less than sixty days from the date of birth. This subsection applies to agreements issued or renewed on or after January 1, 1984. [1984 c 4 § 2; 1983 c 202 § 12.]

48.46.260 Individual health maintenance agreement—Return within ten days of delivery—Refunds—Void from beginning.

Every subscriber of an individual health maintenance agreement may return the agreement to the health maintenance organization or the agent through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the agreement, the subscriber is not satisfied with it for any reason. The health maintenance organization shall refund promptly any fee paid for the agreement. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the health maintenance organization or agent. Upon such return of the agreement, it shall be void from the beginning and the parties shall be in the same position as if no agreement had been issued. Notice of the provisions of this section shall be printed on the face of each such agreement or be attached thereto. [1983 c 202 § 13.]

48.46.270 Financial interests of health maintenance organization authorities, restricted—Exceptions, regulations.

(1) No person having any authority in the investment or disposition of the funds of a health maintenance organization and no officer or director of a health maintenance organization shall accept, except for the health maintenance organization, or be the beneficiary of any fee, brokerage, gift, commission, or other emolument because of any sale of

health care service agreements or any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the health maintenance organization, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the health maintenance organization directly upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the health maintenance organization's funds under this title.

(2) The commissioner may, by regulations, from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the health maintenance organization, or to a corporation or firm in which the director is interested, for necessary services performed or sales or purchases made to or for the health maintenance organization in the ordinary course of the health maintenance organization's business and in the usual private professional or business capacity of the director or the corporation or firm. [1985 c 320 § 5; 1983 c 202 § 14.]

48.46.272 Diabetes coverage—Definitions. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, non-insulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All health benefit plans offered by health maintenance organizations, issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For health benefit plans that include coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all health benefit plans, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the health maintenance organization from restricting patients to seeing only health care providers who have signed participating provider agreements with the health maintenance organization or an insur-

ing entity under contract with the health maintenance organization.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The health maintenance organization need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plans that provide benefits identical to the schedule of services covered by the basic health plan. [2004 c 244 § 14; 1997 c 276 § 5.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—1997 c 276: See note following RCW 41.05.185.

48.46.275 Mammograms—Insurance coverage.

Each health maintenance agreement issued or renewed after January 1, 1990, that provides benefits for hospital or medical care shall provide benefits for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the nursing care quality assurance commission pursuant to chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

All services must be provided by the health maintenance organization or rendered upon referral by the health maintenance organization. This section shall not be construed to prevent the application of standard agreement provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of a health maintenance organization to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 735; 1989 c 338 § 4.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

48.46.280 Reconstructive breast surgery. (1) Any health care service plan issued, amended, or renewed after July 24, 1983, shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Any health care service plan issued, amended, or renewed after January 1, 1986, shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast has been performed. [1985 c 54 § 8; 1983 c 113 § 4.]

(2004 Ed.)

Effective date—1985 c 54: See note following RCW 48.20.397.

48.46.285 Mastectomy, lumpectomy. No health maintenance organization under this chapter may refuse coverage or cancel or decline coverage solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 4.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.46.290 Mental health treatment, optional supplemental coverage—Waiver. (1) Each health maintenance organization providing services or benefits for hospital or medical care coverage in this state under group health maintenance agreements which are issued, delivered, or renewed in this state on or after July 1, 1986, shall offer optional supplemental coverage for mental health treatment to the enrolled participant and the enrolled participant's covered dependents.

(2) Benefits shall be provided under the optional supplemental coverage for mental health treatment whether treatment is rendered by the health maintenance organization or the health maintenance organization refers the enrolled participant or the enrolled participant's covered dependents for treatment to: (a) A physician licensed under chapter 18.71 or 18.57 RCW; (b) a psychologist licensed under chapter 18.83 RCW; (c) a community mental health agency licensed by the department of social and health services pursuant to chapter 71.24 RCW; or (d) a state hospital as defined in RCW 72.23.010. The treatment shall be covered at the usual and customary rates for such treatment. The insurer, health care service contractor, or health maintenance organization providing optional coverage under the provisions of this section for mental health services may establish separate usual and customary rates for services rendered by physicians licensed under chapter 18.71 or 18.57 RCW, psychologists licensed under chapter 18.83 RCW, and community mental health centers licensed under chapter 71.24 RCW and state hospitals as defined in RCW 72.23.010. However, the treatment may be subject to contract provisions with respect to reasonable deductible amounts or copayments. In order to qualify for coverage under this section, a licensed community mental health agency shall have in effect a plan for quality assurance and peer review, and the treatment shall be supervised by a physician licensed under chapter 18.71 or 18.57 RCW or by a psychologist licensed under chapter 18.83 RCW.

(3) The group health maintenance agreement may provide that all the coverage for mental health treatment is waived for all covered members if the contract holder so states in advance in writing to the health maintenance organization.

(4) This section shall not apply to a group health maintenance agreement that has been entered into in accordance with a collective bargaining agreement between management and labor representatives prior to March 1, 1987. [1987 c 283 § 5; 1986 c 184 § 4; 1983 c 35 § 3.]

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Legislative intent—Effective date—Severability—1986 c 184: See notes following RCW 48.21.240.

Effective date—Severability—1983 c 35: See notes following RCW 48.21.240.

48.46.292 Mental health treatment—Waiver of preauthorization for persons involuntarily committed. A health maintenance organization providing services or benefits for hospital or medical care coverage in this state shall waive a preauthorization from the health maintenance organization before an enrolled participant or the enrolled participant's covered dependents receive mental health treatment rendered by a state hospital as defined in RCW 72.23.010 if the enrolled participant or the enrolled participant's covered dependents are involuntarily committed to a state hospital as defined in RCW 72.23.010. [1993 c 272 § 5.]

Savings—Severability—1993 c 272: See notes following RCW 43.20B.347.

48.46.300 Future dividends or refunds, restricted—Issuance or sale of securities regulated. (1) No health maintenance organization nor any individual acting in behalf thereof may guarantee or agree to the payment of future dividends or future refunds of unused charges or savings in any specific or approximate amounts or percentages in respect to any contract being offered to the public, except in a group contract containing an experience refund provision.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health maintenance organization domiciled in this state other than the memberships and bonds of a nonprofit corporation are subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits. [1983 c 106 § 8.]

48.46.310 Registration not endorsement. The granting of a certificate of registration to a health maintenance organization is permissive only, and does not constitute an endorsement by the insurance commissioner of any person or thing related to the health maintenance organization, and no person may advertise or display a certificate of registration for use as an inducement in any solicitation. [1983 c 106 § 9.]

48.46.320 Dependent children, termination of coverage, conditions. Any health maintenance agreement which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the agreement shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both: (1) Incapable of self-sustaining employment by reason of developmental disability or physical handicap; and (2) chiefly dependent upon the subscriber for support and maintenance, if proof of such incapacity and dependency is furnished to the health maintenance organization by the enrolled participant within thirty-one days of the child's attainment of the limiting age and subsequently as required by the health maintenance organization but not more frequently than annually after the two-year period following the child's attainment of the limiting age. [1985 c 320 § 6; 1983 c 106 § 10.]

48.46.340 Return of agreement within ten days.

Every subscriber of an individual health maintenance agreement may return the agreement to the health maintenance organization or the agent through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the agreement, the subscriber is not satisfied with it for any reason. The health maintenance organization shall refund promptly any fee paid for the agreement. Upon such return of the agreement, it shall be void from the beginning and the parties shall be in the same position as if no agreement had been issued. Notice of the substance of this section shall be printed on the face of each such agreement or be attached thereto. [1983 c 106 § 12.]

48.46.350 Chemical dependency treatment. Each group agreement for health care services that is delivered or issued for delivery or renewed on or after January 1, 1988, must contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by a provider which is an "approved treatment program" under RCW 70.96A.020(3). However, this section does not apply to any agreement written as supplemental coverage to any federal or state programs of health care including, but not limited to, Title XVIII health insurance for the aged, which is commonly referred to as Medicare, Parts A&B, and amendments thereto. Treatment must be covered under the chemical dependency coverage if treatment is rendered by the health maintenance organization or if the health maintenance organization refers the enrolled participant or the enrolled participant's dependents to a physician licensed under chapter 18.57 or 18.71 RCW, or to a qualified counselor employed by an approved treatment program described in RCW 70.96A.020(3). In all cases, a health maintenance organization retains the right to diagnose the presence of chemical dependency and select the modality of treatment that best serves the interest of the health maintenance organization's enrolled participant, or the enrolled participant's covered dependent. [2003 c 248 § 19; 1990 1st ex.s. c 3 § 14; 1987 c 458 § 18; 1983 c 106 § 13.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

Chemical dependency benefits, rules: RCW 48.21.197.

48.46.355 "Chemical dependency" defined. For the purposes of RCW 48.46.350, "chemical dependency" means an illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. [1987 c 458 § 19.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

48.46.360 Payment of cost of agreement directly to holder during labor dispute—Changes restricted—Notice to employee. Any employee whose compensation includes a health maintenance agreement, the cost of which is paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the cost as it becomes due directly to the agreement holder whenever the employee's compensation is suspended or terminated directly or indirectly as a result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the health maintenance agreement provides. During that period of time, such agreement may not be altered or changed. Nothing in this section impairs the right of the health maintenance organization to make normal decreases or increases in the cost of the health maintenance agreement upon expiration and renewal of the agreement, in accordance with the agreement. Thereafter, if such health maintenance agreement is no longer available, the employee shall be given the opportunity to convert as specified in RCW 48.46.450 and 48.46.460. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the agreement holder in writing, by mail addressed to the address last of record with the agreement holder, that the employee may pay the cost of the health maintenance agreement to the agreement holder as it becomes due as provided in this section. Payment must be made when due or the coverage may be terminated by the health maintenance organization. [1985 c 7 § 116; 1983 c 106 § 14.]

48.46.370 Coverage not denied for handicap. No health maintenance organization may deny coverage to a person solely on account of the presence of any sensory, mental, or physical handicap. Nothing in this section may be construed as limiting a health maintenance organization's authority to deny or otherwise limit coverage to a person when the person because of a medical condition does not meet the essential eligibility requirements established by the health maintenance organization for purposes of determining coverage for any person. [1983 c 106 § 15.]

48.46.375 Benefits for prenatal diagnosis of congenital disorders—Agreements entered into or renewed on or after January 1, 1990. On or after January 1, 1990, every group health maintenance agreement entered into or renewed that covers hospital, medical, or surgical expenses and which provides benefits for pregnancy, childbirth, or related medical conditions to enrollees of such groups, shall offer benefits for prenatal diagnosis of congenital disorders of the fetus by means of screening and diagnostic procedures during pregnancy to such enrollees when those services are determined to be medically necessary by the health maintenance organization in accord with standards set in rule by the board of health: PROVIDED, That such procedures shall be covered only if rendered directly by the health maintenance organization or upon referral by the health maintenance organization. Every group health maintenance organization shall communicate the availability of such coverage to all groups covered and to all groups with whom they are negotiating. [1988 c 276 § 8.]

(2004 Ed.)

Prenatal testing—Limitation on changes to coverage: RCW 48.42.090.

48.46.380 Notice of reason for cancellation, denial, or refusal to renew agreement. Every authorized health maintenance organization, upon canceling, denying, or refusing to renew any individual health maintenance agreement, shall, upon written request, directly notify in writing the applicant or enrolled participant as appropriate, of the reasons for the action by the health maintenance organization. Any benefits, terms, rates, or conditions of such agreement which are restricted, excluded, modified, increased, or reduced shall, upon written request, be set forth in writing and supplied to the individual. The written communications required by this section shall be phrased in simple language which is readily understandable to a person of average intelligence, education, and reading ability. [1993 c 492 § 291; 1983 c 106 § 16.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.46.390 Providing information on cancellation or refusal—No liability for insurance commissioner or health maintenance organization. With respect to the provisions of health maintenance agreements as set forth in RCW 48.46.380, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, the commissioner's agents, or members of the commissioner's staff, or against any health maintenance organization, its authorized representative, its agents, its employees, for providing to the health maintenance organization information as to reasons for cancellation or refusal to issue or renew, for libel or slander on the basis of any statement made by any of them in any written notice of cancellation or refusal to issue or renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to issue or renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith. [1983 c 106 § 17.]

48.46.400 False or misleading advertising prohibited. No person may knowingly make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a health maintenance organization, or relative to the business of a health maintenance organization or to any person engaged therein. [1983 c 106 § 18.]

48.46.410 Misrepresentations to induce termination or retention of agreement prohibited. No health maintenance organization nor any person representing a health maintenance organization may by misrepresentation or misleading comparisons induce or attempt to induce any member of a health maintenance organization to terminate or retain an agreement or membership in the organization. [1983 c 106 § 19.]

48.46.420 Penalty for violations. (1) Except as otherwise provided in this chapter, any health maintenance organi-

zation which, or person who, violates any provision of this chapter is guilty of a gross misdemeanor.

(2) A health maintenance organization that fails to comply with the net worth requirements of this chapter must cure that defect in compliance with an order of the commissioner rendered in conformity with rules adopted pursuant to chapter 34.05 RCW. The commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrolled participants. [2003 c 250 § 12; 1990 c 119 § 10; 1983 c 106 § 20.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.46.430 Enforcement authority of commissioner.

For the purposes of this chapter, the insurance commissioner shall have the same powers and duties of enforcement as are provided in RCW 48.02.080. [1983 c 106 § 21.]

48.46.440 Continuation option to be offered. Every health maintenance organization that issues agreements providing group coverage for hospital or medical care shall offer the agreement holder an option to include an agreement provision granting a person who becomes ineligible for coverage under the group agreement, the right to continue the group benefits for a period of time and at a rate agreed upon. The agreement provision shall provide that when such coverage terminates the covered person may convert to an agreement as provided in RCW 48.46.450. [1984 c 190 § 8.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

Application—1984 c 190 §§ 2, 5, and 8: See note following RCW 48.21.250.

48.46.450 Conversion agreement to be offered—Exceptions, conditions. (1) Except as otherwise provided by this section, any group health maintenance agreement entered into or renewed on or after January 1, 1985, that provides benefits for hospital or medical care shall contain a provision granting a person covered by the group agreement the right to obtain a conversion agreement from the health maintenance organization upon termination of the person's eligibility for coverage under the group agreement.

(2) A health maintenance organization need not offer a conversion agreement to:

(a) A person whose coverage under the group agreement ended when the person's employment or membership was terminated for misconduct: PROVIDED, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal Medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion agreement, a person must submit a written application and the first premium payment

for the conversion agreement not later than thirty-one days after the date the person's eligibility for group coverage terminates. The conversion agreement shall become effective without lapse of coverage, immediately following termination of coverage under the group agreement.

(4) If a health maintenance organization or group agreement holder does not renew, cancels, or otherwise terminates the group agreement, the health maintenance organization shall offer a conversion agreement to any person who was covered under the terminated agreement unless the person is eligible to obtain group benefits for hospital or medical care within thirty-one days after such nonrenewal, cancellation, or termination of the group agreement.

(5) The health maintenance organization shall determine the premium for the conversion agreement in accordance with the organization's table of premium rates applicable to the age and class of risk of each person to be covered under the agreement and the type and amount of benefits provided. [1984 c 190 § 9.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.46.460 Conversion agreement—Restrictions and requirements. (1) A health maintenance organization must offer a conversion agreement for comprehensive health care services and shall not require proof of insurability as a condition for issuance of the conversion agreement.

(2) A conversion agreement may not contain an exclusion for preexisting conditions except to the extent that a waiting period for a preexisting condition has not been satisfied under the group agreement.

(3) A conversion agreement need not provide benefits identical to those provided under the group agreement. The conversion agreement may contain provisions requiring the person covered by the conversion agreement to pay reasonable deductibles and copayments.

(4) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion agreements.

(5) The commissioner shall adopt rules to establish specific standards for conversion agreement provisions. These rules may include but are not limited to:

- (a) Terms of renewability;
- (b) Nonduplication of coverage;
- (c) Benefit limitations, exceptions, and reductions; and
- (d) Definitions of terms. [1984 c 190 § 10.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.46.470 Endorsement of modifications. If an individual health care service agreement is issued on any basis other than as applied for, an endorsement setting forth such modification must accompany and be attached to the agreement. No agreement shall be effective unless the endorsement is signed by the applicant, and a signed copy thereof returned to the health maintenance organization. [1985 c 320 § 7.]

48.46.480 Continuation of coverage of former family members. Every health care service agreement issued, amended, or renewed after January 1, 1986, for an individual

and his or her dependents shall contain provisions to assure that the covered spouse and/or dependents, in the event that any cease to be a qualified family member by reason of termination of marriage or death of the principal enrollee, shall have the right to continue the health maintenance agreement without a physical examination, statement of health, or other proof of insurability. [1985 c 320 § 8.]

48.46.490 Coverage for adopted children. (1) Any health maintenance agreement under this chapter which provides coverage for dependent children, as defined in the agreement of the enrolled participant, shall cover adoptive children placed with the enrolled participant on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the agreement may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the health maintenance organization. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 5.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.46.500 Cancellation of rider. Upon application by an enrollee, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the enrollee during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the enrollee from that condition, such agreement not to be unreasonably withheld. The option of the enrollee to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 4.]

48.46.510 Phenylketonuria. (1) The legislature finds that:

(a) Phenylketonuria is a rare inherited genetic disorder.

(b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.

(c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.

(d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.

(e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any agreement for health care services delivered or issued for delivery or renewed in this state on or after September 1, 1988, shall provide coverage for the formulas necessary for the treatment of phenylketonuria. Such formulas shall be covered when deemed medically necessary by the medical direc-

tor or his or her designee of the health maintenance organization and if provided by the health maintenance organization or upon the health maintenance organization's referral. Formulas shall be covered at the usual and customary rates for such formulas, subject to contract provisions with respect to deductible amounts or co-payments. [1988 c 173 § 4.]

48.46.520 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each employer-sponsored group contract for comprehensive health care service which is entered into, or renewed, on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Covered benefits and treatment must be rendered or referred by the health maintenance organization, and delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where treatment is rendered by such licensee. Nothing in this section shall prohibit a health maintenance organization from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the health maintenance organization. Benefits shall be provided for the maintenance of a covered enrollee in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be provided to restore and improve function.

(4) It is the intent of this section that employers purchasing comprehensive group coverage including the benefits required by this section, together with the health maintenance organization, retain authority to design and employ utilization and cost controls. Therefore, benefits provided under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the employer purchasing coverage and the health maintenance organization. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available, or may limit the number of services delivered as agreed by the employer purchasing coverage and the health maintenance organization. [1989 c 345 § 3.]

48.46.530 Temporomandibular joint disorders—Insurance coverage. (1) Except as provided in this section, a health maintenance agreement entered into or renewed after December 31, 1989, shall offer optional coverage for the treatment of temporomandibular joint disorders.

(a) Health maintenance organizations offering medical coverage only may limit benefits in such coverages to medical services related to treatment of temporomandibular joint disorders. No health maintenance organizations offering

medical and dental coverage may limit benefits in such coverage to dental services related to treatment of temporomandibular joint disorders. No health maintenance organization offering medical coverage only may define all temporomandibular joint disorders as purely dental in nature.

(b) Health maintenance organizations offering optional temporomandibular joint disorder coverage as provided in this section may, but are not required to, offer lesser or no temporomandibular joint disorder coverage as part of their basic group disability contract.

(c) Benefits and coverage offered under this section may be subject to negotiation to promote broad flexibility in potential benefit coverage. This flexibility shall apply to services to be reimbursed, determination of treatments to be considered medically necessary, systems through which services are to be provided, including referral systems and use of other providers, and related issues.

(2) Unless otherwise directed by law, the insurance commissioner shall adopt rules, to be implemented on January 1, 1993, establishing minimum benefits, terms, definitions, conditions, limitations, and provisions for the use of reasonable deductibles and copayments.

(3) A health maintenance organization need not make the offer of coverage required by this section to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefit statutes under Title 48 RCW that does not provide coverage for temporomandibular joint disorders. [1989 c 331 § 4.]

Legislative finding—Effective date—1989 c 331: See notes following RCW 48.21.320.

48.46.535 Prescriptions—Preapproval of individual claims—Subsequent rejection prohibited—Written record required. Health maintenance organizations who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim. [1993 c 253 § 5.]

Findings—Effective date—1993 c 253: See notes following RCW 48.20.525.

48.46.540 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health maintenance organization providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health maintenance organizations shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health maintenance organization the proof of current licensure for all nonresident pharmacies through which the insurer is providing

coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.17 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [1991 c 87 § 10.]

Effective date—1991 c 87: See note following RCW 18.64.350.

48.46.565 Foot care services. Except to the extent that a health maintenance organization contracts with a group medical practice which only treats that organization's patients, a health maintenance organization may not discriminate in the terms and conditions, including reimbursement, for the provision of foot care services between physicians and surgeons licensed under chapters 18.22, 18.57, and 18.71 RCW. [1999 c 64 § 1.]

Intent—1999 c 64: "This act is intended to be procedural and not to impair the obligation of any existing contract." [1999 c 64 § 2.]

Severability—1999 c 64: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 64 § 3.]

48.46.570 Denturist services. Notwithstanding any provision of any health maintenance organization agreement covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such agreement would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 25 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.46.575 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited. A health maintenance organization that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the health maintenance organization, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board. [1995 c 64 § 1.]

48.46.580 When injury caused by intoxication or use of narcotics. A health maintenance organization may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the enrolled participant's being intoxicated or under the influence of a narcotic. [2004 c 112 § 5.]

Finding—Application—2004 c 112: See notes following RCW 48.20.385.

48.46.600 Disclosure of certain material transactions—Report—Information is confidential. (1) Every health maintenance organization domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.46.605 through 48.46.625 are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health maintenance organization to which it pertains unless the commissioner, after giving the health maintenance organization that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 19.]

48.46.605 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported pursuant to RCW 48.46.600 if the acquisitions or dispositions are not material. For purposes of RCW 48.46.600 through 48.46.625, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting health maintenance organization's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 20.]

48.46.610 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.46.600 through 48.46.625 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting health maintenance organization or the acquisition of materials for such purpose.

(2) Asset dispositions subject to RCW 48.46.600 through 48.46.625 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandon-

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ment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise. [1995 c 86 § 21.]

48.46.615 Report of a material acquisition or disposition of assets—Information required. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (1) Date of the transaction;
- (2) Manner of acquisition or disposition;
- (3) Description of the assets involved;
- (4) Nature and amount of the consideration given or received;
- (5) Purpose of or reason for the transaction;
- (6) Manner by which the amount of consideration was determined;
- (7) Gain or loss recognized or realized as a result of the transaction; and
- (8) Names of the persons from whom the assets were acquired or to whom they were disposed. [1995 c 86 § 22.]

48.46.620 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.46.600 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.46.600 through 48.46.625, a material nonrenewal, cancellation, or revision is one that affects:

(a) More than fifty percent of a health maintenance organization's total reserve credit taken for business ceded, on an annualized basis, as indicated in the health maintenance organization's most recent annual statement;

(b) More than ten percent of a health maintenance organization's total cession when it is replaced by one or more unauthorized reinsurers; or

(c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if a health maintenance organization's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 23.]

48.46.625 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

- (1) The effective date of the nonrenewal, cancellation or revision;
- (2) The description of the transaction with an identification of the initiator;
- (3) The purpose of or reason for the transaction; and
- (4) If applicable, the identity of the replacement reinsurers. [1995 c 86 § 24.]

48.46.900 Liberal construction. It is intended that the provisions of this chapter shall be liberally construed to

accomplish the purposes provided for and authorized herein. [1975 1st ex.s. c 290 § 24.]

48.46.910 Severability—1975 1st ex.s. c 290. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 290 § 26.]

48.46.920 Short title. This 1975 amendatory act may be known and cited as "The Washington Health Maintenance Organization Act of 1975". [1975 1st ex.s. c 290 § 27.]

Chapter 48.47 RCW

MANDATED HEALTH BENEFITS

Sections

48.47.005	Legislative findings—Purpose.
48.47.010	Definitions.
48.47.020	Submission of mandated health benefit proposal—Review—Benefit must be authorized by law.
48.47.030	Mandated health benefit proposal—Guidelines for assessing impact—Inclusion of ad hoc review panels—Health care authority.
48.47.900	Severability—1997 c 412.

48.47.005 Legislative findings—Purpose. The legislature finds that there is a continued interest in mandating certain health coverages or offering of health coverages by health carriers; and that improved access to these health care services to segments of the population which desire them can provide beneficial social and health consequences which may be in the public interest.

The legislature finds further, however, that the cost ramifications of expanding health coverages is of continuing concern; and that the merits of a particular mandated benefit must be balanced against a variety of consequences which may go far beyond the immediate impact upon the cost of insurance coverage. The legislature hereby finds and declares that a systematic review of proposed mandated benefits, which explores all the ramifications of such proposed legislation, will assist the legislature in determining whether mandating a particular coverage or offering is in the public interest. The purpose of this chapter is to establish a procedure for the proposal, review, and determination of mandated benefit necessity. [1997 c 412 § 1; 1984 c 56 § 1. Formerly RCW 48.42.060.]

48.47.010 Definitions. Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Appropriate committees of the legislature" or "committees" means nonfiscal standing committees of the Washington state senate and house of representatives that have jurisdiction over statutes that regulate health carriers, health care facilities, health care providers, or health care services.

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

(3) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chap-

ter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state, and such other facilities as required by federal law and implementing regulations.

(4) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(5) "Health care service" or "service" means a service, drug, or medical equipment offered or provided by a health care facility and a health care provider relating to the prevention, cure, or treatment of illness, injury, or disease.

(6) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, a health maintenance organization as defined in RCW 48.46.020, plans operating under the state health care authority under chapter 41.05 RCW, the state health insurance pool operating under chapter 48.41 RCW, and insuring entities regulated in chapter 48.43 RCW.

(7) "Mandated health benefit," "mandated benefit," or "benefit" means coverage or offering required by law to be provided by a health carrier to: (a) Cover a specific health care service or services; (b) cover treatment of a specific condition or conditions; or (c) contract, pay, or reimburse specific categories of health care providers for specific services; however, it does not mean benefits established pursuant to chapter 74.09, 41.05, or 70.47 RCW, or scope of practice modifications pursuant to chapter 18.120 RCW. [1997 c 412 § 2.]

48.47.020 Submission of mandated health benefit proposal—Review—Benefit must be authorized by law. Mandated health benefits shall be established as follows:

(1) Every person who, or organization that, seeks to establish a mandated benefit shall, at least ninety days prior to a regular legislative session, submit a mandated benefit proposal to the appropriate committees of the legislature, assessing the social impact, financial impact, and evidence of health care service efficacy of the benefit in strict adherence to the criteria enumerated in RCW 48.47.030.

(2) The chair of a committee may request that the department examine the proposal using the criteria set forth in RCW 48.47.030, however, such request must be made no later than nine months prior to a subsequent regular legislative session.

(3) To the extent that funds are appropriated for this purpose, the department shall report to the appropriate committees of the legislature on the appropriateness of adoption no

later than thirty days prior to the legislative session during which the proposal is to be considered.

(4) Mandated benefits must be authorized by law. [1997 c 412 § 3; 1989 1st ex.s. c 9 § 221; 1987 c 150 § 79; 1984 c 56 § 2. Formerly RCW 48.42.070.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1987 c 150: See RCW 18.122.901.

48.47.030 Mandated health benefit proposal—Guidelines for assessing impact—Inclusion of ad hoc review panels—Health care authority. (1) Based on the availability of relevant information, the following criteria shall be used to assess the impact of proposed mandated benefits:

(a) The social impact: (i) To what extent is the benefit generally utilized by a significant portion of the population? (ii) To what extent is the benefit already generally available? (iii) If the benefit is not generally available, to what extent has its unavailability resulted in persons not receiving needed services? (iv) If the benefit is not generally available, to what extent has its unavailability resulted in unreasonable financial hardship? (v) What is the level of public demand for the benefit? (vi) What is the level of interest of collective bargaining agents in negotiating privately for inclusion of this benefit in group contracts?

(b) The financial impact: (i) To what extent will the benefit increase or decrease the cost of treatment or service? (ii) To what extent will the coverage increase the appropriate use of the benefit? (iii) To what extent will the benefit be a substitute for a more expensive benefit? (iv) To what extent will the benefit increase or decrease the administrative expenses of health carriers and the premium and administrative expenses of policyholders? (v) What will be the impact of this benefit on the total cost of health care services and on premiums for health coverage? (vi) What will be the impact of this benefit on costs for state-purchased health care? (vii) What will be the impact of this benefit on affordability and access to coverage?

(c) Evidence of health care service efficacy:

(i) If a mandatory benefit of a specific service is sought, to what extent has there been conducted professionally accepted controlled trials demonstrating the health consequences of that service compared to no service or an alternative service?

(ii) If a mandated benefit of a category of health care provider is sought, to what extent has there been conducted professionally accepted controlled trials demonstrating the health consequences achieved by the mandated benefit of this category of health care provider?

(iii) To what extent will the mandated benefit enhance the general health status of the state residents?

(2) The department shall consider the availability of relevant information in assessing the completeness of the proposal.

(3) The department may supplement these criteria to reflect new relevant information or additional significant issues.

(4) The department shall establish, where appropriate, ad hoc panels composed of related experts, and representatives of carriers, consumers, providers, and purchasers to assist in

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the proposal review process. Ad hoc panel members shall serve without compensation.

(5) The health care authority shall evaluate the reasonableness and accuracy of cost estimates associated with the proposed mandated benefit that are provided to the department by the proposer or other interested parties, and shall provide comment to the department. Interested parties may, in addition, submit data directly to the department. [1997 c 412 § 4; 1984 c 56 § 3. Formerly RCW 48.42.080.]

48.47.900 Severability—1997 c 412. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 412 § 7.]

Chapter 48.48 RCW

STATE FIRE PROTECTION

(Formerly: State fire marshal)

Sections

48.48.030	Examination of premises.
48.48.040	Standards of safety.
48.48.045	Schools—Standards for fire prevention and safety—Plan reviews and construction inspections.
48.48.050	Removal of fire hazards—Appeal of order—Penalty.
48.48.060	Reports and investigation of fires—Police powers.
48.48.065	Statistical information and reports.
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48.48.080	Criminal prosecutions.
48.48.090	Record of fires.
48.48.110	Annual report.
48.48.140	Smoke detection devices in dwelling units—Penalty.
48.48.150	Premises with guard animals—Registration, posting—Acts permitted fire fighters—Liability for injury to fire fighters.
48.48.160	Hazardous liquid and gas pipeline accidents—Preparedness of local first responders.

Director of fire protection, state fire protection policy board: RCW 43.43.932, 43.43.938.

Duties of chief of the Washington state patrol and director of fire protection: agencies for care of children, expectant mothers, developmentally disabled: RCW 74.15.050.

birthing centers: RCW 18.46.110.

nursing homes: RCW 18.51.140.

public fireworks displays: RCW 70.77.250.

Fire protection districts: Title 52 RCW.

Safety requirements as to doors, public buildings, and places of entertainment: RCW 70.54.070.

Transient accommodations, adoption of rules: RCW 70.62.290.

48.48.030 Examination of premises. (1) The chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, shall have authority at all times of day and night, in the performance of duties imposed by this chapter, to enter upon and examine any building or premises where any fire has occurred and other buildings and premises adjoining or near thereto.

(2) The chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, shall have authority at any reasonable hour to enter into any public building or premises or any building or premises used for public purposes to inspect for fire hazards. [1995 c 369 § 25; 1986 c 266 § 67; 1985 c 470 § 17; 1947 c 79 § .33.03; Rem. Supp. 1947 § 45.33.03.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1985 c 470: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 470 § 38.]

Effective date—1985 c 470: "This act shall take effect on January 1, 1986." [1985 c 470 § 40.]

48.48.040 Standards of safety. (1) The chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, shall have authority to enter upon all premises and into all buildings except private dwellings for the purpose of inspection to ascertain if any fire hazard exists, and to require conformance with minimum standards for the prevention of fire and for the protection of life and property against fire and panic as to use of premises, and may adopt by reference nationally recognized standards applicable to local conditions.

(2) The chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, may, upon request by the chief fire official or the local governing body or of taxpayers of such area, assist in the enforcement of any such code. [1995 c 369 § 26; 1986 c 266 § 68; 1985 c 470 § 18; 1947 c 79 § .33.04; Rem. Supp. 1947 § 45.33.04.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.045 Schools—Standards for fire prevention and safety—Plan reviews and construction inspections. Nonconstruction standards relative to fire prevention and safety for all schools under the jurisdiction of the superintendent of public instruction and state board of education shall be established by the state fire protection board. The director of fire protection shall make or cause to be made plan reviews and construction inspections for all E-1 occupancies as may be necessary to insure compliance with the state building code and standards for schools adopted under chapter 19.27 RCW. Nothing in this section prohibits the director of fire protection from delegating construction inspection authority to any local jurisdiction. [1991 c 170 § 2; 1986 c 266 § 69; 1985 c 470 § 19; 1981 c 198 § 3; 1972 ex.s. c 70 § 1.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.050 Removal of fire hazards—Appeal of order—Penalty. (1) If the chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, finds in any building or premises subject to their inspection under this chapter, any combustible material or flammable conditions or fire hazards dangerous to the safety of the building, premises, or to the public, he or she shall by written order require such condition to be remedied, and such order shall forthwith be complied with by the owner or occupant of the building or premises.

(2) An owner or occupant aggrieved by any such order made by the chief of the Washington state patrol, through the director of fire protection or his or her deputy, may appeal

such order pursuant to chapter 34.05 RCW. If the order is confirmed, the order shall remain in force and be complied with by the owner or occupant.

(3) Any owner or occupant failing to comply with any such order not appealed from or with any order so confirmed shall be punishable by a fine of not less than ten dollars nor more than fifty dollars for each day such failure exists. [1995 c 369 § 27; 1986 c 266 § 70; 1985 c 470 § 20; 1947 c 79 § .33.05; Rem. Supp. 1947 § 45.33.05.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.060 Reports and investigation of fires—Police powers. (1) The responsibility for investigating the origin, cause, circumstances, and extent of loss of all fires shall be assigned as follows:

(a) Within any city or town, the chief of the fire department;

(b) Within unincorporated areas of a county, the county fire marshal, or other fire official so designated by the county legislative authority.

(2) No fire marshal, or other person, may enter the scene of an emergency until permitted by the officer in charge of the emergency incident.

(3) Nothing shall prevent any city, town, county, or fire protection district, or any combination thereof, from entering into interlocal agreements to meet the responsibility required by this section.

(4) When any fire investigation indicates that the cause of the fire is determined to be suspicious or criminal in nature, the person responsible for the fire investigation shall immediately report the results of said investigation to the local law enforcement agency and the chief of the Washington state patrol, through the state fire marshal.

(5) In addition to the responsibility imposed by this section, any law enforcement agency, sheriff, or chief of police may assist in the investigation of the origin, cause, circumstances, and extent of loss of all fires within his or her respective jurisdiction.

(6) The chief of the Washington state patrol, through the director of fire protection or his or her deputy, may investigate any fire for the purpose of determining its cause, origin, and the extent of the loss. The chief of the Washington state patrol, through the director of fire protection or his or her deputy, shall assist in the investigation of those fires of criminal, suspected, or undetermined cause when requested by the reporting agency. In the investigation of any fire of criminal, suspected, or undetermined cause, the chief of the Washington state patrol and the director of fire protection or his or her deputy, are vested with police powers to enforce the laws of this state. To exercise these powers, authorized deputies must receive prior written authorization from the chief of the Washington state patrol, through the director of fire protection, and shall have completed a course of training prescribed by the Washington state criminal justice training commission. [1996 c 161 § 1; 1995 c 369 § 28; 1986 c 266 § 71; 1985 c 470 § 21; 1981 c 104 § 1; 1980 c 181 § 1; 1947 c 79 § .33.06; Rem. Supp. 1947 § 45.33.06.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.065 Statistical information and reports. (1)

The chief of each organized fire department, or the sheriff or other designated county official having jurisdiction over areas not within the jurisdiction of any fire department, shall report statistical information and data to the chief of the Washington state patrol, through the director of fire protection, on each fire occurring within the official's jurisdiction and, within two business days, report any death resulting from fire. Reports shall be consistent with the national fire incident reporting system developed by the United States fire administration and rules established by the chief of the Washington state patrol, through the director of fire protection. The chief of the Washington state patrol, through the director of fire protection, and the department of natural resources shall jointly determine the statistical information to be reported on fires on land under the jurisdiction of the department of natural resources.

(2) The chief of the Washington state patrol, through the director of fire protection, shall analyze the information and data reported, compile a report, and distribute a copy annually by July 1st to each chief fire official in the state. Upon request, the chief of the Washington state patrol, through the director of fire protection, shall also furnish a copy of the report to any other interested person at cost.

(3) In carrying out the duties relating to collecting, analyzing, and reporting statistical fire data, the fire protection policy board may purchase statistical fire data from a qualified individual or organization. The information shall meet the diverse needs of state and local fire reporting agencies and shall be (a) defined in understandable terms of common usage in the fire community; (b) adaptable to the varying levels of resources available; (c) maintained in a manner that will foster both technical support and resource sharing; and (d) designed to meet both short and long-term needs. [1999 c 231 § 1; 1995 c 369 § 29; 1986 c 266 § 72; 1985 c 470 § 22; 1980 c 181 § 2.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.070 Examination of witnesses. In the conduct of any investigation into the cause, origin, or loss resulting from any fire, the chief of the Washington state patrol and the director of fire protection shall have the same power and rights relative to securing the attendance of witnesses and the taking of testimony under oath as is conferred upon the insurance commissioner under RCW 48.03.070. False swearing by any such witness shall be deemed to be perjury and shall be subject to punishment as such. [1995 c 369 § 30; 1986 c 266 § 73; 1985 c 470 § 23; 1947 c 79 § .33.07; Rem. Supp. 1947 § 45.33.07.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

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48.48.080 Criminal prosecutions. If as the result of any such investigation, or because of any information received, the chief of the Washington state patrol, through the director of fire protection, is of the opinion that there is evidence sufficient to charge any person with any crime, he or she may cause such person to be arrested and charged with such offense, and shall furnish to the prosecuting attorney of the county in which the offense was committed, the names of witnesses and all pertinent and material evidence and testimony within his or her possession relative to the offense. [1995 c 369 § 31; 1986 c 266 § 74; 1985 c 470 § 24; 1947 c 79 § .33.08; Rem. Supp. 1947 § 45.33.08.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.090 Record of fires. The chief of the Washington state patrol, through the director of fire protection, shall keep on file all reports of fires made to him or her pursuant to this code. Such records shall at all times during business hours be open to public inspection; except, that any testimony taken in a fire investigation may, in the discretion of the chief of the Washington state patrol, through the director of fire protection, be withheld from public scrutiny. The chief of the Washington state patrol, through the director of fire protection, may destroy any such report after five years from its date. [1995 c 369 § 32; 1986 c 266 § 75; 1985 c 470 § 25; 1947 c 79 § .33.09; Rem. Supp. 1947 § 45.33.09.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.110 Annual report. The chief of the Washington state patrol, through the director of fire protection, shall submit annually a report to the governor of this state. The report shall contain a statement of his or her official acts pursuant to this chapter. [1995 c 369 § 33; 1986 c 266 § 76; 1985 c 470 § 26; 1977 c 75 § 71; 1947 c 79 § .33.11; Rem. Supp. 1947 § 45.33.11.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.140 Smoke detection devices in dwelling units—Penalty. (1) Smoke detection devices shall be installed inside all dwelling units:

(a) Occupied by persons other than the owner on and after December 31, 1981; or

(b) Built or manufactured in this state after December 31, 1980.

(2) The smoke detection devices shall be designed, manufactured, and installed inside dwelling units in conformance with:

(a) Nationally accepted standards; and

(b) As provided by the administrative procedure act, chapter 34.05 RCW, rules and regulations promulgated by

the chief of the Washington state patrol, through the director of fire protection.

(3) Installation of smoke detection devices shall be the responsibility of the owner. Maintenance of smoke detection devices, including the replacement of batteries where required for the proper operation of the smoke detection device, shall be the responsibility of the tenant, who shall maintain the device as specified by the manufacturer. At the time of a vacancy, the owner shall insure that the smoke detection device is operational prior to the reoccupancy of the dwelling unit.

(4) Any owner or tenant failing to comply with this section shall be punished by a fine of not more than two hundred dollars.

(5) For the purposes of this section:

(a) "Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) "Smoke detection device" means an assembly incorporating in one unit a device which detects visible or invisible particles of combustion, the control equipment, and the alarm-sounding device, operated from a power supply either in the unit or obtained at the point of installation. [1995 c 369 § 34; 1991 c 154 § 1; 1986 c 266 § 89; 1980 c 50 § 1.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

48.48.150 Premises with guard animals—Registration, posting—Acts permitted fire fighters—Liability for injury to fire fighters. (1) All premises guarded by guard animals, which are animals professionally trained to defend and protect premises or the occupants of the premises, shall be registered with the local fire department. Front entrances to residences and all entrances to business premises shall be posted in a visible location with signs approved by the chief of the Washington state patrol, through the director of fire protection, indicating that guard animals are present.

(2) A fire fighter, who reasonably believes that his or her safety is endangered by the presence of a guard animal, may without liability: (a) Refuse to enter the premises, or (b) take any reasonable action necessary to protect himself or herself from attack by the guard animal.

(3) If the person responsible for the guard animal being on the premises does not comply with subsection (1) of this section, that person may be held liable for any injury to the fire fighter caused by the presence of the guard animal. [1995 c 369 § 35; 1986 c 266 § 90; 1983 c 258 § 1.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

48.48.160 Hazardous liquid and gas pipeline accidents—Preparedness of local first responders. (1) The chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, shall, in consultation with the emergency management program within the state military department, the department of ecology, the utilities and transportation commission, and local emergency services organizations:

(a) Evaluate the preparedness of local first responders in meeting emergency management demands under subsection (2) of this section; and

(b) Conduct an assessment of the equipment and personnel needed by local first responders to meet emergency management demands related to pipelines.

(2) The chief of the Washington state patrol, through the director of fire protection or his or her deputy, shall develop curricula for training local first responders to deal with hazardous liquid and gas pipeline accidents. The curricula shall be developed in conjunction with pipeline companies and local first responders, and shall include a timetable and costs for providing training as defined in the curricula to all communities housing pipelines. Separate curricula shall be developed for hazardous liquid and gas pipelines so that the differences between pipelines may be recognized and appropriate accident responses provided. The need for a training program for regional incident management teams shall also be evaluated.

(3) In consultation with other relevant agencies, the chief of the Washington state patrol, through the director of fire protection or his or her deputy, shall identify the need and means for achieving consistent application of the national interagency incident management system.

(4) For the purposes of this section, "local first responders" means police, fire, emergency medical staff, and volunteers. [2000 c 191 § 20.]

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

Chapter 48.50 RCW

INSURANCE FRAUD REPORTING IMMUNITY ACT

(Formerly: Arson reporting immunity act)

Sections

48.50.010	Short title.
48.50.020	Definitions.
48.50.030	Release of information or evidence by insurer.
48.50.040	Notification by insurer.
48.50.050	Release of information by authorized agencies.
48.50.055	Release of information to requesting insurer.
48.50.070	Immunity from liability for releasing information.
48.50.075	Immunity from liability for denying claim based on written opinion of authorized agency.
48.50.090	Local ordinances not preempted.
48.50.900	Severability—1979 ex.s. c 80.

48.50.010 Short title. This chapter shall be known and may be cited as the Insurance Fraud Reporting Immunity Act. [1995 c 285 § 20; 1979 ex.s. c 80 § 1.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.50.020 Definitions. As used in this chapter the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Authorized agency" means a public agency or its official representative having legal authority to investigate criminal activity or the cause of a fire or to initiate criminal proceedings, including the following persons and agencies:

(a) The chief of the Washington state patrol and the director of fire protection;

- (b) The prosecuting attorney of the county where the criminal activity occurred;
- (c) State, county, and local law enforcement agencies;
- (d) The state attorney general;
- (e) The Federal Bureau of Investigation, or any other federal law enforcement agency;
- (f) The United States attorney's office; and
- (g) The office of the insurance commissioner.

(2) "Insurer" means any insurer, as defined in RCW 48.01.050 and any self-insurer.

(3) "Relevant information" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of criminal activity or the cause of any fire more probable or less probable than it would be without the information. [2000 c 254 § 1. Prior: 1995 c 369 § 36; 1995 c 285 § 21; 1986 c 266 § 77; 1985 c 470 § 27; 1979 ex.s. c 80 § 2.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Effective date—1995 c 285: See RCW 48.30A.900.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.50.030 Release of information or evidence by insurer. (1) Any authorized agency may request, in writing, that an insurer release to the agency any or all relevant information or evidence which the insurer may have in its possession relating to criminal activity, if such information or evidence is deemed important by the agency in its discretion.

(2) An insurer who has reason to believe that a person participated or is participating in criminal activity relating to a contract of insurance may report relevant information to an authorized agency.

(3) The information provided to an authorized agency under this section may include, without limitation:

(a) Pertinent insurance policy information relating to a claim under investigation and any application for such a policy;

(b) Policy premium payment records which are available;

(c) History of previous claims in which the person was involved; and

(d) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence found in the investigation.

(4) The insurer receiving a request under subsection (1) of this section shall furnish all relevant information requested to the agency within a reasonable time, orally or in writing. [1995 c 285 § 22; 1979 ex.s. c 80 § 3.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.50.040 Notification by insurer. (1) When an insurer has reason to believe that a fire loss reported to the insurer may be of other than accidental cause, the insurer shall notify the chief of the Washington state patrol, through the director of fire protection, in the manner prescribed under RCW 48.05.320 concerning the circumstances of the fire loss, including any and all relevant material developed from the insurer's inquiry into the fire loss.

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(2) Notification of the chief of the Washington state patrol, through the director of fire protection, under subsection (1) of this section does not relieve the insurer of the duty to respond to a request for information from any other authorized agency and does not bar an insurer from other reporting under RCW 48.50.030(2). [2000 c 254 § 2. Prior: 1995 c 369 § 37; 1995 c 285 § 23; 1986 c 266 § 91; 1979 ex.s. c 80 § 4.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Effective date—1995 c 285: See RCW 48.30A.900.

Severability—1986 c 266: See note following RCW 38.52.005.

48.50.050 Release of information by authorized agencies. An authorized agency receiving information under RCW 48.50.030, 48.50.040, or 48.50.055 may release or provide such information to any other authorized agencies. [2000 c 254 § 3; 1979 ex.s. c 80 § 5.]

48.50.055 Release of information to requesting insurer. An insurer providing information to an authorized agency or agencies under RCW 48.50.030 or 48.50.040 may request that an authorized agency furnish to the insurer any or all relevant information possessed by the agency relating to the particular fire loss. At their discretion, and unless prohibited by any other provision of law, the agency or agencies may release or provide information to the requesting insurer. [2000 c 254 § 4.]

48.50.070 Immunity from liability for releasing information. Any licensed insurance agent, any licensed insurance broker, or any insurer or person acting in the insurer's behalf or any authorized agency which releases information, whether oral or written, under RCW 48.50.030, 48.50.040, 48.50.050, or 48.50.055 is immune from liability in any civil or criminal action, suit, or prosecution arising from the release of the information, unless actual malice on the part of the agent, broker, insurer, or authorized agency against the insured is shown. [2000 c 254 § 5; 1980 c 102 § 9; 1979 ex.s. c 80 § 7.]

48.50.075 Immunity from liability for denying claim based on written opinion of authorized agency. In denying a claim, an insurer who relies upon a written opinion from an authorized agency specifically enumerated in RCW 48.50.020(1) (a) through (g) that criminal activity that is related to that claim is being investigated, or a crime has been charged, and that the claimant is a target of the investigation or has been charged with a crime, is not liable for bad faith or other noncontractual theory of damages as a result of this reliance.

Immunity under this section shall exist only so long as the incident for which the claimant may be responsible is under active investigation or prosecution, or the authorized agency states its position that the claim includes or is a result of criminal activity in which the claimant was a participant. [1995 c 285 § 24; 1981 c 320 § 2.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.50.090 Local ordinances not preempted. This chapter does not preempt or preclude any county or municipi-

pality from enacting ordinances relating to fire prevention or control of arson. [1979 ex.s. c 80 § 9.]

48.50.900 Severability—1979 ex.s. c 80. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 80 § 11.]

Chapter 48.53 RCW

FIRE INSURANCE—ARSON FRAUD REDUCTION

Sections

48.53.010	Purpose.
48.53.020	Designation of high arson incidence areas and classes of occupancy—Anti-arson application, contents.
48.53.030	Cancellation of policy—Conditions required for.
48.53.040	Cancellation of policy—Procedure.
48.53.050	Issuance or cancellation of policy in violation of chapter.
48.53.060	Adoption of rules.

48.53.010 Purpose. It is the purpose of this chapter to reduce the incidence of arson fraud by requiring insurers to obtain specified information prior to issuing a fire insurance policy for certain structures and by authorizing insurers to cancel fire insurance policies when characteristics frequently associated with arson fraud are present. [1982 c 110 § 1.]

48.53.020 Designation of high arson incidence areas and classes of occupancy—Anti-arson application, contents. (1) The chief of the Washington state patrol, through the director of fire protection, may designate certain classes of occupancy within a geographic area or may designate geographic areas as having an abnormally high incidence of arson. This designation shall not be a valid reason for cancellation, refusal to issue or renew, modification, or increasing the premium for any fire insurance policy.

(2) A fire insurance policy may not be issued to insure any property within a class of occupancy within a geographic area or within a geographic area designated by the chief of the Washington state patrol, through the director of fire protection, as having an abnormally high incidence of arson until the applicant has submitted an anti-arson application and the insurer or the insurer's representative has inspected the property. The application shall be prescribed by the chief of the Washington state patrol, through the director of fire protection, and shall contain but not be limited to the following:

(a) The name and address of the prospective insured and any mortgagees or other parties having an ownership interest in the property to be insured;

(b) The amount of insurance requested and the method of valuation used to establish the amount of insurance;

(c) The dates and selling prices of the property, if any, during the previous three years;

(d) Fire losses exceeding one thousand dollars during the previous five years for property in which the prospective insured held an equity interest or mortgage;

(e) Current corrective orders pertaining to fire, safety, health, building, or construction codes that have not been complied with within the time period or any extension of such time period authorized by the authority issuing such corrective order applicable to the property to be insured;

(f) Present or anticipated occupancy of the structure, and whether a certificate of occupancy has been issued;

(g) Signature and title, if any, of the person submitting the application.

(3) If the facts required to be reported by subsection (2) of this section materially change, the insured shall notify the insurer of any such change within fourteen days.

(4) An anti-arson application is not required for: (a) Fire insurance policies covering one to four-unit owner-occupied residential dwellings; (b) policies existing as of June 10, 1982; or (c) the renewal of these policies.

(5) An anti-arson application shall contain a notice stating: "Designation of a class of occupancy within a geographic area or geographic areas as having an abnormally high incidence of arson shall not be a valid reason for cancellation, refusal to issue or renew, modification, or increasing the premium for any fire insurance policy." [1995 c 369 § 38; 1986 c 266 § 92; 1982 c 110 § 2.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

48.53.030 Cancellation of policy—Conditions required for. Notwithstanding the provisions of RCW 48.18.290, where two or more of the following conditions exist, an insurer may, under RCW 48.53.040, cancel a fire insurance policy for any structure:

(1) Which, without reasonable explanation, is unoccupied for more than sixty consecutive days, or in which at least sixty-five percent of the rental units are unoccupied for more than one hundred twenty consecutive days unless the structure is maintained for seasonal occupancy or is under construction or repair;

(2) On which, without reasonable explanation, progress toward completion of permanent repairs has not occurred within sixty days after receipt of funds following satisfactory adjustment or adjudication of loss resulting from a fire;

(3) Which, because of its physical condition, is in danger of collapse;

(4) For which, because of its physical condition, a vacation or demolition order has been issued, or which has been declared unsafe in accordance with applicable law;

(5) From which fixed and salvageable items have been removed, indicating an intent to vacate the structure;

(6) For which, without reasonable explanation, heat, water, sewer, and electricity are not furnished for sixty consecutive days; and

(7) Which is not maintained in substantial compliance with fire, safety, and building codes. [1982 c 110 § 3.]

48.53.040 Cancellation of policy—Procedure. An insurer may cancel a fire insurance policy when the requirements of RCW 48.53.030 are met only in accordance with the following procedure:

(1) The insurer shall, not less than five days prior to cancellation, issue written notice of cancellation to the insured or the insured's representative in charge of the policy. The notice shall contain at least the following:

(a) The date that the policy will be canceled;

(b) A description of the specific facts justifying the cancellation;

(c) A copy of this chapter; and

(d) The name, title, address, and telephone number of the insurer's employee who may be contacted regarding cancellation of the policy.

(2) The notice required by this section shall be actually delivered or mailed to the insured by certified mail, return receipt requested, and in addition by first class mail. A copy of the notice shall, at the time of delivery or mailing to the insured, or the insured's representative in charge of the policy, be mailed to the insurance commissioner.

(3) The insurer shall also comply with the requirements of RCW 48.18.290 (1)(b), (2) and (3), and shall provide not less than twenty days notice of cancellation to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder except as provided in subsection (1) of this section.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in an amount as computed on a pro rata basis, must be actually paid or mailed to the insured or other person entitled thereto as shown by the policy or any endorsement thereon, as soon as possible, and no later than thirty days after the date that the notice of cancellation was issued. [1982 c 110 § 4.]

48.53.050 Issuance or cancellation of policy in violation of chapter. (1) Any fire insurance policy issued in violation of this chapter shall not be canceled by the insurer under the procedures authorized by this chapter.

(2) Cancellation of a fire insurance policy in violation of this chapter shall constitute a violation of this title. [1982 c 110 § 5.]

48.53.060 Adoption of rules. Rules designating geographic areas or classes of occupancy as having an abnormally high incidence of arson, and any other rules necessary to implement this chapter shall be adopted by the chief of the Washington state patrol, through the director of fire protection, under chapter 34.05 RCW. [1995 c 369 § 39; 1986 c 266 § 93; 1982 c 110 § 6.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 48.56 RCW

INSURANCE PREMIUM FINANCE COMPANY ACT

Sections

48.56.010	Short title.
48.56.020	Definitions.
48.56.030	License—Required—Fees—Information to be furnished—Penalty.
48.56.040	Investigation of applicant—Qualifications—Hearing.
48.56.050	Revocation, suspension, or refusal to renew.
48.56.060	Records.
48.56.070	Rules and regulations.
48.56.080	Premium finance agreement.
48.56.090	Service charge.
48.56.100	Delinquency charge—Cancellation charge.
48.56.110	Cancellation of insurance contract.
48.56.120	Cancellation of insurance contract—Return of unearned premiums.
48.56.130	Filing of agreement.
48.56.900	Effective date—1969 ex.s. c 190.

(2004 Ed.)

48.56.010 Short title. This chapter shall be known and may be cited as "The Insurance Premium Finance Company Act". [1969 ex.s. c 190 § 1.]

48.56.020 Definitions. As used in this chapter:

(1) "Insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.

(2) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract together with a service charge as authorized and limited by this chapter and as security therefor the insurance premium finance company receives an assignment of the unearned premium.

(3) "Licensee" means a premium finance company holding a license issued by the insurance commissioner under this chapter. [1969 ex.s. c 190 § 2.]

48.56.030 License—Required—Fees—Information to be furnished—Penalty. (1) No person shall engage in the business of financing insurance premiums in the state without first having obtained a license as a premium finance company from the commissioner. Any person who shall engage in the business of financing insurance premiums in the state without obtaining a license as provided hereunder shall, upon conviction, be guilty of a misdemeanor and shall be subject to the penalties provided in this chapter.

(2)(a) Application to the commissioner for the license shall be made on forms furnished by the commissioner. As part of, or in connection with, this application, the applicant and, at the commissioner's discretion, any or all stockholders, directors, partners, officers, and employees of the business shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business records; purposes; and other pertinent information, as the commissioner may reasonably require.

(b) The annual license fee shall be one hundred dollars. Licenses may be renewed from year to year as of the first day of May of each year upon payment of the fee of one hundred dollars. The fee for the license shall be paid to the insurance commissioner.

(3) The person to whom the license or the renewal may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the commissioner may require. The commissioner shall have authority, at any time, to require the applicant to disclose fully the identity of all stockholders, directors, partners, officers, and employees and may, in his or her discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he or she finds that any officer, employee, stockholder, or partner who may materially influence the applicant's conduct does not meet the standards of this chapter.

(4) This section shall not apply to any savings and loan association, bank, trust company, consumer loan company,

industrial loan company or credit union authorized to do business in this state but RCW 48.56.080 through 48.56.130 and any rules adopted by the commissioner pertaining to such sections shall be applicable to such organizations, if otherwise eligible, under all premium finance transactions wherein an insurance policy, other than a life or disability insurance policy, or any rights thereunder is made the security or collateral for the repayment of the debt, however, neither this section nor the provisions of this chapter shall be applicable to the inclusion of insurance in a retail installment transaction or to insurance purchased in connection with a real estate transaction, mortgage, deed of trust, or other security instrument or an insurance company authorized to do business in this state unless the insurance company elects to become a licensee.

(5) If in the process of verifying fingerprints under subsection (2) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant. [2002 c 227 § 4; 1969 ex.s. c 190 § 3.]

Effective date—2002 c 227: See note following RCW 48.06.040.

48.56.040 Investigation of applicant—Qualifications—Hearing. (1) Upon the filing of an application and the payment of the license fee the commissioner shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this chapter. If the commissioner does not so find, he shall, within thirty days after he has received such application, at the request of the applicant, give the applicant a full hearing.

(2) The commissioner shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed—

(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for,

(b) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for, and

(c) if a corporation, is a corporation incorporated under the laws of the state or a foreign corporation authorized to transact business in the state. [1969 ex.s. c 190 § 4.]

48.56.050 Revocation, suspension, or refusal to renew. (1) The commissioner may revoke or suspend the license of any premium finance company when and if after investigation it appears to the commissioner that—

(a) any license issued to such company was obtained by fraud,

(b) there was any misrepresentation in the application for the license,

(c) the holder of such license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company, or

(d) such company has violated any of the provisions of this chapter.

(2) Before the commissioner shall revoke, suspend, or refuse to renew the license of any premium finance company, he shall give to such person an opportunity to be fully heard

and to introduce evidence in his behalf. In lieu of revoking or suspending the license for any of the causes enumerated in this section, after hearing as herein provided, the commissioner may subject such company to a penalty of not more than two hundred dollars for each offense when in his judgment he finds that the public interest would not be harmed by the continued operation of such company. The amount of any such penalty shall be paid by such company through the office of the commissioner to the state treasurer. At any hearing provided by this section, the commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(3) If the commissioner refuses to issue or renew any license or if any applicant or licensee is aggrieved by any action of the commissioner, said applicant or licensee shall have the right to a hearing and court proceeding as provided by statute. [1969 ex.s. c 190 § 5.]

48.56.060 Records. (1) Every licensee shall maintain records of its premium finance transactions and the said records shall be open to examination and investigation by the commissioner. The commissioner may at any time require any licensee to bring such records as he may direct to the commissioner's office for examination.

(2) Every licensee shall preserve its records of such premium finance transactions, including cards used in a card system, for at least three years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement. [1969 ex.s. c 190 § 6.]

48.56.070 Rules and regulations. The commissioner shall have authority to make and enforce such reasonable rules and regulations as may be necessary in making effective the provisions of this chapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this chapter. [1969 ex.s. c 190 § 7.]

48.56.080 Premium finance agreement. (1) A premium finance agreement shall—

(a) be dated, signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight point type;

(b) contain the name and place of business of the insurance agent negotiating the related insurance contract, the name and residence or the place of business of the premium finance company to which payments are to be made, a description of the insurance contracts involved and the amount of the premium therefor; and

(c) set forth the following items where applicable—

(i) the total amount of the premiums,

(ii) the amount of the down payment,

(iii) the principal balance (the difference between items (i) and (ii)),

(iv) the amount of the service charge,

(v) the balance payable by the insured (sum of items (iii) and (iv)), and

(vi) the number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(2) The items set out in paragraph (c) of subsection (1) need not be stated in the sequence or order in which they appear in such paragraph (c), and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) of this section shall only be required in the initial agreement where the premium finance company and the insured enter into an open end credit transaction, which is defined as follows: A plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(4) A copy of the premium finance agreement shall be given to the insured at the time or within ten days of its execution, except where the application has been signed by the insured and all the finance charges are one dollar or less per payment. In addition, the premium finance company shall deliver or mail a copy of the premium finance agreement or notice identifying policy, insured and producing agent to each insurer that has premiums involved in the transaction, within thirty days of the execution of the premium finance agreement.

(5) It shall be illegal for a premium finance company to offset funds of an agent with funds belonging to an insured. Premiums advanced by a premium finance company are funds belonging to the insured and shall be held in a fiduciary relationship. [1975-'76 2nd ex.s. c 119 § 6; 1969 ex.s. c 190 § 8.]

48.56.090 Service charge. (1) A premium finance company shall not charge, contract for, receive, or collect a service charge other than as permitted by this chapter.

(2) The service charge is to be computed on the balance of the premiums due (after subtracting the down payment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

(3) The service charge shall be a maximum of ten dollars per one hundred dollars per year plus an acquisition charge of ten dollars per premium finance agreement which need not be refunded upon cancellation or prepayment. [1969 ex.s. c 190 § 9.]

48.56.100 Delinquency charge—Cancellation charge. A premium finance agreement may provide for the payment by the insured of a delinquency charge of one dollar to a maximum of five percent of the delinquent installment that is in default for a period of five days or more except that if the loan is primarily for personal, family, or household purposes the delinquency charge shall not exceed five dollars.

If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency charge imposed with respect to the installment in default and five dollars. [1995 c 72 § 1; 1969 ex.s. c 190 § 10.]

(2004 Ed.)

48.56.110 Cancellation of insurance contract. (1) When a premium finance agreement contains a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(2) Not less than ten days' written notice shall be mailed to the insured of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such ten day period.

(3) After expiration of such ten day period, the premium finance company may thereafter request in the name of the insured, cancellation of such insurance contract or contracts by mailing to the insurer a notice of cancellation, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at his last known address.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation. [1969 ex.s. c 190 § 11.]

48.56.120 Cancellation of insurance contract—Return of unearned premiums. (1) Whenever a financed insurance contract is canceled, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured: PROVIDED, That no such refund shall be required if it amounts to less than one dollar. [1969 ex.s. c 190 § 12.]

48.56.130 Filing of agreement. No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns. [1969 ex.s. c 190 § 13.]

48.56.900 Effective date—1969 ex.s. c 190. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on the sixtieth day following passage by the legislature and submission to the governor for action. [1969 ex.s. c 190 § 15.]

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Chapter 48.58 RCW

RIOT REINSURANCE REIMBURSEMENT

Sections

48.58.010 Riot reinsurance reimbursement—Assessments.

48.58.010 Riot reinsurance reimbursement—Assessments. (1) The commissioner may reimburse the secretary of the department of housing and urban development under the provisions of Section 1223(a)(1) of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448) for losses reinsured by the secretary of the department of housing and urban development and occurring in this state on or after August 1, 1968. After receipt by the state treasurer of a statement requesting reimbursement from the secretary of the department of housing and urban development and upon certification promptly made by the commissioner of insurance, hereafter referred to as the commissioner, of the correctness of the amount thereof, the commissioner is hereby authorized to provide for an assessment upon insurers authorized to do business in this state in amounts sufficient to pay reimbursement to the secretary of the department of housing and urban development: PROVIDED, That the amount assessed each insurer shall be in the same proportion that the premiums written by each insurer in this state bear to the aggregate premiums written in this state by all insurance companies on those lines for which reinsurance was available in this state from the secretary of the department of housing and urban development during the preceding calendar year.

(2) In the event any insurer fails, by reason of insolvency, to pay any assessment as provided herein, the amount assessed each insurer, as computed under subsection (1) of this section, shall be immediately recalculated excluding therefrom the insolvent insurer so that its assessment is, in effect, assumed and redistributed among the remaining insurers.

(3) When assessments as provided herein are made, the individual insurer, after having paid the full amount assessed against the insurer, may deduct from future premium tax liabilities an amount not to exceed twenty percent per annum until such deductions equal the amount of the assessment levied against the insurer.

(4) This section shall cease to be of any force and effect upon termination of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448), except that obligations incurred pursuant to the provisions of this section shall not be impaired by the expiration of the same.

(5) Notwithstanding the termination of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448), the commissioner is authorized to continue in force the program developed in response to that act, the Washington essential property insurance inspection and placement program, in order to provide essential property insurance within the state where it cannot be obtained through the normal insurance market. [1987 c 128 § 1; 1980 c 32 § 9; 1969 ex.s. c 140 § 1.]

Chapter 48.62 RCW

LOCAL GOVERNMENT
INSURANCE TRANSACTIONS

Sections

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48.62.011 Legislative intent—Construction. This chapter is intended to provide the exclusive source of local government entity authority to individually or jointly self-insure risks, jointly purchase insurance or reinsurance, and to contract for risk management, claims, and administrative services. This chapter shall be liberally construed to grant local government entities maximum flexibility in self-insuring to the extent the self-insurance programs are operated in a safe and sound manner. This chapter is intended to require prior approval for the establishment of every individual local government self-insured employee health and welfare benefit program and every joint local government self-insurance program. In addition, this chapter is intended to require every local government entity that establishes a self-insurance program not subject to prior approval to notify the state of the existence of the program and to comply with the regulatory and statutory standards governing the management and operation of the programs as provided in this chapter. This chapter is not intended to authorize or regulate self-insurance of unemployment compensation under chapter 50.44 RCW, or industrial insurance under chapter 51.14 RCW. [1991 sp.s. c 30 § 1.]

48.62.021 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Local government entity" or "entity" means every unit of local government, both general purpose and special purpose, and includes, but is not limited to, counties, cities, towns, port districts, public utility districts, water-sewer dis-

districts, school districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, and quasi-municipal corporations.

(2) "Risk assumption" means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

(3) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(4) "Health and welfare benefits" means a plan or program established by a local government entity or entities for the purpose of providing its employees and their dependents, and in the case of school districts, its district employees, students, directors, or any of their dependents, with health care, accident, disability, death, and salary protection benefits.

(5) "Property and liability risks" includes the risk of property damage or loss sustained by a local government entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the local government entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the local government entity.

(6) "State risk manager" means the risk manager of the risk management division within the office of financial management.

(7) "Nonprofit corporation" or "corporation" has the same meaning as defined in RCW 24.03.005(3). [2004 c 255 § 2; 2002 c 332 § 24; 1999 c 153 § 60; 1991 sp.s. c 30 § 2.]

Findings—Intent—2004 c 255: See note following RCW 48.62.036.

Intent—Effective date—2002 c 332: See notes following RCW 43.41.280.

Part headings not law—1999 c 153: See note following RCW 57.04.050.

48.62.031 Authority to self-insure—Options—Risk manager. (1) The governing body of a local government entity may individually self-insure, may join or form a self-insurance program together with other entities, and may jointly purchase insurance or reinsurance with other entities for property and liability risks, and health and welfare benefits only as permitted under this chapter. In addition, the entity or entities may contract for or hire personnel to provide risk management, claims, and administrative services in accordance with this chapter.

(2) The agreement to form a joint self-insurance program shall be made under chapter 39.34 RCW.

(3) Every individual and joint self-insurance program is subject to audit by the state auditor.

(4) If provided for in the agreement or contract established under chapter 39.34 RCW, a joint self-insurance program may, in conformance with this chapter:

(a) Contract or otherwise provide for risk management and loss control services;

(b) Contract or otherwise provide legal counsel for the defense of claims and other legal services;

(c) Consult with the state insurance commissioner and the state risk manager;

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(d) Jointly purchase insurance and reinsurance coverage in such form and amount as the program's participants agree by contract; and

(e) Possess any other powers and perform all other functions reasonably necessary to carry out the purposes of this chapter.

(5) A local government entity that has decided to assume a risk of loss must have available for inspection by the state auditor a written report indicating the class of risk or risks the governing body of the entity has decided to assume.

(6) Every joint self-insurance program governed by this chapter shall appoint the risk manager as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising in this state.

(a) Service upon the risk manager as attorney shall constitute service upon the program. Service upon joint insurance programs subject to chapter 30, Laws of 1991 1st sp. sess. can be had only by service upon the risk manager. At the time of service, the plaintiff shall pay to the risk manager a fee to be set by the risk manager, taxable as costs in the action.

(b) With the initial filing for approval with the risk manager, each joint self-insurance program shall designate by name and address the person to whom the risk manager shall forward legal process so served upon him or her. The joint self-insurance program may change such person by filing a new designation.

(c) The appointment of the risk manager as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the joint self-insurance program, and shall remain in effect as long as there is in force in this state any contract made by the joint self-insurance program or liabilities or duties arising therefrom.

(d) The risk manager shall keep a record of the day and hour of service upon him or her of all legal process. A copy of the process, by registered mail with return receipt requested, shall be sent by the risk manager, to the person designated for the purpose by the joint self-insurance program in its most recent such designation filed with the risk manager. No proceedings shall be had against the joint self-insurance program, and the program shall not be required to appear, plead, or answer, until the expiration of forty days after the date of service upon the risk manager. [1991 sp.s. c 30 § 3.]

48.62.036 Authority to form or join a self-insurance risk pool—When section not applicable. (1) A nonprofit corporation may form or join a self-insurance risk pool with one or more nonprofit corporations or with a local government entity or entities for property and liability risks.

(2) A nonprofit corporation that participates in or forms a self-insurance risk pool with one or more nonprofit corporations or with a local government entity or entities, as provided in subsection (1) of this section, is subject to the same rules and regulations that apply to a local government entity or entities under this chapter.

(3) This section does not apply to a nonprofit corporation that:

(a) Individually self-insures for property and liability risks;

(b) Participates in a risk pooling arrangement, including a risk retention group or a risk purchasing group, regulated under chapter 48.92 RCW, or is a captive insurer authorized in its state of domicile; or

(c) Is a hospital licensed under chapter 70.41 RCW or an entity owned, operated, controlled by, or affiliated with such a hospital that participates in a self-insurance risk pool or other risk pooling arrangement, unless the self-insurance pool or other risk pooling arrangement for property and liability risks includes a local government entity. [2004 c 255 § 3.]

Findings—Intent—2004 c 255: "The legislature finds that recent increases in property and liability insurance premiums experienced by some nonprofit organizations have the potential to negatively impact the ability of these organizations to continue to offer the level of service they provide in our communities. The legislature finds that nonprofit organizations are distinct from private for-profit businesses. By their very nature, nonprofit organizations are formed for purposes other than generating a profit, and are restricted from distributing any part of the organization's income to its directors or officers. Because of these characteristics, nonprofit organizations provide a unique public good to the residents in our state.

The legislature finds that in order to sustain the financial viability of nonprofit organizations, they should be provided with alternative options for insuring against risks. The legislature further finds that local government entities and nonprofit organizations share the common goal of providing services beneficial to the public interest. The legislature finds that allowing nonprofit organizations and local government entities to pool risk in self-insurance risk pools may be of mutual benefit for both types of entities. Therefore, it is the intent of the legislature to allow nonprofit organizations to form or participate in self-insurance risk pools with other nonprofit organizations or with local government entities where authority for such risk pooling arrangements does not currently exist in state or federal law." [2004 c 255 § 1.]

48.62.041 Property and liability advisory board—Creation—Membership—Duties. (1) The property and liability advisory board is created, consisting of the insurance commissioner and the state risk manager, or their designees, as ex officio members and five members appointed by the governor on the basis of their experience and knowledge in matters pertaining to local government risk management, self-insurance, and management of joint self-insurance programs. The board shall include at least two representatives from individual property or liability self-insurance programs and at least two representatives from joint property or liability self-insurance programs.

(2) The board shall assist the state risk manager in:

(a) Adopting rules governing the operation and management of both individual and joint self-insurance programs covering liability and property risks;

(b) Reviewing and approving the creation of joint self-insurance programs covering property or liability risks;

(c) Reviewing annual reports filed by joint self-insurance programs covering property and liability risks and recommending that corrective action be taken by the programs when necessary; and

(d) Responding to concerns of the state auditor related to the management and operation of both individual and joint self-insurance programs covering liability or property risks.

(3) The board shall annually elect a chair and a vice-chair from its members. The board shall meet at least quarterly at such times as the state risk manager may fix. The board members who are appointed shall serve without compensation from the state but shall suffer no loss because of absence from their regular employment. Members of the board who

are not public employees shall be compensated in accordance with RCW 43.03.240.

(4) A majority of the board constitutes a quorum for the transaction of business.

(5) The board shall keep public records of its proceedings. [1991 sp.s. c 30 § 4.]

48.62.051 Health and welfare advisory board—Creation—Membership—Duties. (1) The health and welfare advisory board is created consisting of the insurance commissioner and the state risk manager, or their designees, as ex officio members and six members appointed by the governor on the basis of their experience and knowledge pertaining to local government self-insured health and welfare benefits programs. The board shall include one city management representative; one county management representative; two management representatives from local government self-insured health and welfare programs; and two representatives of statewide employee organizations representing local government employees.

(2) The board shall assist the state risk manager in:

(a) Adopting rules governing the operation and management of both individual and joint self-insured health and welfare benefits programs;

(b) Reviewing and approving the creation of both individual and joint self-insured health and welfare benefits programs;

(c) Reviewing annual reports filed by health and welfare benefits programs and in recommending that corrective action be taken by the programs when necessary; and

(d) Responding to concerns of the state auditor related to the management and operation of health and welfare benefits programs.

(3) The board shall annually elect a chair and a vice-chair from its members. The board shall meet at least quarterly at such times as the state risk manager may fix. The board members who are appointed shall serve without compensation from the state but shall suffer no loss because of absence from their regular employment. Members of the board who are not public employees shall be compensated in accordance with RCW 43.03.240.

(4) A majority of the board constitutes a quorum for the transaction of business.

(5) The board shall keep public records of its proceedings. [1991 sp.s. c 30 § 5.]

48.62.061 Rule making by state risk manager—Standards. The state risk manager, in consultation with the property and liability advisory board, shall adopt rules governing the management and operation of both individual and joint local government self-insurance programs covering property or liability risks. The state risk manager shall also adopt rules governing the management and operation of both individual and joint local government self-insured health and welfare benefits programs in consultation with the health and welfare benefits advisory board. All rules shall be appropriate for the type of program and class of risk covered. The state risk manager's rules shall include:

(1) Standards for the management, operation, and solvency of self-insurance programs, including the necessity and frequency of actuarial analyses and claims audits;

(2) Standards for claims management procedures; and

(3) Standards for contracts between self-insurance programs and private businesses including standards for contracts between third-party administrators and programs. [1991 sp.s. c 30 § 6.]

48.62.071 Program approval required—State risk manager—Plan of management and operation. Before the establishment of a joint self-insurance program covering property or liability risks by local government entities, or an individual or joint local government self-insured health and welfare benefits program, the entity or entities must obtain the approval of the state risk manager. Risk manager approval is not required for the establishment of an individual local government self-insurance program covering property or liability risks. The entity or entities proposing creation of a self-insurance program requiring prior approval shall submit a plan of management and operation to the state risk manager and the state auditor that provides at least the following information:

(1) The risk or risks to be covered, including any coverage definitions, terms, conditions, and limitations or in the case of health and welfare benefits programs, the benefits to be provided, including any benefit definitions, terms, conditions, and limitations;

(2) The amount and method of financing the benefits or covered risks, including the initial capital and proposed rates and projected premiums;

(3) The proposed claim reserving practices;

(4) The proposed purchase and maintenance of insurance or reinsurance in excess of the amounts retained by the self-insurance program;

(5) In the case of a joint program, the legal form of the program, including but not limited to any bylaws, charter, or trust agreement;

(6) In the case of a joint program, the agreements with members of the program defining the responsibilities and benefits of each member and management;

(7) The proposed accounting, depositing, and investment practices of the program;

(8) The proposed time when actuarial analysis will be first conducted and the frequency of future actuarial analysis;

(9) A designation of the individual upon whom service of process shall be executed on behalf of the program. In the case of a joint program, a designation of the individual to whom service of process shall be forwarded by the risk manager on behalf of the program;

(10) All contracts between the program and private persons providing risk management, claims, or other administrative services;

(11) A professional analysis of the feasibility of creation and maintenance of the program; and

(12) Any other information required by rule of the state risk manager that is necessary to determine the probable financial and management success of the program or that is necessary to determine compliance with this chapter. [1991 sp.s. c 30 § 7.]

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48.62.081 Multistate program participants—Requirements. A local government entity may participate in a joint self-insurance program covering property or liability risks with similar local government entities from other states if the program satisfies the following requirements:

(1) Only those local government entities of this state and similar entities of other states that are provided insurance by the program may have ownership interest in the program;

(2) The participating local government entities of this state and other states shall elect a board of directors to manage the program, a majority of whom shall be affiliated with one or more of the participating entities;

(3) The program must provide coverage through the delivery to each participating entity of one or more written policies effecting insurance of covered risks;

(4) The program shall be financed, including the payment of premiums and the contribution of initial capital, in accordance with the plan of management and operation submitted to the state risk manager in accordance with this chapter;

(5) The financial statements of the program shall be audited annually by the certified public accountants for the program, and such audited financial statements shall be delivered to the Washington state auditor and the state risk manager not more than one hundred twenty days after the end of each fiscal year of the program;

(6) The investments of the program shall be initiated only with financial institutions and/or broker-dealers doing business in those states in which participating entities are located, and such investments shall be audited annually by the certified public accountants for the program, and a list of such investments shall be delivered to the Washington state auditor not more than one hundred twenty days after the end of each fiscal year of the program;

(7) The treasurer of a multistate joint self-insurance program shall be designated by resolution of the program and such treasurer shall be located in the state of one of the participating entities;

(8) The participating entities may have no contingent liabilities for covered claims, other than liabilities for unpaid premiums, retrospective premiums, or assessments, if assets of the program are insufficient to cover the program's liabilities; and

(9) The program shall obtain approval from the state risk manager in accordance with this chapter and shall remain in compliance with the provisions of this chapter, except to the extent that such provisions are modified by or inconsistent with this section. [1991 sp.s. c 30 § 8.]

48.62.091 Program approval or disapproval—Procedures—Annual report. (1) Within one hundred twenty days of receipt of a plan of management and operation, the state risk manager shall either approve or disapprove the formation of the self-insurance program after reviewing the plan to determine whether the proposed program complies with this chapter and all rules adopted in accordance with this chapter.

(2) If the state risk manager denies a request for approval, the state risk manager shall specify in detail the reasons for denial and the manner in which the program fails to meet the requirements of this chapter or any rules adopted in accordance with this chapter.

(3) Whenever the state risk manager determines that a joint self-insurance program covering property or liability risks or an individual or joint self-insured health and welfare benefits program is in violation of this chapter or is operating in an unsafe financial condition, the state risk manager may issue and serve upon the program an order to cease and desist from the violation or practice.

(a) The state risk manager shall deliver the order to the appropriate entity or entities directly or mail it to the appropriate entity or entities by registered mail with return receipt requested.

(b) If the program violates the order or has not taken steps to comply with the order after the expiration of twenty days after the cease and desist order has been received by the program, the program is deemed to be operating in violation of this chapter, and the state risk manager shall notify the state auditor and the attorney general of the violation.

(c) After hearing or with the consent of a program governed by this chapter and in addition to or in lieu of a continuation of the cease and desist order, the risk manager may levy a fine upon the program in an amount not less than three hundred dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid. The period within which such fines shall be paid shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the risk manager shall request the attorney general to bring a civil action on the risk manager's behalf to collect the fine. The risk manager shall pay any fine so collected to the state treasurer for the account of the general fund.

(4) Each self-insurance program approved by the state risk manager shall annually file a report with the state risk manager and state auditor providing:

- (a) Details of any changes in the articles of incorporation, bylaws, or interlocal agreement;
- (b) Copies of all the insurance coverage documents;
- (c) A description of the program structure, including participants' retention, program retention, and excess insurance limits and attachment point;
- (d) An actuarial analysis, if required;
- (e) A list of contractors and service providers;
- (f) The financial and loss experience of the program; and
- (g) Such other information as required by rule of the state risk manager.

(5) No self-insurance program requiring the state risk manager's approval may engage in an act or practice that in any respect significantly differs from the management and operation plan that formed the basis for the state risk manager's approval of the program unless the program first notifies the state risk manager in writing and obtains the state risk manager's approval. The state risk manager shall approve or disapprove the proposed change within sixty days of receipt of the notice. If the state risk manager denies a requested change, the risk manager shall specify in detail the reasons for denial and the manner in which the program would fail to meet the requirements of this chapter or any rules adopted in accordance with this chapter. [1991 sp.s. c 30 § 9.]

48.62.101 Access to information—Executive sessions—Public disclosure act. (1) All self-insurance pro-

grams governed by this chapter may provide for executive sessions in accordance with chapter 42.30 RCW to consider litigation and settlement of claims when it appears that public discussion of these matters would impair the program's ability to conduct its business effectively.

(2) Notwithstanding any provision to the contrary contained in the public disclosure act, chapter 42.17 RCW, in a claim or action against the state or a local government entity, no person is entitled to discover that portion of any funds or liability reserve established for purposes of satisfying a claim or cause of action, except that the reserve is discoverable in a supplemental or ancillary proceeding to enforce a judgment. All other records of individual or joint self-insurance programs are subject to disclosure in accordance with chapter 42.17 RCW.

(3) In accordance with chapter 42.17 RCW, bargaining groups representing local government employees shall have reasonable access to information concerning the experience and performance of any health and welfare benefits program established for the benefit of such employees. [1991 sp.s. c 30 § 10.]

48.62.111 Investments—Designated treasurer—Deposit requirements—Bond. (1) The assets of a joint self-insurance program governed by this chapter may be invested only in accordance with the general investment authority that participating local government entities possess as a governmental entity.

(2) Except as provided in subsection (3) of this section, a joint self-insurance program may invest all or a portion of its assets by depositing the assets with the treasurer of a county within whose territorial limits any of its member local government entities lie, to be invested by the treasurer for the joint program.

(3) Local government members of a joint self-insurance program may by resolution of the program designate some other person having experience in financial or fiscal matters as treasurer of the program, if that designated treasurer is located in Washington state. The program shall, unless the program's treasurer is a county treasurer, require a bond obtained from a surety company authorized to do business in Washington in an amount and under the terms and conditions that the program finds will protect against loss arising from mismanagement or malfeasance in investing and managing program funds. The program may pay the premium on the bond.

All program funds must be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the treasurer or a person appointed by the program and upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW. The treasurer shall establish a program account, into which shall be recorded all program funds, and the treasurer shall maintain special accounts as may be created by the program into which the treasurer shall record all money as the program may direct by resolution.

(4) The treasurer of the joint program shall deposit all program funds in a public depository or depositories as defined in RCW 39.58.010(2) and under the same restrictions, contracts, and security as provided for any participating

local government entity, and the depository shall be designated by resolution of the program.

(5) A joint self-insurance program may invest all or a portion of its assets by depositing the assets with the state investment board, to be invested by the state investment board in accordance with chapter 43.33A RCW. The state investment board shall designate a manager for those funds to whom the program may direct requests for disbursement upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW.

(6) All interest and earnings collected on joint program funds belong to the program and must be deposited to the program's credit in the proper program account.

(7) A joint program may require a reasonable bond from any person handling money or securities of the program and may pay the premium for the bond.

(8) Subsections (3) and (4) of this section do not apply to a multistate joint self-insurance program governed by RCW 48.62.081. [2003 c 248 § 20; 1991 sp.s. c 30 § 11.]

48.62.121 General operating regulations—Employee remuneration—Governing control—School districts—Use of agents and brokers—Health care services—Trusts.

(1) No employee or official of a local government entity may directly or indirectly receive anything of value for services rendered in connection with the operation and management of a self-insurance program other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the program. No employee or official of a local government entity may accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or official's independence of judgment is impaired with respect to the management and operation of the program.

(2)(a) No local government entity may participate in a joint self-insurance program in which local government entities do not retain complete governing control. This prohibition does not apply to:

(i) Local government contribution to a self-insured employee health and welfare benefits plan otherwise authorized and governed by state statute;

(ii) Local government participation in a multistate joint program where control is shared with local government entities from other states; or

(iii) Local government contribution to a self-insured employee health and welfare benefit trust in which the local government shares governing control with their employees.

(b) If a local government self-insured health and welfare benefit program, established by the local government as a trust, shares governing control of the trust with its employees:

(i) The local government must maintain at least a fifty percent voting control of the trust;

(ii) No more than one voting, nonemployee, union representative selected by employees may serve as a trustee; and

(iii) The trust agreement must contain provisions for resolution of any deadlock in the administration of the trust.

(3) Moneys made available and moneys expended by school districts and educational service districts for self-insurance under this chapter are subject to such rules of the

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superintendent of public instruction as the superintendent may adopt governing budgeting and accounting. However, the superintendent shall ensure that the rules are consistent with those adopted by the state risk manager for the management and operation of self-insurance programs.

(4) RCW 48.30.140, 48.30.150, 48.30.155, and 48.30.157 apply to the use of agents and brokers by local government self-insurance programs.

(5) Every individual and joint local government self-insured health and welfare benefits program that provides comprehensive coverage for health care services shall include mandated benefits that the state health care authority is required to provide under RCW 41.05.170 and 41.05.180. The state risk manager may adopt rules identifying the mandated benefits.

(6) An employee health and welfare benefit program established as a trust shall contain a provision that trust funds be expended only for purposes of the trust consistent with statutes and rules governing the local government or governments creating the trust. [1993 c 458 § 1; 1991 sp.s. c 30 § 12.]

Review of health care trusts—1993 c 458: "If chapter 492, Laws of 1993 is enacted into law, the provisions of chapter 48.62 RCW shall be reviewed to evaluate the extent to which health care trusts provide benefits to certain individuals in the state; and to review the federal laws that may constrain the organization or operation of these joint employee-employer entities. The health services commission shall make appropriate recommendations to the governor and the legislature as to how these trusts can be brought under the provisions of chapter 492, Laws of 1993." [1993 c 458 § 3.]

48.62.123 Existing benefit program established as a trust—Risk manager—Limited extension of deadline for compliance.

No local government self-insured employee health and welfare benefit program established as a trust by a local government entity or entities prior to July 25, 1993, may continue in operation unless such program complies with the provisions of this chapter within one hundred eighty days after July 25, 1993. The state risk manager may extend such period if the risk manager finds that such local government entity or entities are making a good faith effort and taking all necessary steps to comply with this chapter; however, in no event may the risk manager extend the period required for compliance more than ninety days after the expiration of the initial one hundred eighty-day period. [1993 c 458 § 2.]

Review of health care trusts—1993 c 458: See note following RCW 48.62.121.

48.62.125 Educational service districts—Rules—Superintendent of public instruction.

All rules adopted by the superintendent of public instruction by January 1, 1992, that apply to self-insurance programs of educational service districts remain in effect until expressly amended, repealed, or superseded by the state risk manager or the state health care authority. [1991 sp.s. c 30 § 31.]

48.62.131 Preexisting programs—Notice to state auditor.

Every local government entity that has established a self-insurance program not subject to the prior approval requirements of this chapter shall provide written notice to the state auditor of the existence of the program. The notice must identify the manager of the program and the class or classes of risk self-insured. The notice must also identify all

investments and distribution of assets of the program, the current depository of assets and the program's designation of asset depository and investment agent as required by RCW 48.62.111. In addition, the local government entity shall notify the state auditor whenever the program covers a new class of risk or discontinues the self-insurance of a class of risk. [1991 sp.s. c 30 § 13.]

48.62.141 Insufficient assets—Program requirement.

Every joint self-insurance program covering liability or property risks, excluding multistate programs governed by RCW 48.62.081, shall provide for the contingent liability of participants in the program if assets of the program are insufficient to cover the program's liabilities. [1991 sp.s. c 30 § 14.]

48.62.151 Insurance premium taxes—Exemption.

A joint self-insurance program approved in accordance with this chapter is exempt from insurance premium taxes, from fees assessed under chapter 48.02 RCW, from chapters 48.32 and 48.32A RCW, from business and occupations taxes imposed under chapter 82.04 RCW, and from any assigned risk plan or joint underwriting association otherwise required by law. This section does not apply to and no exemption is provided for insurance companies issuing policies to cover program risks, nor does it apply to or provide an exemption for third-party administrators or brokers serving the self-insurance program. [1991 sp.s. c 30 § 15.]

48.62.161 Establishment of fee to cover costs—Boards—State risk manager. (1) The state risk manager shall establish and charge an investigation fee in an amount necessary to cover the costs for the initial review and approval of a self-insurance program. The fee must accompany the initial submission of the plan of operation and management.

(2) The costs of subsequent reviews and investigations shall be charged to the self-insurance program being reviewed or investigated in accordance with the actual time and expenses incurred in the review or investigation.

(3) After the formation of the two advisory boards, each board may calculate, levy, and collect from each joint property and liability self-insurance program and each individual and joint health and welfare benefit program regulated by this chapter a start-up assessment to pay initial expenses and operating costs of the boards and the risk manager's office in administering this chapter. Any program failing to remit its assessment when due is subject to denial of permission to operate or to a cease and desist order until the assessment is paid. [1991 sp.s. c 30 § 16.]

48.62.171 Dissemination of information—Civil immunity. (1) Any person who files reports or furnishes other information required under Title 48 RCW, required by the risk manager or the state auditor under authority granted by Title 48 RCW, or which is useful to the risk manager or the state auditor in the administration of Title 48 RCW, shall be immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the risk manager or to the state auditor, unless actual malice, fraud, or bad faith is shown.

(2) The risk manager and the state auditor, and the agents and employees of each, are immune from liability in any civil action or suit arising from the publication of any report or bulletins or arising from dissemination of information related to the official activities of the risk manager, the advisory boards, or the state auditor, unless actual malice, fraud, or bad faith is shown.

(3) The immunity granted by this section is in addition to any common law or statutory privilege or immunity enjoyed by such person, and nothing in this section is intended to abrogate or modify in any way such common law or statutory privilege or immunity. [1991 sp.s. c 30 § 17.]

48.62.900 Effective date, implementation, application—1991 sp.s. c 30. (1) This act shall take effect January 1, 1992, but the state risk manager shall take all steps necessary to implement this act on its effective date.

(2) Every individual local government self-insured employee health and welfare plan and self-insurance program that has been in continuous operation for at least one year before January 1, 1992, need not obtain approval to continue operations until January 1, 1993, but must comply with all other provisions of this act.

(3) Local government entity authority to self-insure employee health and welfare benefits applies retroactively to 1979. [1991 sp.s. c 30 § 30.]

48.62.901 Severability—1991 sp.s. c 30. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 sp.s. c 30 § 32.]

Chapter 48.66 RCW

MEDICARE SUPPLEMENTAL HEALTH INSURANCE ACT

Sections

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48.66.910	Effective date—1981 c 153.

48.66.010 Short title—Intent—Application of chapter. This chapter shall be known and may be cited as "The Medicare Supplemental Health Insurance Act" and is intended to govern the content and sale of medicare supplemental insurance as defined in this chapter. The provisions of this chapter shall apply in addition to, rather than in place of, other requirements of Title 48 RCW. [1981 c 153 § 1.]

48.66.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Medicare supplemental insurance" or "medicare supplement insurance policy" refers to a group or individual policy of disability insurance or a subscriber contract of a health care service contractor, a health maintenance organization, or a fraternal benefit society, which relates its benefits to medicare, or which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. Such term does not include:

(a) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) A policy issued pursuant to a contract under Section 1876 of the federal social security act (42 U.S.C. Sec. 1395 et seq.), or an issued policy under a demonstration specified in 42 U.S.C. Sec. 1395(g)(1); or

(c) Insurance policies or health care benefit plans, including group conversion policies, provided to medicare eligible persons, that are not marketed or held to be medicare supplement policies or benefit plans.

(2) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(3) "Medicare eligible expenses" means health care expenses of the kinds covered by medicare, to the extent recognized as reasonable and medically necessary by medicare.

(4) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy or subscriber contract, the proposed certificate holder.

(5) "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement insurance policy.

(6) "Loss ratio" means the incurred claims as a percentage of the earned premium computed under rules adopted by the insurance commissioner.

(7) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during a specified time period immediately prior to the effective date of coverage.

(8) "Disclosure form" means the form designated by the insurance commissioner which discloses medicare benefits, the supplemental benefits offered by the insurer, and the remaining amount for which the insured will be responsible.

(9) "Issuer" includes insurance companies, health care service contractors, health maintenance organizations, fraternal benefit societies, and any other entity delivering or issuing for delivery medicare supplement policies or certificates to a resident of this state. [1996 c 269 § 1; 1995 c 85 § 1; 1992 c 138 § 1; 1981 c 153 § 2.]

Effective date—1996 c 269: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1996]." [1996 c 269 § 2.]

48.66.030 Renewability—Benefit standards—Benefit limitations. (1) A medicare supplement insurance policy which provides for the payment of benefits may not be based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(2) Limitations on benefits, such as policy exclusions or waiting periods, shall be labeled in a separate section of the policy or placed with the benefit provisions to which they apply, rather than being included in other sections of the policy, rider, or endorsement. [1992 c 138 § 2; 1981 c 153 § 3.]

48.66.035 Commissioner's approval required. (1) A medicare supplement insurance policy or certificate form or application form, rider, or endorsement shall not be issued, delivered, or used unless it has been filed with and approved by the commissioner.

(2) Rates, or modification of rates, for medicare supplement policies or certificates shall not be used until filed with and approved by the commissioner.

(3) Every filing shall be received not less than thirty days in advance of any such issuance, delivery, or use. At the expiration of such thirty days the form or rate so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he or she may affirmatively approve or disapprove any such form or rate, by giving notice of such extension before expiration of the initial thirty-day waiting period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form or rate shall be deemed approved. A filing of a form or rate or modification thereto may not be deemed approved unless the filing contains all required documents prescribed by the commissioner. The commissioner may withdraw any such approval at any time for cause. By approval of any such form or rate for immediate use, the commissioner may waive any unexpired portion of such initial thirty-day waiting period.

(4) The commissioner's order disapproving any such form or rate or withdrawing a previous approval shall state the grounds therefor.

(5) A form or rate shall not knowingly be issued, delivered, or used if the commissioner's approval does not then exist. [1992 c 138 § 3.]

48.66.041 Minimum standards required by rule—Waiver. (1) The insurance commissioner shall adopt rules to establish minimum standards for benefits in medicare supplement insurance policies and certificates.

(2) The commissioner shall adopt rules to establish specific standards for medicare supplement insurance policy or certificate provisions. These rules may include but are not limited to:

- (a) Terms of renewability;
- (b) Nonduplication of coverage;
- (c) Benefit limitations, exceptions, and reductions;
- (d) Definitions of terms;
- (e) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements;
- (f) Establishing uniform methodology for calculating and reporting loss ratios;
- (g) Assuring public access to policies, premiums, and loss ratio information of an issuer of medicare supplement insurance;
- (h) Establishing a process for approving or disapproving proposed premium increases; and
- (i) Establishing standards for medicare SELECT policies and certificates.

(3) The insurance commissioner may adopt rules that establish disclosure standards for replacement of policies or certificates by persons eligible for medicare.

(4) The insurance commissioner may by rule prescribe that an informational brochure, designed to improve the buyer's understanding of medicare and ability to select the most appropriate coverage, be provided to persons eligible for medicare by reason of age. The commissioner may require that the brochure be provided to applicants concurrently with delivery of the outline of coverage, except with respect to direct response insurance, when the brochure may be provided upon request but no later than the delivery of the policy.

(5) In the case of a state or federally qualified health maintenance organization, the commissioner may waive compliance with one or all provisions of this section until January 1, 1983. [1993 c 388 § 1; 1992 c 138 § 4; 1982 c 200 § 1.]

48.66.045 Mandated coverage for replacement policies—Rates on a community-rated basis. Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, shall:

(1) Issue coverage under its standardized benefit plans B, C, D, E, F, and G without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized benefit plan policy or certificate B, C, D, E, F, or G, or other more comprehensive coverage than the replacing policy;

(2) Issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy; and

(3) Set rates only on a community-rated basis. Premiums shall be equal for all policyholders and certificate holders

under a standardized medicare supplement benefit plan form, except that an issuer may vary premiums based on spousal discounts, frequency of payment, and method of payment including automatic deposit of premiums and may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

- (a) Age; or
- (b) Disability or end-stage renal disease. [2004 c 83 § 1; 1999 c 334 § 1; 1995 c 85 § 3.]

Severability—2004 c 83: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 83 § 2.]

Effective date—2004 c 83: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2004]." [2004 c 83 § 3.]

Effective date—1999 c 334: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 334 § 2.]

48.66.050 Policy or certificate provisions prohibited by rule—Waivers restricted. (1) The insurance commissioner may issue reasonable rules that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unfair, unjust, or unfairly discriminatory to any person insured or proposed to be insured under a medicare supplement insurance policy or certificate.

(2) No medicare supplement insurance policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1992 c 138 § 5; 1981 c 153 § 5.]

48.66.055 Termination or disenrollment—Application for coverage—Eligible persons—Types of policies.

(1) Under this section, persons eligible for a medicare supplement policy or certificate are those individuals described in subsection (3) of this section who, subject to subsection (3)(b)(ii) of this section, apply to enroll under the policy not later than sixty-three days after the date of the termination of enrollment described in subsection (3) of this section, and who submit evidence of the date of termination or disenrollment with the application for a medicare supplement policy.

(2) With respect to eligible persons, an issuer may not deny or condition the issuance or effectiveness of a medicare supplement policy described in subsection (4) of this section that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a medicare supplement policy.

(3) "Eligible persons" means an individual that meets the requirements of (a), (b), (c), (d), (e), or (f) of this subsection, as follows:

(a) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

(b)(i) The individual is enrolled with a medicare+choice organization under a medicare+choice plan under part C of medicare, and any of the following circumstances apply, or the individual is sixty-five years of age or older and is enrolled with a program of all inclusive care for the elderly (PACE) provider under section 1894 of the social security act, and there are circumstances similar to those described in this subsection (3)(b) that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a medicare+choice plan:

(A) The certification of the organization or plan under this subsection (3)(b) has been terminated, or the organization or plan has notified the individual of an impending termination of such a certification;

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides, or has notified the individual of an impending termination or discontinuance of such a plan;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary of the United States department of health and human services, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal social security act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856 of the federal social security act), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the secretary of the United States department of health and human services, that:

(I) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(II) The organization, an agent, or other entity acting on the organization's behalf materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets other exceptional conditions as the secretary of the United States department of health and human services may provide.

(ii)(A) An individual described in (b)(i) of this subsection may elect to apply (a) of this subsection by substituting, for the date of termination of enrollment, the date on which the individual was notified by the medicare+choice organization of the impending termination or discontinuance of the medicare+choice plan it offers in the area in which the individual resides, but only if the individual disenrolls from the plan as a result of such notification.

(B) In the case of an individual making the election under (b)(ii)(A) of this subsection, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subsection (1) of this section shall only become effective upon termination of coverage under the medicare+choice plan involved;

(c)(i) The individual is enrolled with:

(A) An eligible organization under a contract under section 1876 (medicare risk or cost);

(B) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(C) An organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan); or

(D) An organization under a medicare select policy; and
(ii) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under (b)(i) of this subsection;

(d) The individual is enrolled under a medicare supplement policy and the enrollment ceases because:

(i)(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(B) Of other involuntary termination of coverage or enrollment under the policy;

(ii) The issuer of the policy substantially violated a material provision of the policy; or

(iii) The issuer, an agent, or other entity acting on the issuer's behalf materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)(i) The individual was enrolled under a medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any medicare+choice organization under a medicare+choice plan under part C of medicare, any eligible organization under a contract under section 1876 (medicare risk or cost), any similar organization operating under demonstration project authority, any PACE program under section 1894 of the social security act, an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a medicare select policy; and

(ii) The subsequent enrollment under (e)(i) of this subsection is terminated by the enrollee during any period within the first twelve months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal social security act); or

(f) The individual, upon first becoming eligible for benefits under part A of medicare at age sixty-five, enrolls in a medicare+choice plan under part C of medicare, or in a PACE program under section 1894, and disenrolls from the plan or program by not later than twelve months after the effective date of enrollment.

(4) An eligible person under subsection (3) of this section is entitled to a medicare supplement policy as follows:

(a) A person eligible under subsection (3)(a), (b), (c), and (d) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A through G offered by any issuer;

(b) A person eligible under subsection (3)(e) of this section is entitled to the same medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in (a) of this subsection; and

(c) A person eligible under subsection (3)(f) of this section is entitled to any medicare supplement policy offered by any issuer.

(5)(a) At the time of an event described in subsection (3) of this section, and because of which an individual loses cov-

erage or benefits due to the termination of a contract, agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in subsection (3) of this section, and because of which an individual ceases enrollment under a contract, agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated within ten working days of the issuer receiving notification of disenrollment. [2002 c 300 § 4.]

48.66.060 Equal coverage of sickness and accidents.

A medicare supplement insurance policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents. [1981 c 153 § 6.]

48.66.070 Adjustment of benefits and premiums for medicare cost-sharing. A medicare supplement insurance policy must provide that benefits designed to cover cost-sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes. [1981 c 153 § 7.]

48.66.080 "Benefit period"—"Medicare benefit period"—Minimum requirements. "Benefit period" or "medicare benefit period" may not be defined more restrictively than as defined in the medicare program. [1981 c 153 § 8.]

48.66.090 Guaranteed renewable—Exceptions. All medicare supplement policies must be guaranteed renewable and a medicare supplement insurance policy may not provide that the policy may be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation. All medicare supplement policies and certificates must include a renewal or continuation provision. The language or specifications of such provision must be appropriately captioned, appear on the first page of the policy, and shall include any reservation by the issuer or a right to change premium. [1992 c 138 § 6; 1981 c 153 § 9.]

48.66.100 Loss ratio requirements—Mass sales practices of individual policies. (1) Medicare supplement insurance policies shall return to policyholders in the form of aggregate benefits under the policy, for the entire period for which rates are computed to provide coverage, loss ratios of:

(a) At least seventy-five percent of the aggregate amount of premiums earned in the case of group policies; and

(b) At least sixty-five percent of the aggregate amount of premiums earned in the case of individual policies.

(2) For the purpose of this section, medicare supplement insurance policies issued as a result of solicitation of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(3) The insurance commissioner may adopt rules sufficient to accomplish the provisions of this section and may, by such rules, impose more stringent or appropriate loss ratio requirements when it is necessary for the protection of the public interest. [1992 c 138 § 7; 1982 c 200 § 2; 1981 c 153 § 10.]

48.66.110 Disclosure by insurer—Outline of coverage required. In order to provide for full and fair disclosure in the sale of medicare supplement policies, a medicare supplement policy or certificate shall not be delivered in this state unless an outline of coverage is delivered to the potential policyholder not later than the time of application for the policy. [1992 c 138 § 8; 1981 c 153 § 11.]

48.66.120 Return of policy and refund of premium—Notice required—Effect of return. Every individual medicare supplement insurance policy issued after January 1, 1982, and every certificate issued pursuant to a group medicare supplement policy after January 1, 1982, shall have prominently displayed on the first page of the policy form or certificate a notice stating in substance that the person to whom the policy or certificate is issued shall be permitted to return the policy or certificate within thirty days of its delivery to the purchaser and to have the premium refunded if, after examination of the policy or certificate, the purchaser is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policyholder or purchaser, pursuant to such notice, returns the policy or certificate to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy or certificate had been issued. [1983 1st ex.s. c 32 § 12; 1982 c 200 § 3; 1981 c 153 § 12.]

48.66.130 Preexisting condition limitations. (1) On or after January 1, 1996, and notwithstanding any other provision of Title 48 RCW, a medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition.

(2) On or after January 1, 1996, a medicare supplement policy or certificate shall not define a preexisting condition more restrictively than as a condition for which medical advice was given or treatment was recommended by or received from a physician, or other health care provider acting within the scope of his or her license, within three months before the effective date of coverage.

(3) If a medicare supplement insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(4) No exclusion or limitation of preexisting conditions may be applied to policies or certificates replaced in accordance with the provisions of RCW 48.66.045 if the policy or certificate replaced had been in effect for at least three months. [2002 c 300 § 3; 1995 c 85 § 2; 1992 c 138 § 9; 1981 c 153 § 13.]

48.66.140 Medical history. Any time that completion of a medical history of a patient is required in order for an application for a medicare supplement insurance policy to be accepted, that medical history must be completed by the applicant, a relative of the applicant, a legal guardian of the applicant, or a physician. [1981 c 153 § 14.]

48.66.150 Reporting and recordkeeping, separate data required. Commencing with reports for accounting periods beginning on or after January 1, 1982, insurers, health care service contractors, health maintenance organizations, and fraternal benefit societies shall, for reporting and recordkeeping purposes, separate data concerning medicare supplement insurance policies and contracts from data concerning other disability insurance policies and contracts. [1981 c 153 § 15.]

48.66.160 Federal law supersedes. In any case where the provisions of this chapter conflict with provisions of the "Health Insurance For The Aged Act," Title XVIII of the Social Security Amendments of 1965, or any amendments thereto or regulations promulgated thereunder, regarding any contract between the secretary of health and human services and a health maintenance organization, the provisions of the "Health Insurance For The Aged Act" shall supersede and be paramount. [1981 c 153 § 16.]

48.66.165 Conformity with federal law—Rules. The commissioner may adopt, from time-to-time, such rules as are necessary with respect to medicare supplemental insurance to conform Washington policies, contracts, certificates, standards, and practices to the requirements of federal law, specifically including 42 U.S.C. Sec. 1395ss, and federal regulations adopted thereunder. [1991 c 120 § 1.]

48.66.900 Severability—1981 c 153. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 153 § 17.]

48.66.910 Effective date—1981 c 153. This act shall take effect January 1, 1982. [1981 c 153 § 19.]

(2004 Ed.)

Chapter 48.68 RCW

HEALTH CARE SAVINGS ACCOUNT ACT

Sections

- 48.68.005 Intent—Health care savings accounts authorized.
48.68.010 Duties of governor and responsible agencies—Chapter to remain in effect.

48.68.005 Intent—Health care savings accounts authorized. (1) This chapter shall be known as the health care savings account act.

(2) The legislature recognizes that the costs of health care are increasing rapidly and most individuals are removed from participating in the purchase of their health care.

As a result, it becomes critical to encourage and support solutions to alleviate the demand for diminishing state resources. In response to these increasing costs in health care spending, the legislature intends to clarify that health care savings accounts may be offered as health benefit options to all residents as incentives to reduce unnecessary health services utilization, administration, and paperwork, and to encourage individuals to be in charge of and participate directly in their use of service and health care spending. To alleviate the possible impoverishment of residents requiring long-term care, health care savings accounts may promote savings for long-term care and provide incentives for individuals to protect themselves from financial hardship due to a long-term health care need.

(3) Health care savings accounts are authorized in Washington state as options to employers and residents. [1995 c 265 § 2.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.68.010 Duties of governor and responsible agencies—Chapter to remain in effect. The governor and responsible agencies shall:

(1) Request that the United States congress amend the internal revenue code to treat premiums and contributions to health benefits plans, such as health care savings account programs, basic health plans, conventional and standard health plans offered through a health carrier, by employers, self-employed persons, and individuals, as fully excluded employer expenses and deductible from individual adjusted gross income for federal tax purposes.

(2) Request that the United States congress amend the internal revenue code to exempt from federal income tax interest that accrues in health care savings accounts until such money is withdrawn for expenditures other than eligible health expenses as defined in law.

(3) If all federal statute or regulatory waivers necessary to fully implement this chapter have not been obtained by July 1, 1995, this chapter shall remain in effect. [1995 c 265 § 3.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Chapter 48.70 RCW
SPECIFIED DISEASE INSURANCE ACT

Sections

48.70.010	Legislative intent.
48.70.020	Definitions—Rules.
48.70.030	Expected returns to policyholders—Rules.
48.70.040	Rules required.
48.70.900	Application of chapter.
48.70.910	Severability—1982 c 181.

48.70.010 Legislative intent. This chapter shall be known as the specified disease insurance act and is intended to govern the content and sale of specified disease insurance as defined in this chapter. This chapter applies in addition to, rather than in place of, other requirements of Title 48 RCW. It is the intent of the legislature to guarantee that specified disease policies issued, delivered, or used in this state provide a reasonable level of benefits to the policyholders. This chapter shall be applied broadly to ensure achievement of its aim. [1982 c 181 § 20.]

48.70.020 Definitions—Rules. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Specified disease policy" refers to any insurance policy or contract which provides benefits to a policyholder only in the event that the policyholder contracts the disease or diseases specifically named in the policy.

(2) "Loss ratio" means the incurred claims as a percentage of the earned premium, computed under rules adopted by the commissioner. Earned premiums and incurred claims shall be computed under rules adopted by the commissioner. [1982 c 181 § 21.]

48.70.030 Expected returns to policyholders—Rules.

(1) Commencing with reports for the accounting periods beginning on or after July 1, 1983, specified disease policies shall be expected to return to policyholders in the form of aggregate loss ratios under the policy:

(a) At least seventy-five percent of the earned premiums in the case of group policies; and

(b) At least sixty percent of the earned premiums in the case of individual policies.

(2) For the purpose of this section, specified disease insurance policies issued as a result of solicitation of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(3) By July 1, 1983, the commissioner shall adopt rules sufficient to accomplish the provisions of this section. [1982 c 181 § 22.]

48.70.040 Rules required. By July 1, 1983, the commissioner shall adopt all rules necessary to ensure that specified disease policies provide a reasonable level of benefits to policyholders, and that purchasers and potential purchasers of such policies are fully informed of the level of benefits provided. [1982 c 181 § 23.]

48.70.900 Application of chapter. This chapter shall apply to all policies issued on or after July 1, 1983. This chap-

ter shall not apply to services provided by health care service contractors as defined in RCW 48.44.010. [1982 c 181 § 24.]

48.70.910 Severability—1982 c 181. See note following RCW 48.03.010.

Chapter 48.74 RCW
STANDARD VALUATION LAW

Sections

48.74.010	Short title—"NAIC" defined.
48.74.020	Valuation of reserve liabilities.
48.74.025	Reserves and related actuarial items—Opinion of a qualified actuary—Requirements for the opinion—Rules.
48.74.030	Minimum standard for valuation.
48.74.040	Amount of reserves required.
48.74.050	Minimum aggregate reserves.
48.74.060	Other methods of reserve calculation.
48.74.070	Minimum reserve if gross premium less than valuation net premium.
48.74.080	Procedure when specified methods of reserve determination unfeasible.
48.74.090	Valuation of disability insurance.

48.74.010 Short title—"NAIC" defined. This chapter may be known and cited as the standard valuation law. As used in this chapter, "NAIC" means the National Association of Insurance Commissioners. [1982 1st ex.s. c 9 § 1.]

48.74.020 Valuation of reserve liabilities. The commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods, including net level premium method or other, used in the calculation of such reserves. In calculating such reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard provided in this chapter and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction. [1982 1st ex.s. c 9 § 2.]

48.74.025 Reserves and related actuarial items—Opinion of a qualified actuary—Requirements for the opinion—Rules. (1) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply

with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(2)(a) Every life insurance company, except as exempted by rule, shall also include in the opinion required under subsection (1) of this section an opinion as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(b) The commissioner may provide by rule for a transition period for establishing higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this section.

(3) Each opinion required under subsection (2) of this section is governed by the following provisions:

(a) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or if the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(4) A memorandum in support of the opinion, and other material provided by the company to the commissioner in connection with it, must be kept confidential by the commissioner and may not be made public and is not subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of an action required by this section or by rules adopted under it. However, the commissioner may otherwise release the memorandum or other material (a) with the written consent of the company or (b) to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum are no longer confidential.

(5) Each opinion required under this section is governed by the following provisions:

(a) The opinion must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1994.

(b) The opinion applies to all business in force, including individual and group disability insurance, in form and substance acceptable to the commissioner as specified by rule.

(c) The opinion must be based on standards adopted by the commissioner, who in setting the standards shall give due regard to the standards established by the actuarial standards board or its successors.

(d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(e) For purposes of this section, "qualified actuary" means a person who meets qualifications set by the commissioner with due regard to the qualifications established for membership in the American Academy of Actuaries or its successors.

(f) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(g) Rules adopted by the commissioner shall define disciplinary action by the commissioner against the company or the qualified actuary. [1993 c 462 § 85.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.74.030 Minimum standard for valuation. (1)

Except as otherwise provided in subsections (2) and (3) of this section, or in RCW 48.74.090, the minimum standard for the valuation of all such policies and contracts issued prior to July 10, 1982, shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections (2) and (3) of this section, or in RCW 48.74.090, the minimum standard for the valuation of all such policies and contracts issued on or after July 10, 1982, shall be the commissioner's reserve valuation methods defined in RCW 48.74.040, 48.74.070, and 48.74.090, three and one-half percent interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after July 16, 1973, four percent interest for such policies issued prior to September 1, 1979, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on and after September 1, 1979, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies—the commissioner's 1941 standard ordinary mortality table for such policies issued prior to the operative date of *RCW 48.23.350(5a) and the commissioner's 1958 standard ordinary mortality table for such policies issued on or after such operative date and prior to the operative date of RCW 48.76.050(4), except that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this chapter may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of RCW

48.76.050(4): (i) The commissioner's 1980 standard ordinary mortality table; or (ii) at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with ten-year select mortality factors; or (iii) any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies—the 1941 standard industrial mortality table for such policies issued prior to the operative date of *RCW 48.23.350(5b), and for such policies issued on or after such operative date the commissioner's 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule of the commissioner for use in determining the minimum standard of valuation for such policies.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the class (3) disability table (1926); and for policies issued prior to January 1, 1961, the class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies—for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the intercompany double indemnity mortality table; and for policies issued prior to January 1, 1961, the intercompany double

indemnity mortality table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

(2) Except as provided in subsection (3) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after July 10, 1982, and for all annuities and pure endowments purchased on or after such effective date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in RCW 48.74.040 and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued before September 1, 1979, excluding any disability and accidental death benefit in such contracts—the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

(b) For individual single premium immediate annuity contracts issued on or after September 1, 1979, excluding any disability and accidental death benefits in such contracts—the 1971 individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

(c) For individual annuity and pure endowment contracts issued on or after September 1, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts—the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts.

(d) For all annuities and pure endowments purchased prior to September 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 group annuity mortality table, or any modification of this table approved by the commissioner, and six percent interest.

(e) For all annuities and pure endowments purchased on or after September 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 group annuity mortality table or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure

endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

After July 16, 1973, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1979, which shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1979.

(3)(a) The interest rates used in determining the minimum standard for the valuation of:

(i) All life insurance policies issued in a particular calendar year, on or after the operative date of RCW 48.76.050(4);

(ii) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(iii) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(iv) The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this section.

(b) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one percent:

(i) For life insurance:

$$I = .03 + W (R_1 - .03) + W/2 (R_2 - .09);$$

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W (R - .03)$$

where R_1 is the lesser of R and $.09$,

R_2 is the greater of R and $.09$,

R is the reference interest rate defined in this section, and W is the weighting factor defined in this section;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in (ii) of this subparagraph, the formula for life insurance stated in (i) of this subparagraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in (ii) of this subparagraph shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in (ii) of this subparagraph shall apply;

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in (ii) of this subparagraph shall apply.

(c) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies

issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1983 using the reference interest rate defined for 1982 and shall be determined for each subsequent calendar year regardless of when RCW 48.76.050(4) becomes operative.

(d) The weighting factors referred to in the formulas stated in subparagraph (b) of this subsection are given in the following tables:

(i) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80;

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in (ii) of this subparagraph, shall be as specified in (d)(iii)(A), (B), and (C) of this subsection, according to the rules and definitions in (d)(iii)(D), (E), and (F) of this subsection:

(A) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(B) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (d)(iii)(A) of this subsection increased by:

Plan Type		
A	B	C
.15	.25	.05

(C) For annuities and guaranteed interest contracts valued on an issue year basis other than those with no cash settlement options which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates

on considerations received more than twelve months beyond the valuation date, the factors shown in (d)(iii)(A) of this subsection or derived in (d)(iii)(B) of this subsection increased by:

Plan Type		
A	B	C
.05	.05	.05

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(E) Plan type as used in the tables in (d)(iii)(A), (B), and (C) of this subsection is defined as follows:

Plan Type A: At any time a policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, a policyholder may withdraw funds only: (1) With adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of the interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan Type C: A policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(F) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract. The change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calen-

dar year valuation interest rate for the year of the change in the fund.

(e) The reference interest rate referred to in subparagraphs (b) and (c) of this subsection is defined as follows:

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30th of the calendar year next preceding the year of issue, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30th of the calendar year of issue or year of purchase of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (ii) of this subparagraph, with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30th of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (ii) of this subparagraph, with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30th of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30th of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in (ii) of this subparagraph, the average over a period of twelve months, ending on June 30th of the calendar year of the change in the fund, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(f) If Moody's corporate bond yield average—monthly average corporates is no longer published by Moody's Investors Service, Inc., or if the National Association of Insurance Commissioners determines that Moody's corporate bond yield average—monthly average corporates as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by rule adopted by the commissioner, may be substituted. [1993 c 462 § 86; 1982 1st ex.s. c 9 § 3.]

***Reviser's note:** RCW 48.23.350 was repealed by 1982 1st ex.s. c 9 § 36. For later enactment, see chapter 48.76 RCW.

48.74.040 Amount of reserves required. (1) Except as otherwise provided in RCW 48.74.040(2), 48.74.070, and 48.74.090, reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: PROVIDED HOWEVER, That such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year: PROVIDED, That for any life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in RCW 48.74.070, be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph of this subsection and the reserve as of such policy anniversary calculated as described in that paragraph, but with: (i) The value defined in subparagraph (a) of that paragraph being reduced by fifteen percent of the amount of such excess first year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on such date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in RCW 48.74.030 (1) and (3) shall be used.

Reserves according to the commissioner's reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying

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premiums, group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, disability and accidental death benefits in all policies and contracts, and all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this subsection.

(2) This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values. [1993 c 462 § 87; 1982 1st ex.s. c 9 § 4.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.74.050 Minimum aggregate reserves. (1) In no event may a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after July 10, 1982, be less than the aggregate reserves calculated in accordance with the methods set forth in RCW 48.74.040, 48.74.070, and 48.74.080 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) In no event may the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required under RCW 48.74.025. [1993 c 462 § 88; 1982 1st ex.s. c 9 § 5.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.74.060 Other methods of reserve calculation.

Reserves for all policies and contracts issued prior to the operative date of this chapter, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts, or benefits as established by the commissioner, issued on or after July 10, 1982, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

Any such company which at any time has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided. For the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required under RCW 48.74.025 is not to be the adoption of a higher standard of valuation. [1993 c 462 § 89; 1982 1st ex.s. c 9 § 6.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.74.070 Minimum reserve if gross premium less than valuation net premium. If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in RCW 48.74.030 (1) and (3): PROVIDED, That for any life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this section shall be applied as if the method actually used in calculating the reserve for such policy were the method described in RCW 48.74.040, ignoring the second paragraph of that section. The minimum reserve at each policy anniversary of such a policy shall be the greater

of the minimum reserve calculated in accordance with RCW 48.74.040, including the second paragraph of that section, and the minimum reserve calculated in accordance with this section. [1982 1st ex.s. c 9 § 7.]

48.74.080 Procedure when specified methods of reserve determination unfeasible. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in RCW 48.74.040 and 48.74.070, the reserves which are held under any such plan must, under regulations promulgated by the commissioner:

(1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) Be computed by a method which is consistent with the principles of this standard valuation law. [1982 1st ex.s. c 9 § 8.]

48.74.090 Valuation of disability insurance. The commissioner shall adopt rules containing the minimum standards applicable to the valuation of disability insurance. [1993 c 462 § 90.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.76 RCW**STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE**

Sections

48.76.010	Short title—"NAIC" defined.
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48.76.080	Cash surrender value required for policies issued on or after January 1, 1986.
48.76.090	Chapter inapplicable to certain policies.
48.76.100	Operative date of chapter.

48.76.010 Short title—"NAIC" defined. This chapter may be known and cited as the standard nonforfeiture law for life insurance. As used in this chapter, "NAIC" means the National Association of Insurance Commissioners. [1982 1st ex.s. c 9 § 10.]

48.76.020 Nonforfeiture and cash surrender provisions required. In the case of policies issued on and after the operative date of this chapter as defined in RCW 48.76.100, no policy of life insurance, except as stated in RCW 48.76.090, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements speci-

fied in this chapter and are essentially in compliance with RCW 48.76.080:

(1) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be specified in this chapter. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(2) That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be specified in this chapter.

(3) That a specified paid-up nonforfeiture benefit becomes effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default.

(4) That if the policy has become paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be specified in this chapter.

(5) That policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(6) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the

values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy. [1982 1st ex.s. c 9 § 11.]

48.76.030 Amount of cash surrender value. (1) Subject to subsections (2) and (3) of this section, any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by RCW 48.76.020, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of the then present value of the adjusted premiums as defined in RCW 48.76.050, corresponding to premiums which would have fallen due on and after such anniversary, and the amount of any indebtedness to the company on the policy.

(2) For any policy issued on or after the operative date of RCW 48.76.050(4), which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subsection (1) of this section shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

(3) For any family policy issued on or after the operative date of RCW 48.76.050(4), which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash surrender value shall be an amount not less than the sum of the cash surrender value as defined in this section for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in this section for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

(4) Any cash surrender value available within thirty days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by RCW 48.76.020, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy. [1982 1st ex.s. c 9 § 12.]

48.76.040 Nonforfeiture benefit in case of premium default. Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary is at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this chapter in the absence of the condition that premiums shall have been paid for at least a specified period. [1982 1st ex.s. c 9 § 13.]

48.76.050 Calculation of adjusted premiums—Operative date of section. (1)(a) This subsection does not apply to policies issued on or after the operative date of subsection (4) of this section. Except as provided in subparagraph (c) of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of: (i) The then present value of the future guaranteed benefits provided for by the policy; (ii) two percent of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty percent of the adjusted premium for the first policy year; (iv) twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: PROVIDED, That in applying the percentages specified in subparagraph (a)(iii) and (iv) of this subsection, no adjusted premium shall be deemed to exceed four percent of the amount of insurance or level amount equivalent thereto. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(b) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent level amount thereof for the purpose of this section shall be deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the inception of the insurance as the benefits under the policy: PROVIDED HOWEVER, That in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

(c) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to: (i) The adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, subparagraph

(c)(i) and (ii) of this subsection being calculated separately and as specified in subparagraphs (a) and (b) of this subsection except that, for the purposes of subparagraph (a)(ii), (a)(iii), and (a)(iv) of this subsection, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in subparagraph (c)(ii) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in subparagraph (c)(i) of this subsection.

(d) Except as otherwise provided in subsections (2) and (3) of this section, all adjusted premiums and present values referred to in this chapter shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table: PROVIDED, That for any category of ordinary insurance issued on female risks on or after July 1, 1957, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: PROVIDED, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty percent of the rates of mortality according to such applicable table: PROVIDED, FURTHER, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(2) This subsection does not apply to ordinary policies issued on or after the operative date of subsection (4) of this section. In the case of ordinary policies issued on or after the operative date of this section, all adjusted premiums and present values referred to in this chapter shall be calculated on the basis of the commissioner's 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after July 16, 1973, and before September 1, 1979, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after September 1, 1979, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured: PROVIDED, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 extended term insurance table: PROVIDED FURTHER, That for insurance issued on a sub-

standard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After June 11, 1959, any company may file with the commissioner a written notice of its election to comply with the provisions of this section. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such company), this subsection shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1966.

(3) This subsection does not apply to industrial policies issued on or after the operative date of subsection (4) of this section. In the case of industrial policies issued on or after the operative date of this chapter, all adjusted premiums and present values referred to in this chapter shall be calculated on the basis of the commissioner's 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum, except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after July 16, 1973, and prior to September 1, 1979, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after September 1, 1979, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used: PROVIDED, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1961 industrial extended term insurance table: PROVIDED FURTHER, That for insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provisions of this section. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such company), this subsection shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1968.

(4)(a) This section applies to all policies issued on or after the operative date of this subsection as defined herein. Except as provided in subparagraph (g) of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all

adjusted premiums shall be equal to the sum of: (i) The then present value of the future guaranteed benefits provided for by the policy; (ii) one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and (iii) one hundred twenty-five percent of the nonforfeiture net level premium as defined in subparagraph (b) of this subsection: PROVIDED, That in applying the percentage specified in (iii) of this subparagraph no nonforfeiture net level premium shall be deemed to exceed four percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(b) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(c) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(d) Except as otherwise provided in subparagraph (g) of this subsection, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (i) the sum of (A) the then present value of the then future guaranteed benefits provided for by the policy and (B) the additional expense allowance, if any, over (ii) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(e) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of: (i) One percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (ii) one hun-

dred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.

(f) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (i) by (ii) where:

(i) Equals the sum of:

(A) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(B) The present value of the increase in future guaranteed benefits provided for by the policy; and

(ii) Equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(g) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(h) All adjusted premiums and present values referred to in this chapter shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1980 standard ordinary mortality table or at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with ten-year select mortality factors, shall for all policies of industrial insurance be calculated on the basis of the commissioner's 1961 standard industrial mortality table, and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section, for policies issued in that calendar year, subject to the following provisions:

(i) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.

(ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by RCW 48.76.020, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(iii) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(iv) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioner's

1961 industrial extended term insurance table for policies of industrial insurance.

(v) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(vi) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioner's 1980 extended term insurance table.

(vii) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term insurance table.

(i) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in the standard valuation law (chapter 48.74 RCW), rounded to the nearer one quarter of one percent.

(j) Notwithstanding any other provision in this title to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(k) After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provision[s] of this section after a specified date before January 1, 1989, which shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1989. [1982 1st ex.s. c 9 § 14.]

48.76.060 Requirements when specified methods of minimum values determination unfeasible. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in RCW 48.76.020 through 48.76.050, then:

(1) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by RCW 48.76.020 through 48.76.050;

(2) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;

(3) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this chapter, as

determined by regulations promulgated by the commissioner. [1982 1st ex.s. c 9 § 15.]

48.76.070 Calculation of cash surrender value and paid-up nonforfeiture benefit. Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in RCW 48.76.030 through 48.76.050 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding the provisions of RCW 48.76.030, additional benefits payable: (1) In the event of death or dismemberment by accident or accidental means; (2) in the event of total and permanent disability; (3) as reversionary annuity or deferred reversionary annuity benefits; (4) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this chapter would not apply; (5) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child; and (6) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this chapter, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits. [1982 1st ex.s. c 9 § 16.]

48.76.080 Cash surrender value required for policies issued on or after January 1, 1986. (1) This section, in addition to all other applicable sections of this chapter, shall apply to all policies issued on or after January 1, 1986. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of: (a) The greater of zero and the basic cash value specified in subsection (2) of this section; and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

(2) The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as defined in subsection (3) of this section, corresponding to premiums which would have fallen due on and after such anniversary: PROVIDED, That the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in RCW 48.76.030 or

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48.76.050(4), whichever is applicable, shall be the same as are the effects specified in RCW 48.76.030 or 48.76.050(4), whichever is applicable, on the cash surrender values defined in that section.

(3) The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in RCW 48.76.050 (1) or (4). Except as is required by the next succeeding sentence of this paragraph, such percentage:

(a) Must be the same percentage for each policy year between the second policy anniversary and the later of: (i) The fifth policy anniversary; and (ii) The first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and

(b) Must be such that no percentage after the later of the two policy anniversaries specified in subparagraph (a) of this subsection may apply to fewer than five consecutive policy years: PROVIDED, That no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in RCW 48.76.050 (1) or (4), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(4) All adjusted premiums and present values referred to in this section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this chapter. The cash surrender values referred to in this section shall include any endowment benefits provided for by the policy.

(5) Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in RCW 48.76.020 through 48.76.040, 48.76.050(4), and 48.76.070. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in RCW 48.76.070 shall conform with the principles of this section. [1982 1st ex.s. c 9 § 17.]

48.76.090 Chapter inapplicable to certain policies.

This chapter does not apply to any of the following:

- (1) Reinsurance;
- (2) Group insurance;
- (3) A pure endowment;
- (4) An annuity or reversionary annuity contract;
- (5) A term policy of a uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;
- (6) A term policy of a decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in

RCW 48.76.050, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;

(7) A policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in RCW 48.76.030 through 48.76.050, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year; nor

(8) A policy which is delivered outside this state through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of this chapter, the age at expiration for a joint term life insurance policy is the age at expiration of the oldest life. [1982 1st ex.s. c 9 § 18.]

48.76.100 Operative date of chapter. After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provisions of this chapter. After the filing of such notice, then upon such specified date (which shall be the operative date for such company), this chapter becomes operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this chapter for such company shall be January 1, 1948. [1982 1st ex.s. c 9 § 19.]

Chapter 48.80 RCW

HEALTH CARE FALSE CLAIM ACT

Sections

48.80.010	Legislative finding—Short title.
48.80.020	Definitions.
48.80.030	Making false claims, concealing information—Penalty—Exclusions.
48.80.040	Use of circumstantial evidence.
48.80.050	Civil action not limited.
48.80.060	Conviction of provider, notification to regulatory agency.
48.80.900	Severability—1986 c 243.

48.80.010 Legislative finding—Short title. The legislature finds and declares that the welfare of the citizens of this state is threatened by the spiraling increases in the cost of health care. It is further recognized that fraudulent health care claims contribute to these increases in health care costs. In recognition of these findings, it is declared that special attention must be directed at eliminating the unjustifiable costs of fraudulent health care claims by establishing specific penalties and deterrents. This chapter may be known and cited as "the health care false claim act." [1986 c 243 § 1.]

48.80.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Claim" means any attempt to cause a health care payer to make a health care payment.

(2) "Deceptive" means presenting a claim to a health care payer that contains a statement of fact or fails to reveal a material fact, leading the health care payer to believe that the represented or suggested state of affairs is other than it actually is. For the purposes of this chapter, the determination of what constitutes a material fact is a question of law to be resolved by the court.

(3) "False" means wholly or partially untrue or deceptive.

(4) "Health care payment" means a payment for health care services or the right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service.

(5) "Health care payer" means any insurance company authorized to provide health insurance in this state, any health care service contractor authorized under chapter 48.44 RCW, any health maintenance organization authorized under chapter 48.46 RCW, any legal entity which is self-insured and providing health care benefits to its employees, and any insurer or other person responsible for paying for health care services.

(6) "Person" means an individual, corporation, partnership, association, or other legal entity.

(7) "Provider" means any person lawfully licensed or authorized to render any health service. [1995 c 285 § 25; 1986 c 243 § 2.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.80.030 Making false claims, concealing information—Penalty—Exclusions. (1) A person shall not make or present or cause to be made or presented to a health care payer a claim for a health care payment knowing the claim to be false.

(2) No person shall knowingly present to a health care payer a claim for a health care payment that falsely represents that the goods or services were medically necessary in accordance with professionally accepted standards. Each claim that violates this subsection shall constitute a separate offense.

(3) No person shall knowingly make a false statement or false representation of a material fact to a health care payer for use in determining rights to a health care payment. Each claim that violates this subsection shall constitute a separate violation.

(4) No person shall conceal the occurrence of any event affecting his or her initial or continued right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service. A person shall not conceal or fail to disclose any information with intent to obtain a health care payment to which the person or any other person is not entitled, or to obtain a health care payment in an amount greater than that which the person or any other person is entitled.

(5) No provider shall willfully collect or attempt to collect an amount from an insured knowing that to be in violation of an agreement or contract with a health care payer to which the provider is a party.

(6) A person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

(7) This section does not apply to statements made on an application for coverage under a contract or certificate of health care coverage issued by an insurer, health care service contractor, health maintenance organization, or other legal entity which is self-insured and providing health care benefits to its employees. [1990 c 119 § 11; 1986 c 243 § 3.]

48.80.040 Use of circumstantial evidence. In a prosecution under this chapter, circumstantial evidence may be presented to demonstrate that a false statement or claim was knowingly made. Such evidence may include but shall not be limited to the following circumstances:

(1) Where a claim for a health care payment is submitted with the person's actual, facsimile, stamped, typewritten, or similar signature on the form required for the making of a claim for health care payment; and

(2) Where a claim for a health care payment is submitted by means of computer billing tapes or other electronic means if the person has advised the health care payer in writing that claims for health care payment will be submitted by use of computer billing tapes or other electronic means. [1986 c 243 § 4.]

48.80.050 Civil action not limited. This chapter shall not be construed to prohibit or limit a prosecution of or civil action against a person for the violation of any other law of this state. [1986 c 243 § 5.]

48.80.060 Conviction of provider, notification to regulatory agency. Upon the conviction under this chapter of any provider, the prosecutor shall provide written notification to the appropriate regulatory or disciplinary agency of such conviction. [1986 c 243 § 6.]

48.80.900 Severability—1986 c 243. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 243 § 7.]

Chapter 48.84 RCW

LONG-TERM CARE INSURANCE ACT

Sections

48.84.010	General provisions, intent.
48.84.020	Definitions.
48.84.030	Rules—Benefits-premiums ratio, coverage limitations.
48.84.040	Policies and contracts—Prohibited provisions.
48.84.050	Disclosure rules—Required provisions in policy or contract.
48.84.060	Prohibited practices.
48.84.070	Separation of data regarding certain policies.
48.84.900	Severability—1986 c 170.
48.84.910	Effective date, application—1986 c 170.

Long-term care insurance plans for eligible public employees: RCW 41.05.065.

48.84.010 General provisions, intent. This chapter may be known and cited as the "long-term care insurance act" and is intended to govern the content and sale of long-term care insurance and long-term care benefit contracts as defined in this chapter. This chapter shall be liberally construed to promote the public interest in protecting purchasers

of long-term care insurance from unfair or deceptive sales, marketing, and advertising practices. The provisions of this chapter shall apply in addition to other requirements of Title 48 RCW. [1986 c 170 § 1.]

48.84.020 Definitions. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Long-term care insurance" or "long-term care benefit contract" means any insurance policy or benefit contract primarily advertised, marketed, offered, or designed to provide coverage or services for either institutional or community-based convalescent, custodial, chronic, or terminally ill care. Such terms do not include and this chapter shall not apply to policies or contracts governed by chapter 48.66 RCW and continuing care retirement communities.

(2) "Loss ratio" means the incurred claims plus or minus the increase or decrease in reserves as a percentage of the earned premiums, or the projected incurred claims plus or minus the increase or decrease in projected reserves as a percentage of projected earned premiums, as defined by the commissioner.

(3) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during the specified time period before the effective date of coverage.

(4) "Medicare" means Title XVIII of the United States social security act, or its successor program.

(5) "Medicaid" means Title XIX of the United States social security act, or its successor program.

(6) "Nursing home" means a nursing home as defined in RCW 18.51.010. [1986 c 170 § 2.]

48.84.030 Rules—Benefits-premiums ratio, coverage limitations. (1) The commissioner shall adopt rules requiring reasonable benefits in relation to the premium or price charged for long-term care policies and contracts which rules may include but are not limited to the establishment of minimum loss ratios.

(2) In addition, the commissioner may adopt rules establishing standards for long-term care coverage benefit limitations, exclusions, exceptions, and reductions and for policy or contract renewability. [1986 c 170 § 3.]

48.84.040 Policies and contracts—Prohibited provisions. No long-term care insurance policy or benefit contract may:

(1) Use riders, waivers, endorsements, or any similar method to limit or reduce coverage or benefits;

(2) Indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

(3) Be canceled, nonrenewed, or segregated at the time of rerating solely on the grounds of the age or the deterioration of the mental or physical health of the covered person;

(4) Exclude or limit coverage for preexisting conditions for a period of more than one year prior to the effective date of the policy or contract or more than six months after the effective date of the policy or contract;

(5) Differentiate benefit amounts on the basis of the type or level of nursing home care provided;

(6) Contain a provision establishing any new waiting period in the event an existing policy or contract is converted to a new or other form within the same company. [1986 c 170 § 4.]

48.84.050 Disclosure rules—Required provisions in policy or contract. (1) The commissioner shall adopt rules requiring disclosure to consumers of the level, type, and amount of benefits provided and the limitations, exclusions, and exceptions contained in a long-term care insurance policy or contract. In adopting such rules the commissioner shall require an understandable disclosure to consumers of any cost for services that the consumer will be responsible for in utilizing benefits covered under the policy or contract.

(2) Each long-term care insurance policy or contract shall include a provision, prominently displayed on the first page of the policy or contract, stating in substance that the person to whom the policy or contract is sold shall be permitted to return the policy or contract within thirty days of its delivery. In the case of policies or contracts solicited and sold by mail, the person may return the policy or contract within sixty days. Once the policy or contract has been returned, the person may have the premium refunded if, after examination of the policy or contract, the person is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy or contract to the insurer or agent. If a person, pursuant to such notice, returns the policy or contract to the insurer at its branch or home office, or to the agent from whom the policy or contract was purchased, the policy or contract shall be void from its inception, and the parties shall be in the same position as if no policy or contract had been issued. [1986 c 170 § 5.]

48.84.060 Prohibited practices. No agent, broker, or other representative of an insurer, contractor, or other organization selling or offering long-term care insurance policies or benefit contracts may: (1) Complete the medical history portion of any form or application for the purchase of such policy or contract; (2) knowingly sell a long-term care policy or contract to any person who is receiving medicaid; or (3) use or engage in any unfair or deceptive act or practice in the advertising, sale, or marketing of long-term care policies or contracts. [1986 c 170 § 6.]

48.84.070 Separation of data regarding certain policies. Commencing with reports for accounting periods beginning on or after January 1, 1988, all insurers, fraternal benefit societies, health care services contractors, and health maintenance organizations shall, for reporting and record keeping purposes, separate data concerning long-term care insurance policies and contracts from data concerning other insurance policies and contracts. [1986 c 170 § 7.]

48.84.900 Severability—1986 c 170. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 170 § 9.]

48.84.910 Effective date, application—1986 c 170. RCW 48.84.060 shall take effect on November 1, 1986, and the commissioner shall adopt all rules necessary to implement RCW 48.84.060 by its effective date including rules prohibiting particular unfair or deceptive acts and practices in the advertising, sale, and marketing of long-term care policies and contracts. The commissioner shall adopt all rules necessary to implement the remaining sections of this chapter by July 1, 1987, and the remaining sections of this chapter shall apply to policies and contracts issued on or after January 1, 1988. [1986 c 170 § 10.]

Chapter 48.85 RCW

WASHINGTON LONG-TERM CARE PARTNERSHIP

Sections

48.85.010	Washington long-term care partnership program—Generally.
48.85.020	Protection of assets—Federal approval—Rules.
48.85.030	Insurance policy criteria—Rules.
48.85.040	Consumer education program.
48.85.900	Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492.

48.85.010 Washington long-term care partnership program—Generally. The department of social and health services shall, in conjunction with the office of the insurance commissioner, coordinate a long-term care insurance program entitled the Washington long-term care partnership, whereby private insurance and medicaid funds shall be used to finance long-term care. For individuals purchasing a long-term care insurance policy or contract governed by chapter 48.84 RCW and meeting the criteria prescribed in this chapter, and any other terms as specified by the office of the insurance commissioner and the department of social and health services, this program shall allow for the exclusion of some or all of the individual's assets in determination of medicaid eligibility as approved by the federal health care financing administration. [1995 1st sp.s. c 18 § 76; 1993 c 492 § 458.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

48.85.020 Protection of assets—Federal approval—Rules. The department of social and health services shall seek approval from the federal health care financing administration to allow the protection of an individual's assets as provided in this chapter. The department shall adopt all rules necessary to implement the Washington long-term care partnership program, which rules shall permit the exclusion of all or some of an individual's assets in a manner specified by the department in a determination of medicaid eligibility to the extent that private long-term care insurance provides payment or benefits for services. [1995 1st sp.s. c 18 § 77; 1993 c 492 § 459.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

48.85.030 Insurance policy criteria—Rules. (1) The insurance commissioner shall adopt rules defining the criteria that long-term care insurance policies must meet to satisfy the requirements of this chapter. The rules shall provide that

all long-term care insurance policies purchased for the purposes of this chapter:

- (a) Be guaranteed renewable;
- (b) Provide coverage for nursing home care and provide coverage for an alternative plan of care benefit as defined by the commissioner;
- (c) Provide optional coverage for home and community-based services. Such home and community-based services shall be included in the coverage unless rejected in writing by the applicant;
- (d) Provide automatic inflation protection or similar coverage for any policyholder through the age of seventy-nine and made optional at age eighty to protect the policyholder from future increases in the cost of long-term care;
- (e) Not require prior hospitalization or confinement in a nursing home as a prerequisite to receiving long-term care benefits; and
- (f) Contain at least a six-month grace period that permits reinstatement of the policy or contract retroactive to the date of termination if the policy or contract holder's nonpayment of premiums arose as a result of a cognitive impairment suffered by the policy or contract holder as certified by a physician.

(2) Insurers offering long-term care policies for the purposes of this chapter shall demonstrate to the satisfaction of the insurance commissioner that they:

- (a) Have procedures to provide notice to each purchaser of the long-term care consumer education program;
- (b) Offer case management services;
- (c) Have procedures that provide for the keeping of individual policy records and procedures for the explanation of coverage and benefits identifying those payments or services available under the policy that meet the purposes of this chapter;
- (d) Agree to provide the insurance commissioner, on or before September 1 of each year, an annual report containing information derived from the long-term care partnership long-term care insurance uniform data set as specified by the office of the insurance commissioner. [1995 1st sp.s. c 18 § 78; 1993 c 492 § 460.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

48.85.040 Consumer education program. The insurance commissioner shall, with the cooperation of the department of social and health services and members of the long-term care insurance industry, develop a consumer education program designed to educate consumers as to the need for long-term care, methods for financing long-term care, the availability of long-term care insurance, and the availability and eligibility requirements of the asset protection program provided under this chapter. [1995 1st sp.s. c 18 § 79; 1993 c 492 § 461.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

48.85.900 Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effec-

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tive dates—1993 c 492. See RCW 43.72.910 through 43.72.915.

Chapter 48.87 RCW

MIDWIVES AND BIRTHING CENTERS—JOINT UNDERWRITING ASSOCIATION

Sections

48.87.010	Intent.
48.87.020	Definitions.
48.87.030	Plan for establishing association—Commissioner's duty—Market assistance plan.
48.87.040	Composition of association.
48.87.050	Midwifery and birth center malpractice insurance—Rating plan modified according to practice volume.
48.87.060	Administering a plan.
48.87.070	Policies written on a claims made basis—Commissioner may not approve without insurer guarantees.
48.87.080	Risk management program—Part of plan.
48.87.100	Rule making.

48.87.010 Intent. Certified nurse midwives and licensed midwives experience a major problem in both the availability and affordability of malpractice insurance. In particular midwives practicing outside hospital settings are unable to obtain malpractice insurance at any price in this state at this time. Licensed midwives have been unable to obtain hospital privileges due in part to the requirement of almost all Washington hospitals that professional staff members have liability insurance.

The services performed by midwives are in demand by many women for childbirth and prenatal care. Women often choose to have a home or birth center birth instead of a hospital birth. Women are entitled to the provider of their choice at such a critical life event. Studies document the safety of midwife-attended births and the safety of home births for low-risk women.

At a time when safety, cost-effectiveness, and individual choice are of paramount concern to the citizens of Washington state, midwifery care in a variety of settings must be available to the public. This is essential to the goals of increased access to maternity care and increased cost-effectiveness of care, as well as addressing problems of provider shortage. One of the primary impediments to the availability of maternity services performed by midwives is the lack of available and affordable malpractice liability insurance coverage.

This chapter is intended to increase the availability of cost-effective, high-quality maternity care by making malpractice insurance available for midwives. This chapter is implemented by requiring all insurers authorized to write commercial or professional liability insurance to be members of a joint underwriting association created to provide malpractice insurance for midwives. [1993 c 112 § 1.]

48.87.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Association" means the joint underwriting association established under this chapter.

(2) "Midwifery and birth center malpractice insurance" means insurance coverage against the legal liability of the insured and against loss damage or expense incident to a

claim arising out of the death or injury of a person as a result of negligence or malpractice in rendering professional service by a licensee.

(3) "Licensee" means a person or facility licensed to provide midwifery services under chapter 18.50, 18.79, or 18.46 RCW. [2002 c 300 § 1; 1993 c 112 § 2.]

48.87.030 Plan for establishing association—Commissioner's duty—Market assistance plan. The insurance commissioner shall approve by December 31, 1993, a reasonable plan for the establishment of a nonprofit, joint underwriting association for midwifery and birth center malpractice insurance subject to the conditions and limitations contained in this chapter. Such plan shall include a market assistance plan to be used prior to activating a joint underwriting association. [1993 c 112 § 3.]

48.87.040 Composition of association. The association shall be comprised of all insurers possessing a certificate of authority to write and engaged in writing medical malpractice insurance within this state and general casualty companies. Every insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to transact business in this state. Only licensed midwives under chapter 18.50 RCW, certified nurse midwives licensed under chapter 18.79 RCW, or birth centers licensed under chapter 18.46 RCW may participate in the joint underwriting authority. [2002 c 300 § 2; 1993 c 112 § 4.]

48.87.050 Midwifery and birth center malpractice insurance—Rating plan modified according to practice volume. A licensee may apply to the association to purchase midwifery and birth center malpractice insurance and the association shall offer a policy with liability limits of one million dollars per claim and three million dollars per annual aggregate, or such other minimum level of mandated coverage as determined by the department of health. The insurance commissioner shall require the use of a rating plan for midwifery malpractice insurance that permits rates to be modified according to practice volume. Any rating plan for midwifery malpractice insurance used under this section must be based on sound actuarial principles. Coverage may not exclude midwives who engage in home birth or birth center deliveries. [1994 c 90 § 1; 1993 c 112 § 5.]

Effective date—1994 c 90: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 90 § 2.]

48.87.060 Administering a plan. The commissioner may select an insurer to administer a plan established under this chapter. The insurer must be admitted to transact the business of insurance of the state of Washington. [1993 c 112 § 6.]

48.87.070 Policies written on a claims made basis—Commissioner may not approve without insurer guarantees. The insurance commissioner may not approve a policy written on a claims made basis by an insurer doing business in this state unless the insurer guarantees to the commissioner the continued availability of suitable liability protection for

midwives subsequent to the discontinuance of professional practice by the midwife or the sooner termination of the insurance policy by the insurer for so long as there is a reasonable probability of a claim for injury for which the health care provider might be liable. [1993 c 112 § 7.]

48.87.080 Risk management program—Part of plan.

A risk management program for insureds of the association must be established as a part of the plan. This program must include but not be limited to: Investigation and analysis of frequency, severity, and causes of adverse or untoward outcomes; development of measures to control these injuries; systematic reporting of incidents; investigation and analysis of patient complaints; and education of association members to improve quality of care and risk reduction. [1993 c 112 § 8.]

48.87.100 Rule making. The commissioner may adopt all rules necessary to ensure the efficient, equitable operation of the association, including but not limited to, rules requiring or limiting certain policy provisions. [1993 c 112 § 10.]

Chapter 48.88 RCW

DAY CARE SERVICES—JOINT UNDERWRITING ASSOCIATION

Sections

48.88.010	Intent.
48.88.020	Definitions.
48.88.030	Plan for joint underwriting association.
48.88.040	Association—Membership.
48.88.050	Policies—Liability limits—Rating plan.
48.88.070	Rules.

48.88.010 Intent. Day care service providers have experienced major problems in both the availability and affordability of liability insurance. Premiums for such insurance policies have recently grown as much as five hundred percent and the availability of such insurance in Washington markets has greatly diminished.

The availability of quality day care is essential to achieving such goals as increased work force productivity, family self-sufficiency, and protection for children at risk due to poverty and abuse. The unavailability of adequate liability insurance threatens to decrease the availability of day care services.

This chapter is intended to remedy the problem of unavailable liability insurance for day care services by requiring all insurers authorized to write commercial or professional liability insurance to be members of a joint underwriting association created to provide liability insurance for day care services. [1986 c 141 § 1.]

48.88.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Association" means the joint underwriting association established pursuant to the provisions of this chapter.

(2) "Day care insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or

injury of any person as the result of negligence or malpractice in rendering professional service by any licensee.

(3) "Licensee" means any person or facility licensed to provide day care services pursuant to chapter 74.15 RCW. [1986 c 141 § 2.]

48.88.030 Plan for joint underwriting association.

The commissioner shall approve by July 1, 1986, a reasonable plan for the establishment of a nonprofit, joint underwriting association for day care insurance, subject to the conditions and limitations contained in this chapter. [1986 c 141 § 3.]

48.88.040 Association—Membership.

The association shall be comprised of all insurers possessing a certificate of authority to write and engage in writing property and casualty insurance within this state on a direct basis, including the liability portion of multiperil policies, but not of ocean marine insurance. Every such insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to transact business in this state. [1986 c 141 § 4.]

48.88.050 Policies—Liability limits—Rating plan.

Any licensee may apply to the association to purchase day care insurance, and the association shall offer a policy with liability limits of at least one hundred thousand dollars per occurrence. The commissioner shall require the use of a rating plan for day care insurance that permits rates to be modified for individual licensees according to the type, size and past loss experience of the licensee including any other difference among licensees that can be demonstrated to have a probable effect upon losses. [1986 c 141 § 5.]

48.88.070 Rules.

The commissioner may adopt all rules necessary to ensure the efficient, equitable operation of the association, including but not limited to, rules requiring or limiting certain policy provisions. [1986 c 141 § 7.]

Chapter 48.90 RCW

CHILD DAY CARE CENTERS—SELF-INSURANCE

(Formerly: Day care centers—Self-insurance)

Sections

48.90.010	Findings and intent.
48.90.020	Definitions.
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48.90.120	Contracts—Terms.
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48.90.150	Recovery limits.
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48.90.010 Findings and intent. (1) Day care providers are facing a major crisis in that adequate and affordable business liability insurance is no longer available within this state

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for persons who care for children. Many child day care centers have been forced to purchase inadequate coverage at prohibitive premium rates from unregulated foreign surplus line carriers over which the state has minimal control.

(2) There is a danger that a substantial number of child day care centers who cannot afford the escalating premiums will be unable or unwilling to remain in business without adequate coverage. As a result the number of available facilities will be drastically reduced forcing some parents to leave the work force to care for their children. A corresponding demand upon the state's resources will result in the form of public assistance to unemployed parents and day care providers.

(3) There is a further danger that a substantial number of child day care centers now licensed pursuant to state law, who currently provide specific safeguards for the health and safety of children but are unable to procure insurance, may choose to continue to operate without state approval, avoiding regulation and payment of legitimate taxes, and forcing some parents to place their children in facilities of unknown quality and questionable levels of safety.

(4) Most child day care centers are small business enterprises with limited resources. The state's policies encourage the growth and development of small businesses.

(5)(a) This chapter is intended to remedy the problem of nonexistent or unaffordable liability coverage for child day care centers, and to encourage compliance with state laws protecting children while meeting the state's sound economic policies of encouraging small business development, sustaining an active work force, and discouraging policies that result in an increased drain on the state's resources through public assistance and other forms of public funding.

(b) This chapter will empower child day care centers to create self-insurance pools, to purchase insurance coverage, and to contract for risk management and administrative services through an association with demonstrated responsible fiscal management.

The intent of this legislation is to allow these associations maximum flexibility to create and administer plans to provide coverage and risk management services to licensed child day care centers. [2003 c 248 § 21; 1986 c 142 § 1.]

48.90.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Child day care center" means an agency that regularly provides care for one or more children for periods of less than twenty-four hours as defined in RCW 74.15.020(1)(a).

(2) "Association" means a corporation organized under Title 24 RCW, representative of one or more categories of child day care centers not formed for the sole purpose of establishing and operating a self-insurance program that:

(a) Maintains a roster of current names and addresses of member child day care centers and of former member child day care centers or their representatives, and of all employees of member or former member child day care centers;

(b) Has a membership of a size and stability to ensure that it will be able to provide consistent and responsible fiscal management; and

(c) Maintains a regular newsletter or other periodic communication to member child day care centers.

(3) "Subscriber" means a child day care center that:

- (a) Subscribes to a plan created pursuant to this chapter;
- (b) Complies with all state licensing requirements;
- (c) Is a member in good standing of an association;
- (d) Has consistently maintained its license free from revocation for cause, except where the revocation was not later rescinded or vacated by appellate or administrative decision; and
- (e) Is prepared to demonstrate the willingness and ability to bear its share of the financial responsibility of its participation in the plan for each applicable contractual period. [2003 c 248 § 22; 1986 c 142 § 2.]

48.90.030 Authority to self-insure. Associations meeting the criteria of RCW 48.90.020 are empowered to create and operate self-insurance plans to provide general liability coverage to member child day care centers who choose to subscribe to the plans. [2003 c 248 § 23; 1986 c 142 § 3.]

48.90.040 Chapter exclusive. Except as provided in this chapter, self-insurance plans formed and implemented pursuant to this chapter shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state. [1986 c 142 § 4.]

48.90.050 Elements of plan. Any association desiring to establish a plan pursuant to this chapter shall prepare and submit to the commissioner a proposed plan of organization and operation, including the following elements:

- (1) A statement that the association meets the requirements of this chapter.
- (2) A financial plan specifying:
 - (a) The coverage to be offered by the self-insurance pool, setting forth a deductible level and maximum level of claims that the pool will self-insure;
 - (b) The amount of cash reserves to be maintained for the payment of claims;
 - (c) The amount of insurance, if any, to be purchased to cover claims in excess of the amount of claims to be satisfied directly from the association's own cash reserves;
 - (d) The amount of stop-loss coverage to be purchased in the event the joint self-insurance pool's resources are exhausted in a given fiscal period;
 - (e) A mechanism for determining and assessing the contingent liability of subscribers in the event the assets in the contributing trust fund are at any time insufficient to cover liabilities; and
 - (f) Certification that all subscribers in the pool are apprised of the limitations of coverage to be provided.
- (3) A plan of management setting forth:
 - (a) The means of fulfilling the requirements in RCW 48.90.050(2);
 - (b) The names and addresses of board members and their terms of office, and a copy of the corporate bylaws defining the method of election of board members;
 - (c) The frequency of studies or other evaluation to establish the periodic contribution rates for each of the subscribers;
 - (d) The responsibilities of subscribers, including procedures for entry into and withdrawal from the pool, the alloca-

tion of contingent liabilities and a procedure for immediate assessments if the contributing trust fund falls below the level set in RCW 48.90.050(2)(b);

- (e) A plan for monitoring risks and disseminating information with respect to their reduction or elimination;
- (f) A contract with a professional insurance management corporation, for the management and operation of any joint self-insurance pool established by the association; and
- (g) The corporate address of the association. [1986 c 142 § 5.]

48.90.060 Approval of plan. If the plan submitted complies with RCW 48.90.050 and if the terms of the plan reflect sound financial management, the commissioner shall approve the plan submitted pursuant to RCW 48.90.050. [1986 c 142 § 6.]

48.90.070 Contributing trust fund. All funds contributed for the purpose of the self-insurance plan shall be deposited in a contributing trust fund, which shall at all times be maintained separately from the general funds of the association. The association shall not contribute to or draw upon the contributing trust fund at any time or for any reason other than administration of the trust fund and operation of the plan. All administration and operating costs related to the trust fund shall be drawn from it. [1986 c 142 § 7.]

48.90.080 Initial implementation of plan—Conditions. The initial implementation of the plan shall be conditioned upon establishment of the minimum deposits in the contributing trust fund at least thirty days prior to the first effective date of the program for its first year of operation. [1986 c 142 § 8.]

48.90.090 Standard of care in fund management—Fiduciary. In managing the assets of the contributing trust fund, the association shall exercise the reasonable judgment and care that ordinary persons of prudence, intelligence, and discretion exercise in the sound management of their affairs, not in regard to speculation but in regard to preservation of their funds with maximum return, given the information reasonably available. The association may delegate this duty to a responsible fiduciary. If the fiduciary has special skills or represents that it has special skills, then the fiduciary is under a duty to use those skills in the management of the fund's assets. [1986 c 142 § 9.]

48.90.100 Annual report. The association shall provide an annual report of the operations of the plan to all subscribers, to the secretary of social and health services, and to the commissioner. This report shall:

- (1) Review claims made, judgments entered, and claims rejected;
- (2) Certify that the current level of the contributing trust fund is sufficient to meet reasonable needs, or provide a plan for establishing such a level within a reasonable time; and
- (3) Make recommendations for specific measures of risk reduction. [1986 c 142 § 10.]

48.90.110 Powers of association. The association shall have the power, in its capacity as plan administrator, to contract for or delegate services as necessary for the efficient management and operation of the plan, including but not limited to:

- (1) Contracting for risk management and loss control services;
- (2) Designing a continuing program of risk reduction, calling for the participation of all subscribers;
- (3) Contracting for legal counsel for the defense of claims and other legal services;
- (4) Consulting with the commissioner, the secretary of social and health services, or other interested state agencies with respect to any matters affecting the provision of day care for the state's children, and related risk problems; and
- (5) Purchasing commercial insurance coverage in the form and amount as the subscribers may by contract agree, including reinsurance, excess coverage, and stop-loss insurance. [1986 c 142 § 11.]

48.90.120 Contracts—Terms. (1) All contracts between subscribers and the association shall be for one-year periods and shall terminate on the first day of the next fiscal year of the association following their signature. Subscribers withdrawing from participation in the plan during any contract period may do so only upon surrender of their licenses to care for children to the department of social and health services.

(2) Premiums should be annual, prorated quarterly in the event any subscriber withdraws, or any new subscriber contracts with the association to become part of the plan during the fiscal year. Subscribers should not have the power to delegate or assign the responsibility for their assessments.

(3) Contracts should provide for recovery by the association, of any assessments that are not promptly contributed, for methods of collection, and for resolution of related disputes. [1986 c 142 § 12.]

48.90.130 Significant modifications in plan, statement on. Within six months of the beginning of any fiscal year in which significant modifications of the plan are envisioned, the association shall provide the commissioner with a statement of those modifications, setting forth the proposed changes, reasons for the changes, and reasonable alternatives, if any exist. The statement shall specifically include reference to coverage available in the commercial insurance market, together with suggested solutions within the joint self-insurance plan. [1986 c 142 § 13.]

48.90.140 Dissolution of plan and association. (1) If at any time the plan can no longer be operated on a sound financial basis, the association may elect to dissolve the plan, subject to explicit approval by the commissioner of a plan for dissolution. Once a plan operated by an association has been dissolved, that association may not again implement a plan pursuant to this chapter for five calendar years.

(2) At dissolution, the assets of the association represented by the contributing trust fund shall be deposited with the commissioner for a period of twenty-one years, to be made available for claims arising during that period based upon occurrences during the term of coverage. At the time of

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transfer of the funds, the association shall certify to the commissioner a list of all current subscribers, with their correct mailing addresses, and shall have notified all current subscribers of their obligation to keep the commissioner informed of any changes in their mailing addresses over the twenty-one year period, and that this obligation extends to their representatives, successors, assigns, and to the representatives of their estates. Upon dissolution, the association is required to provide to the commissioner a list of all plan subscribers during all of the years of operation of the plan.

At the end of the twenty-one year period, any funds remaining in the trust account must be distributed to those subscribers who were current subscribers in the most recent year of operation of the plan, with each current subscriber receiving an equal share of the distribution, without regard for the length of time each child day care center was a subscriber.

In the alternative, in the discretion of the association, the balance of the contributing trust fund may be used to purchase similar or more liberal coverage from a commercial insurer. Each subscriber shall, however, be given the option to deposit its share of the fund with the commissioner as provided in this section if it elects not to participate in the proposed commercial insurance. [2003 c 248 § 24; 1986 c 142 § 14.]

48.90.150 Recovery limits. No person with a claim covered by a plan established pursuant to this chapter shall be entitled to recover from the plan any amount in excess of the limits of coverage provided for in the plan. [1986 c 142 § 15.]

48.90.160 Suspension of plan—Reconsideration. The commissioner may disapprove, and require suspension of a plan for failure of the association to comply with any provision of this chapter, for gross mismanagement, or for wilful disregard and neglect of its fiduciary duty. The association shall have the right to request reconsideration of the commissioner's decision within fifteen days of the receipt of the commissioner's written notification of the decision, or to request a hearing according to chapter 48.04 RCW. [1986 c 142 § 16.]

48.90.170 Costs of investigation or review of plan. All reasonable costs of any investigation or review by the commissioner of an association's plan of organization and operation, or any changes or modifications thereof, including the dissolution of a plan, shall be paid by the association before issuance of any approval required under this chapter. [1986 c 142 § 17.]

Chapter 48.92 RCW

LIABILITY RISK RETENTION

Sections

- 48.92.010 Purpose.
- 48.92.020 Definitions.
- 48.92.030 Requirements for chartering.
- 48.92.040 Required acts—Prohibited practices.
- 48.92.050 Insolvency guaranty fund, participation prohibited—Joint underwriting associations, participation required.
- 48.92.060 Countersigning not required.

48.92.070	Purchasing groups—Exempt from certain laws.
48.92.080	Purchasing groups—Notice and registration.
48.92.090	Purchasing groups—Dealing with foreign insurers—Deductible or self-insured retention—Aggregate limits.
48.92.095	Premium taxes—Imposition—Obligations—Member's liability.
48.92.100	Authority of commissioner.
48.92.110	Penalties.
48.92.120	Agents, brokers, solicitors—License required.
48.92.130	Federal injunctions.
48.92.140	Rules.

48.92.010 Purpose. The purpose of this chapter is to regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986. [1993 c 462 § 91; 1987 c 306 § 1.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

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

(1) "Commissioner" means the insurance commissioner of Washington state or the commissioner, director, or superintendent of insurance in any other state.

(2) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:

(a) Any person who performs that work; or

(b) Any person who hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

(3) "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means:

(a) For a corporation, the state in which the purchasing group is incorporated; and

(b) For an unincorporated entity, the state of its principal place of business.

(4) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:

(a) To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(b) To pay other obligations in the normal course of business.

(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.

(6) "Liability" means legal liability for damages including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of:

(a) Any business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations; or

(b) Any activity of any state or local government, or any agency or political subdivision thereof.

"Liability" does not include personal risk liability and an employer's liability with respect to its employees other than

legal liability under the federal Employers' Liability Act 45 U.S.C. 51 et seq.

(7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection (6) of this section.

(8) "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum:

(a) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(b) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(c) Historical and expected loss experience of the proposed members and national experience of similar exposures;

(d) Pro forma financial statements and projections;

(e) Appropriate opinions by a qualified, independent, casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(f) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements;

(g) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each of those states; and

(h) Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state.

(9) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage including damages resulting from the loss of use of property arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

(10) "Purchasing group" means any group which:

(a) Has as one of its purposes the purchase of liability insurance on a group basis;

(b) Purchases the insurance only for its group members and only to cover their similar or related liability exposure, as described in (c) of this subsection;

(c) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(d) Is domiciled in any state.

(11) "Risk retention group" means any corporation or other limited liability association:

(a) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(b) Which is organized for the primary purpose of conducting the activity described under (a) of this subsection;

(c) Which:

(i) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as the terms were defined in the federal Product Liability Risk Retention Act of 1981 before the date of the enactment of the federal Risk Retention Act of 1986;

(d) Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(e) Which:

(i) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the risk retention group; or

(ii) Has as its sole owner an organization that has:

(A) As its members only persons who comprise the membership of the risk retention group; and

(B) As its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group;

(f) Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

(g) Whose activities do not include the provision of insurance other than:

(i) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in businesses or activities so that the group or member meets the requirement described in (f) of this subsection from membership in the risk retention group which provides such reinsurance; and

(h) The name of which includes the phrase "risk retention group."

(12) "State" means any state of the United States or the District of Columbia. [1993 c 462 § 92; 1987 c 306 § 2.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.030 Requirements for chartering. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as

provided elsewhere in this chapter, must comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and licensed in this state and with RCW 48.92.040 to the extent the requirements are not a limitation on laws, rules, regulations, or requirements of this state.

(2) A risk retention group chartered in this state shall file with the department and the National Association of Insurance Commissioners an annual statement in a form prescribed by the National Association of Insurance Commissioners, and in electronic form if required by the commissioner, and completed in accordance with its instructions and the National Association of Insurance Commissioners accounting practices and procedures manual.

(3) Before it may offer insurance in any state, each domestic risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study. The risk retention group shall submit an appropriate revision in the event of a subsequent material change in an item of the plan of operation or feasibility study, within ten days of the change. The group may not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of the plan or study is approved by the commissioner.

(4) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information: The identity of the initial members of the group; the identify of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group; the amount and nature of the initial capitalization; the coverages to be afforded; and the states in which the group intends to operate. Upon receipt of this information, the commissioner shall forward the information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners is in addition to and is not sufficient to satisfy the requirements of RCW 48.92.040 or this chapter. [1993 c 462 § 93; 1987 c 306 § 3.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.040 Required acts—Prohibited practices. Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall comply with the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner on a form prescribed by the National Association of Insurance Commissioners:

(a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and any other information including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under RCW 48.92.020(11);

(b) A copy of its plan of operations or a feasibility study and revisions of the plan or study submitted to its state of domicile: PROVIDED, HOWEVER, That the provision relating to the submission of a plan of operation or a feasibility

ity study shall not apply with respect to any line or classification of liability insurance which: (i) Was defined in the federal Product Liability Risk Retention Act of 1981 before October 27, 1986; and (ii) was offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date;

(c) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required under RCW 48.92.030(3) at the same time that the revision is submitted to the commissioner of its chartering state; and

(d) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) Any risk retention group doing business in this state shall submit to the commissioner:

(a) A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;

(b) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(c) Upon request by the commissioner, a copy of any information or document pertaining to an outside audit performed with respect to the risk retention group; and

(d) Any information as may be required to verify its continuing qualification as a risk retention group under RCW 48.92.020(11).

(3)(a) A risk retention group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report on or before March 1st of each year to the commissioner the direct premiums written for risks resident or located within this state. The risk retention group is subject to taxation, and applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer.

(b) To the extent agents or brokers are utilized under RCW 48.92.120 or otherwise, they shall report to the commissioner the premiums for direct business for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent agents or brokers are used under RCW 48.92.120 or otherwise, an agent or broker shall keep a complete and separate record of all policies procured from each risk retention group. The record is open to examination by the commissioner, as provided in chapter 48.03 RCW. These records must include, for each policy and each kind of insurance provided thereunder, the following:

(i) The limit of liability;

(ii) The time period covered;

(iii) The effective date;

(iv) The name of the risk retention group that issued the policy;

(v) The gross premium charged; and

(vi) The amount of return premiums, if any.

(4) Any risk retention group, its agents and representatives, shall be subject to any and all unfair claims settle-

ment practices statutes and regulations specifically denominated by the commissioner as unfair claims settlement practices regulations.

(5) Any risk retention group, its agents and representatives, shall be subject to the provisions of chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this state. The examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' examiner handbook.

(7) Every application form for insurance from a risk retention group and every policy issued by a risk retention group shall contain in ten-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(8) The following acts by a risk retention group are hereby prohibited:

(a) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in that group; and

(b) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(10) The terms of an insurance policy issued by a risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection (6) of this section. [1993 c 462 § 94; 1987 c 306 § 4.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.050 Insolvency guaranty fund, participation prohibited—Joint underwriting associations, participation required. (1) No risk retention group shall be permitted to join or contribute financially to any insurance insolvency

guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by a risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations and mandatory liability pools or plans required by the commissioners.

(3) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever resident or located, are covered by an insurance guaranty fund or similar mechanism in this state.

(4) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state are covered by the state guaranty fund established in chapter 48.32 RCW. [1993 c 462 § 95; 1987 c 306 § 5.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.060 Countersigning not required. A policy of insurance issued to a risk retention group or any member of that group shall not be required to be countersigned. [1987 c 306 § 6.]

48.92.070 Purchasing groups—Exempt from certain laws. A purchasing group and its insurer or insurers are subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers are exempt, in regard to liability insurance for the purchasing group, from any law that:

(1) Prohibits the establishment of a purchasing group;

(2) Makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) Prohibits a purchasing group or its members from purchasing insurance on a group basis described in subsection (2) of this section;

(4) Prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) Requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form;

(6) Requires that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) Otherwise discriminates against a purchasing group or any of its members. [1993 c 462 § 96; 1987 c 306 § 7.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.080 Purchasing groups—Notice and registration. (1) A purchasing group which intends to do business in this state shall furnish, before doing business, notice to the commissioner, on forms prescribed by the National Association of Insurance Commissioners which shall:

(a) Identify the state in which the group is domiciled;

(b) Identify all other states in which the group intends to do business;

(c) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(d) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of that company or companies;

(e) Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;

(f) Identify the principal place of business of the group; and

(g) Provide any other information as may be required by the commissioner to verify that the purchasing group is qualified under RCW 48.92.020(10).

(2) A purchasing group shall, within ten days, notify the commissioner of any changes in any of the items set forth in subsection (1) of this section.

(3) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, except that this requirement shall not apply in the case of a purchasing group that only purchases insurance that was authorized under the federal Product Liability Risk Retention Act of 1981 and:

(a) Which in any state of the United States:

(i) Was domiciled before April 1, 1986; and

(ii) Is domiciled on and after October 27, 1986;

(b) Which:

(i) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state;

(ii) Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state; or

(c) Which was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 before October 27, 1986.

(4) A purchasing group that is required to give notice under subsection (1) of this section shall also furnish such information as may be required by the commissioner to:

(a) Verify that the entity qualifies as a purchasing group;

(b) Determine where the purchasing group is located; and

(c) Determine appropriate tax treatment. [1993 c 462 § 97; 1987 c 306 § 8.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.090 Purchasing groups—Dealing with foreign insurers—Deductible or self-insured retention—Aggregate limits. (1) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of that state.

(2) A purchasing group that obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group that have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this

state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.

(3) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

(4) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits that are applicable to all purchases of group insurance. [1993 c 462 § 98; 1987 c 306 § 9.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.095 Premium taxes—Imposition—Obligations—Member's liability. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups must be:

(1) Imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes and taxes on premiums paid for similar coverage from authorized insurers, as defined under chapter 48.05 RCW, or unauthorized insurers, as defined and provided for under chapter 48.15 RCW, by other insurers; and

(2) The obligation of the insurer; and if not paid by the insurer, then the obligation of the purchasing group; and if not paid by the purchasing group, then the obligation of the agent or broker for the purchasing group; and if not paid by the agent or broker for the purchasing group, then the obligation of each of the purchasing group's members. The liability of each member of the purchasing group is several, not joint, and is limited to the tax due in relation to the premiums paid by that member. [1993 c 462 § 99.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.100 Authority of commissioner. The commissioner is authorized to make use of any of the powers established under Title 48 RCW to enforce the laws of this state so long as those powers are not specifically preempted by the federal Product Liability Risk Retention Act of 1981, as amended by the federal Risk Retention Amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. With regard to any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction. [1993 c 462 § 100; 1987 c 306 § 10.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.110 Penalties. A risk retention group which violates any provision of this chapter shall be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license and/or the right to do business in this state. [1987 c 306 § 11.]

[Title 48 RCW—page 370]

48.92.120 Agents, brokers, solicitors—License required. (1) No person may act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless the person is licensed as an insurance agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(2)(a) No person may act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless the person is licensed as an insurance agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(b) No person may act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for a member of a purchasing group under a purchasing group's policy unless the person is licensed as an insurance agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(c) No person may act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless the person is licensed as a surplus lines broker in accordance with chapter 48.15 RCW and pays the fees designated for the license under RCW 48.14.010.

(3) For purposes of acting as an agent or broker for a risk retention group or purchasing group under subsections (1) and (2) of this section, the requirement of residence in this state does not apply.

(4) Every person licensed under chapters 48.15 and 48.17 RCW, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required under RCW 48.92.040(7) in the case of a risk retention group and *RCW 48.92.090(3) in the case of a purchasing group. [1993 c 462 § 101; 1987 c 306 § 12.]

***Reviser's note:** The reference to RCW 48.92.090(3) appears erroneous. Reference to RCW 48.92.090(2) was apparently intended.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.130 Federal injunctions. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state or in all states or in any territory or possession of the United States, upon a finding that the group is in a hazardous financial or financially impaired condition, shall be enforceable in the courts of the state. [1993 c 462 § 102; 1987 c 306 § 13.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.140 Rules. The commissioner may establish and from time to time amend the rules relating to risk retention or purchasing groups as may be necessary or desirable to carry out the provisions of this chapter. [1993 c 462 § 103; 1987 c 306 § 14.]

(2004 Ed.)

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.94 RCW

REINSURANCE INTERMEDIARY ACT

Sections

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48.94.901	Severability—Implementation—1993 c 462.

48.94.005 Definitions. The definitions set forth in this section apply throughout this chapter:

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(2) "Controlling person" means a person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

(3) "Insurer" means insurer as defined in RCW 48.01.050.

(4) "Licensed producer" means an agent, broker, or reinsurance intermediary licensed under the applicable provisions of this title.

(5) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subsections (6) and (7) of this section.

(6) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(7) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary-manager, manager, or other similar term. Notwithstanding this subsection, the following persons are not considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of this chapter:

(a) An employee of the reinsurer;

(b) A United States manager of the United States branch of an alien reinsurer;

(c) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the Insurer Holding Company Act, chapter 48.31B RCW, and whose compensation is not based on the volume of premiums written;

(d) The manager of a group, association, pool, or organization of insurers that engages in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(8) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with the authority to assume reinsurance.

(9) "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with this chapter.

(10) "Qualified United States financial institution" means an institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;

(b) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the commissioner, or the securities valuation office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner. [1993 c 462 § 23.]

48.94.010 Acting as a reinsurance intermediary-broker or reinsurance intermediary-manager—Commissioner's powers—Licenses—Attorney exemption. (1) No person, firm, association, or corporation may act as a reinsurance intermediary-broker in this state if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

(a) In this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state; or

(b) In another state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state or another state having a regulatory scheme substantially similar to this chapter.

(2) No person, firm, association, or corporation may act as a reinsurance intermediary-manager:

(a) For a reinsurer domiciled in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(b) In this state, if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(c) In another state for a nondomestic reinsurer, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state or another state having a substantially similar regulatory scheme.

(3) The commissioner may require a reinsurance intermediary-manager subject to subsection (2) of this section to:

(a) File a bond in an amount and from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(4)(a) The commissioner may issue a reinsurance intermediary license to a person, firm, association, or corporation who has complied with the requirements of this chapter. Any such license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons may be named in the application and any supplements to it. Any such license issued to a corporation authorizes all of the officers, and any designated employees and directors of it, to act as reinsurance intermediaries on behalf of the corporation, and all such persons must be named in the application and any supplements to it.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, but the change does not become effective until acknowledged by the commissioner.

(5) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, anyone named on the application, or a member, principal, officer, or director of the applicant, is not trustworthy, or that a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with a prerequisite for the issuance of such license. Upon written request, the commissioner will furnish a summary of the basis for refusal to issue a license, which document is privileged and not subject to chapter 42.17 RCW.

(6) Licensed attorneys at law of this state when acting in their professional capacity as such are exempt from this section. [1993 c 462 § 24.]

48.94.015 Written authorization required between a reinsurance intermediary-broker and an insurer—Minimum provisions. Brokers transactions between a reinsurance intermediary-broker and the insurer it represents in such capacity may be entered into only under a written authorization, specifying the responsibilities of each party. The authorization must, at a minimum, provide that:

(1) The insurer may terminate the reinsurance intermediary-broker's authority at any time.

(2) The reinsurance intermediary-broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing, to the reinsurance intermediary-broker, and remit all funds due to the insurer within thirty days of receipt.

(3) All funds collected for the insurer's account must be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank that is a qualified United States financial institution as defined in this chapter.

(4) The reinsurance intermediary-broker will comply with RCW 48.94.020.

(5) The reinsurance intermediary-broker will comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance intermediary-broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded. [1993 c 462 § 25.]

48.94.020 Accounts and records maintained by reinsurance intermediary-broker—Access by insurer.

(1) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction showing:

(a) The type of contract, limits, underwriting restrictions, classes, or risks and territory;

(b) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;

(c) Reporting and settlement requirements of balances;

(d) Rate used to compute the reinsurance premium;

(e) Names and addresses of assuming reinsurers;

(f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

(g) Related correspondence and memoranda;

(h) Proof of placement;

(i) Details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(j) Financial records, including but not limited to, premium and loss accounts; and

(k) When the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(2) The insurer has access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer. [1993 c 462 § 26.]

48.94.025 Restrictions on insurer—Obtaining services—Employees—Financial condition of reinsurance intermediary. (1) An insurer may not engage the services of a person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by RCW 48.94.010(1).

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business, unless the reinsurance intermediary-broker is under common control with the insurer and subject to the Insurer Holding Company Act, chapter 48.31B RCW.

(3) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business. [1993 c 462 § 27.]

48.94.030 Contract required between a reinsurance intermediary-manager and a reinsurer—Minimum provisions. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in such capacity may be entered into only under a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before the reinsurer assumes or cedes business through the reinsurance intermediary-manager, a true copy of the approved contract must be filed with the commissioner for approval. The contract must, at a minimum, provide that:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of a dispute regarding the cause for termination.

(2) The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the reinsurer's account must be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank that is a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

(a) The type of contract, limits, underwriting restrictions, classes, or risks and territory;

(b) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(c) Reporting and settlement requirements of balances;

(d) Rate used to compute the reinsurance premium;

(e) Names and addresses of reinsurers;

(f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(g) Related correspondence and memoranda;

(h) Proof of placement;

(i) Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by RCW 48.94.040(4), including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(j) Financial records, including but not limited to, premium and loss accounts; and

(k) When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) Directly from an assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(5) The reinsurer has access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

(6) The reinsurance intermediary-manager may not assign the contract in whole or in part.

(7) The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The rates, terms, and purposes of commissions, charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer are clearly specified.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(a) All claims will be reported to the reinsurer in a timely manner;

(b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) Involves a coverage dispute;

(iii) May exceed the reinsurance intermediary-manager's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(c) All claim files are the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer, the files become the sole property of the reinsurer or its estate; the reinsurance intermediary-manager has reasonable access to and the right to copy the files on a timely basis;

(d) Settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of a dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, such interim

profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified under RCW 48.94.040(3).

(11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall periodically, at least semiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with an insurer before ceding or assuming any business with the insurer under this contract.

(14) Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf it is acting. [1993 c 462 § 28.]

48.94.035 Restrictions on reinsurance intermediary-manager—Retrocessions—Syndicates—Licenses—Employees. The reinsurance intermediary-manager may not:

(1) Cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions under obligatory automatic agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for the retrocessions. The guidelines must include a list of reinsurers with which the automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) Commit the reinsurer to participate in reinsurance syndicates.

(3) Appoint a reinsurance intermediary without assuring that the reinsurance intermediary is lawfully licensed to transact the type of reinsurance for which he or she is appointed.

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31st of the last complete calendar year.

(5) Collect a payment from a retrocessionaire or commit the reinsurer to a claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(6) Jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to the Insurer Holding Company Act, chapter 48.31B RCW.

(7) Appoint a subreinsurance intermediary-manager. [1993 c 462 § 29.]

48.94.040 Restrictions on reinsurer—Financial condition of reinsurance intermediary-manager—Loss reserves—Retrocessions—Termination of contract—

Board of directors. (1) A reinsurer may not engage the services of a person, firm, association, or corporation to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by RCW 48.94.010(2).

(2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager that the reinsurer has had prepared by an independent certified accountant in a form acceptable to the commissioner.

(3) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion is in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates must rest with an officer of the reinsurer who is not affiliated with the reinsurance intermediary-manager.

(5) Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

(6) A reinsurer may not appoint to its board of directors an officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by the Insurer Holding Company Act, chapter 48.31B RCW, or, if applicable, the Broker-controlled Property and Casualty Insurer Act, chapter 48.97 RCW. [1993 c 462 § 30.]

48.94.045 Examination by commissioner. (1) A reinsurance intermediary is subject to examination by the commissioner. The commissioner has access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

(2) A reinsurance intermediary-manager may be examined as if it were the reinsurer. [1993 c 462 § 31.]

48.94.050 Violations of chapter—Penalties—Judicial review. (1) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with chapters 48.17 and 34.05 RCW, to be in violation of any provision of this chapter, shall:

(a) For each separate violation, pay a penalty in an amount not exceeding five thousand dollars;

(b) Be subject to revocation or suspension of its license; and

(c) If a violation was committed by the reinsurance intermediary, make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(2) The decision, determination, or order of the commissioner under subsection (1) of this section is subject to judicial review under this title and chapter 34.05 RCW.

(3) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided in this title.

(4) Nothing contained in this chapter is intended to or in any manner limits or restricts the rights of policyholders, claimants, creditors, or other third parties or confer any rights to those persons. [1993 c 462 § 32.]

48.94.055 Rule making. The commissioner may adopt reasonable rules for the implementation and administration of this chapter. [1993 c 462 § 33.]

48.94.900 Short title. This chapter may be known and cited as the Reinsurance Intermediary Act. [1993 c 462 § 22.]

48.94.901 Severability—Implementation—1993 c 462. See RCW 48.31B.901 and 48.31B.902.

Chapter 48.96 RCW

MOTOR VEHICLE SERVICE CONTRACTS

(Formerly: Motor vehicle mechanical breakdown insurance)

Sections

48.96.005	Purpose.
48.96.010	Definitions.
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48.96.050	Service contracts—Excluded parties.
48.96.060	Noncompliance as unfair competition, trade practice—Remedies.
48.96.900	Application of chapter—Date.
48.96.901	Effective date—1990 c 239 §§ 2-10.

48.96.005 Purpose. The purpose of this chapter is to protect the public and contract providers from losses arising from the mismanagement of funds paid for motor vehicle service contracts, to better inform the public of their rights and obligations under the contracts, to permit purchasers of such contracts the opportunity to return the contract for a refund, and to require the liabilities owed under these contracts to be fully insured, rather than partially insured, or insured only in the event of provider default. [1990 c 239 § 2.]

48.96.010 Definitions. (1) "Motor vehicle service contract" or "service contract" means a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, but does not include mechanical breakdown insurance.

(2) "Motor vehicle service contract provider" or "provider" means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract.

(3) "Mechanical breakdown insurance" means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal

wear and tear, and that is issued by an insurance company authorized to do business in this state.

(4) "Motor vehicle service contract reimbursement insurance policy" or "reimbursement insurance policy" means a policy of insurance providing coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider.

(5) "Motor vehicle" means any vehicle subject to registration under chapter 46.16 RCW.

(6) "Service contract holder" means a person who purchases a motor vehicle service contract. [1987 c 99 § 1.]

48.96.020 Reimbursement policy required for sale of service contract. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the provider of the service contract is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state. [1987 c 99 § 2.]

48.96.025 Reimbursement policy—Insurer's responsibility. (1) Every insurer issuing a reimbursement insurance policy shall include, as a part of the policy, the motor vehicle service contract(s) that the reimbursement insurance policy is intended to cover. Notwithstanding RCW 48.18.100, subsequent changes to the motor vehicle service contract(s) must be filed by the insurer with the commissioner no later than thirty days after the date of the change.

(2) Every insurer issuing a reimbursement insurance policy must require that premiums due for coverage under the policy be paid directly by the provider to the insurer or its agent. [1990 c 239 § 3.]

48.96.030 Reimbursement policy—Required provisions. A motor vehicle service contract reimbursement insurance policy shall not be issued, sold, or offered for sale in this state unless the reimbursement insurance policy conspicuously states that the issuer of the policy shall pay on behalf of the provider all sums which the provider is legally obligated to pay according to the provider's contractual obligations under the motor vehicle service contracts issued or sold by the provider. [1990 c 239 § 6; 1987 c 99 § 3.]

48.96.040 Service contract—Required statements. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states that the obligations of the provider to the service contract holder are guaranteed under the reimbursement insurance policy, and unless the contract conspicuously states the name and address of the issuer of the reimbursement insurance policy, the applicable policy number, and the means by which a service contract holder may file a claim under the policy. [1990 c 239 § 7; 1987 c 99 § 4.]

48.96.045 Service contract—Notice to holder. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the contract contains a conspicuous statement that has been initialed by the service contract holder and discloses:

(1) Any material conditions that the service contract holder must meet to maintain coverage under the contract including, but not limited to any maintenance schedule to which the service contract holder must adhere, any requirement placed on the service contract holder for documenting repair or maintenance work, and any procedure to which the service contract holder must adhere for filing claims;

(2) The work and parts covered by the contract;

(3) Any time or mileage limitations;

(4) That the implied warranty of merchantability on the motor vehicle is not waived if the contract has been purchased within ninety days of the purchase date of the motor vehicle from a provider who also sold the motor vehicle covered by the contract;

(5) Any exclusions of coverage; and

(6) The contract holder's right to return the contract for a refund, which right can be no more restrictive than provided for in RCW 48.96.047. [1990 c 239 § 4.]

48.96.047 Service contract—Holder's right to return.

(1) At a minimum, every provider shall permit the service contract holder to return the contract within thirty days of its purchase if no claim has been made under the contract, and shall refund to the holder the full purchase price of the contract unless the service contract holder returns the contract ten or more days after its purchase, in which case the provider may charge a cancellation fee not exceeding twenty-five dollars. A ten percent penalty shall be added to any refund that is not paid within thirty days of return of the contract to the provider. If a contract holder returns the contract within thirty days of its purchase or within such longer time period as permitted under the contract, the contract shall be void from the beginning and the parties shall be in the same position as if no contract had been issued.

(2) If a service contract holder returns the contract in accordance with this section, the insurer issuing the reimbursement insurance policy covering the contract shall refund to the provider the full premium paid by the provider for coverage of the contract. [1990 c 239 § 5.]

48.96.050 Service contracts—Excluded parties.

RCW 48.96.020, 48.96.030, and 48.96.040 do not apply to motor vehicle service contracts issued by a motor vehicle manufacturer or import distributor covering vehicles manufactured or imported by the motor vehicle manufacturer or import distributor. [1990 c 239 § 8; 1987 c 99 § 5.]

48.96.060 Noncompliance as unfair competition, trade practice—Remedies. Failure to comply with the provisions of this chapter is an unfair method of competition and an unfair or deceptive act or practice in the conduct of a trade or commerce, as specifically contemplated by RCW 19.86.020, and is a violation of the Consumer Protection Act, chapter 19.86 RCW. Any service contract holder injured as a result of a violation of a provision of this chapter shall be entitled to maintain an action pursuant to chapter 19.86 RCW against the motor vehicle service contract provider and the insurer issuing the applicable motor vehicle service contract reimbursement insurance policy and shall be entitled to all of the rights and remedies afforded by that chapter. Any suc-

cessful claimant under this section shall also be entitled to reasonable attorneys' fees. [1990 c 239 § 9; 1987 c 99 § 6.]

48.96.900 Application of chapter—Date. This chapter shall apply to all motor vehicle service contracts issued, sold, or offered for sale on or after January 1, 1988. [1987 c 99 § 7.]

48.96.901 Effective date—1990 c 239 §§ 2-10. Sections 2 through 10 of this act shall take effect January 1, 1991. [1990 c 239 § 11.]

Chapter 48.97 RCW

BROKER-CONTROLLED PROPERTY AND CASUALTY INSURER ACT

Sections

48.97.005	Definitions.
48.97.010	Application.
48.97.015	Business placed with a controlled insurer—Application of section—Exceptions—Written contract required—Audit committee—Report to commissioner.
48.97.020	Relationship between broker and controlled insurer—Broker's duty to disclose—Subbrokers.
48.97.025	Broker's failure to comply with chapter—Commissioner's power—Damages—Penalties.
48.97.900	Short title.
48.97.901	Severability—Implementation—1993 c 462.

48.97.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners.

(2) "Broker" means an insurance broker or brokers or any other person, firm, association, or corporation, when, for compensation, commission, or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of an insurance contract on behalf of an insured other than the person, firm, association, or corporation.

(3) "Control" or "controlled by" has the meaning ascribed in RCW 48.31B.005(2).

(4) "Controlled insurer" means a licensed insurer that is controlled, directly or indirectly, by a broker.

(5) "Controlling producer" means a broker who, directly or indirectly, controls an insurer.

(6) "Licensed insurer" or "insurer" means a person, firm, association, or corporation licensed to transact property and casualty insurance business in this state. The following, among others, are not licensed insurers for purposes of this chapter:

(a) Risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, P.L. 99-499, 100 Stat. 1613 (1986), the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq. (1982 & Supp. 1986), and chapter 48.92 RCW;

(b) Residual market pools and joint underwriting associations; and

(c) Captive insurers. For the purposes of this chapter, captive insurers are insurance companies owned by another

organization, whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members, or both, and their affiliates. [1993 c 462 § 17.]

48.97.010 Application. This chapter applies to licensed insurers either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of the Insurer Holding Company Act, chapter 48.31B RCW, or its successor act, to the extent they are not superseded by this chapter, continue to apply to all parties within the holding company systems subject to this chapter. [1993 c 462 § 18.]

48.97.015 Business placed with a controlled insurer—Application of section—Exceptions—Written contract required—Audit committee—Report to commissioner. (1)(a) This section applies in a particular calendar year if in that calendar year the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling broker is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30th of the prior year.

(b) Notwithstanding (a) of this subsection, this section does not apply if:

(i) The controlling producer:

(A) Places insurance only with the controlled insurer; or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with the insurance; and

(B) Accepts insurance placements only from nonaffiliated subbrokers, and not directly from insureds; and

(ii) The controlled insurer, except for business written through a residual market facility such as the assigned risk plan, fair plans, or other such plans, accepts insurance business only from a controlling broker, a broker controlled by the controlled insurer, or a broker that is a subsidiary of the controlled insurer.

(2) A controlled insurer may not accept business from a controlling broker and a controlling broker may not place business with a controlled insurer unless there is a written contract between the controlling broker and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling broker. The controlled insurer shall suspend the authority of the controlling broker to write business during the pendency of a dispute regarding the cause for the termination;

(b) The controlling broker shall render accounts to the controlling insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling broker;

(c) The controlling broker shall remit all funds due under the terms of the contract to the controlling insurer on at least a monthly basis. The due date must be fixed so that premiums or installments collected are remitted no later than ninety days after the effective date of a policy placed with the controlling insurer under this contract;

(d) The controlling broker shall hold all funds collected for the controlled insurer's account in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the applicable provisions of this title. However, funds of a controlling broker not required to be licensed in this state must be maintained in compliance with the requirements of the controlling broker's domiciliary jurisdiction;

(e) The controlling broker shall maintain separately identifiable records of business written for the controlled insurer;

(f) The contract shall not be assigned in whole or in part by the controlling broker;

(g) The controlled insurer shall provide the controlling broker with its underwriting standards, rules, and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling broker shall adhere to the standards, rules, procedures, rates, and conditions that are the same as those applicable to comparable business placed with the controlled insurer by a broker other than the controlling broker;

(h) The rates of the controlling broker's commissions, charges, and other fees must be no greater than those applicable to comparable business placed with the controlled insurer by brokers other than controlling brokers. For purposes of (g) and (h) of this subsection, examples of comparable business include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(i) If the contract provides that the controlling broker, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified under subsection (3) of this section;

(j) The insurer may establish a different limit on the controlling broker's writings in relation to the controlled insurer's surplus and total writings for each line or subline of business. The controlled insurer shall notify the controlling broker when the applicable limit is approached and may not accept business from the controlling broker if the limit is reached. The controlling broker may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(k) The controlling broker may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling broker places with the controlled insurer, except that the controlling broker may bind facultative reinsurance contracts under obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and

ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts of percentages that may be reinsured, and commission schedules.

(3) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

(4)(a) In addition to any other required loss reserve certification, the controlled insurer shall, annually, on April 1st of each year, file with the commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including losses incurred but not reported, on business placed by the broker; and

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling brokers for placements of the same kinds of insurance. [1993 c 462 § 19.]

48.97.020 Relationship between broker and controlled insurer—Broker's duty to disclose—Subbrokers. The broker, before the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the broker and the controlled insurer, except that, if the business is placed through a subbroker who is not a controlling broker, the controlling broker shall retain in his or her records a signed commitment from the subbroker that the subbroker is aware of the relationship between the insurer and the broker and that the subbroker has notified or will notify the insured. [1993 c 462 § 20.]

48.97.025 Broker's failure to comply with chapter—Commissioner's power—Damages—Penalties. (1)(a) If the commissioner believes that the controlling broker has not materially complied with this chapter, or a rule adopted or order issued under this chapter, the commissioner may after notice and opportunity to be heard, order the controlling broker to cease placing business with the controlled insurer; and

(b) If it is found that because of material noncompliance that the controlled insurer or any policyholder thereof has suffered loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(2) If an order for liquidation or rehabilitation of the controlled insurer has been entered under chapter 48.31 RCW, and the receiver appointed under that order believes that the controlling broker or any other person has not materially complied with this chapter, or a rule adopted or order issued under this chapter, and the insurer suffered any loss or damage from the noncompliance, the receiver may maintain a

civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(3) Nothing contained in this section alters or affects the right of the commissioner to impose other penalties provided for in this title.

(4) Nothing contained in this section alters or affects the rights of policyholders, claimants, creditors, or other third parties. [1993 c 462 § 21.]

48.97.900 Short title. This chapter may be known and cited as the Business Transacted with Broker-controlled Property and Casualty Insurer Act. [1993 c 462 § 16.]

48.97.901 Severability—Implementation—1993 c 462. See RCW 48.31B.901 and 48.31B.902.

Chapter 48.98 RCW

MANAGING GENERAL AGENTS ACT

Sections

48.98.005	Definitions.
48.98.010	Requirements for managing general agent—License—Bond—Errors and omissions policy.
48.98.015	Contract required between a managing general agent and an insurer—Minimum provisions.
48.98.020	Requirements for insurer—Audit, loss reserves, and on-site review of managing general agent—Notice to commissioner—Quarterly review of books and records—Board of director.
48.98.025	Examinations—Acts of a managing general agent are acts of the insurer.
48.98.030	Violations of chapter—Penalties—Judicial review.
48.98.035	Rule making.
48.98.040	Continued use of a managing general agent—Compliance with chapter.
48.98.900	Short title.
48.98.901	Severability—Implementation—1993 c 462.

48.98.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(2) "Insurer" means a person having a certificate of authority in this state as an insurance company under RCW 48.01.050.

(3) "Managing general agent" means:

(a) A person who manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as a representative of the insurer whether known as a managing general agent, manager, or other similar term, and who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:

(i) Adjusts or pays claims in excess of an amount to be determined by the commissioner; or

(ii) Negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding (a) of this subsection, the following persons may not be managing general agents for purposes of this chapter:

- (i) An employee of the insurer;
- (ii) A United States manager of the United States branch of an alien insurer;
- (iii) An underwriting manager who, under a contract, manages all of the insurance operations of the insurer, is under common control with the insurer, subject to the Insurer Holding Company Act, chapter 48.31B RCW, and whose compensation is not based on the volume of premiums written; or
- (iv) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(4) "Underwrite" means to accept or reject risks on behalf of the insurer. [1993 c 462 § 35.]

48.98.010 Requirements for managing general agent—License—Bond—Errors and omissions policy.

(1) No person may act in the capacity of a managing general agent with respect to risks located in this state, for an insurer authorized by this state, unless that person is licensed in this state as an agent, under chapter 48.17 RCW, for the lines of insurance involved and is designated as a managing general agent and appointed as such by the insurer.

(2) No person may act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless that person is licensed as an agent in this state, under chapter 48.17 RCW, for the lines of insurance involved and is designated as a managing general agent and appointed as such by the insurer.

(3) The commissioner may require a bond for the protection of each insurer.

(4) The commissioner may require the managing general agent to maintain an errors and omissions policy. [1993 c 462 § 36.]

48.98.015 Contract required between a managing general agent and an insurer—Minimum provisions.

No managing general agent may place business with an insurer unless there is in force a written contract between the managing general agent and the insurer that sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, specifies the division of the responsibilities, and that contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of a dispute regarding the cause for termination.

(2) The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) The managing general agent shall hold funds collected for the account of an insurer in a fiduciary capacity in a financial institution located in this state that is a member of the federal reserve system. This account must be used for all

payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

(4) The managing general agent shall maintain separate records of business written for each insurer. The insurer has access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the commissioner has access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. Those records shall be retained according to the requirements of this title and rules adopted under it.

(5) The managing general agent may not assign the contract in whole or part.

(6)(a) Appropriate underwriting guidelines must include at least the following: The maximum annual premium volume; the basis of the rates to be charged; the types of risks that may be written; maximum limits of liability; applicable exclusions; territorial limitations; policy cancellation provisions; and the maximum policy period.

(b) The insurer has the right to cancel or not renew any policy of insurance, subject to the applicable laws and rules, including those in chapter 48.18 RCW.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims must be reported to the insurer in a timely manner.

(b) A copy of the claim file must be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the commissioner, or exceeds the limit set by the insurer, whichever is less;

(ii) Involves a coverage dispute;

(iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment in excess of an amount set by the commissioner or an amount set by the insurer, whichever is less.

(c) All claim files are the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer, those files become the sole property of the insurer or its liquidator or successor. The managing general agent has reasonable access to and the right to copy the files on a timely basis.

(d) Settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the managing general agent's settlement authority during the pendency of a dispute regarding the cause for termination.

(8) Where electronic claims files are in existence, the contract must address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified under RCW 48.98.020.

(10) The managing general agent may not:

(a) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind automatic reinsurance contracts under obligatory automatic agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(b) Commit the insurer to participate in insurance or reinsurance syndicates;

(c) Use an agent that is not appointed to represent the insurer in accordance with the requirements of chapter 48.17 RCW;

(d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, that shall not exceed one percent of the insurer's policyholder surplus as of December 31st of the last-completed calendar year;

(e) Collect a payment from a reinsurer or commit the insurer to a claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;

(f) Permit an agent appointed by it to serve on the insurer's board of directors;

(g) Jointly employ an individual who is employed by the insurer; or

(h) Appoint a submanaging general agent. [1993 c 462 § 37.]

48.98.020 Requirements for insurer—Audit, loss reserves, and on-site review of managing general agent—Notice to commissioner—Quarterly review of books and records—Board of director. (1) The insurer shall have on file an independent audited financial statement, in a form acceptable to the commissioner, of each managing general agent with which it is doing or has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(3) The insurer shall periodically, and no less frequently than semiannually, conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates must rest with an officer of the insurer, who may not be affiliated with the managing general agent.

(5) Within thirty days of entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of that appointment or termination to the commissioner. Notices of appointment of a managing general agent must include a statement of duties that the managing general agent is expected to perform on behalf of the insurer, the lines of insurance for which the managing general agent is to be authorized to act, and any other information the

commissioner may request. This subsection applies to managing general agents operating in this state.

(6) An insurer shall review its books and records each calendar quarter to determine if any agent has become a managing general agent. If the insurer determines that an agent has become a managing general agent under RCW 48.98.005, the insurer shall promptly notify the agent and the commissioner of that determination, and the insurer and agent shall fully comply with this chapter within thirty days.

(7) An insurer may not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of its managing general agents. This subsection does not apply to relationships governed by the Insurer Holding Company Act, chapter 48.31B RCW, or, if applicable, the business transacted with Broker-controlled Property and Casualty Insurer Act, chapter 48.97 RCW. [1993 c 462 § 38.]

48.98.025 Examinations—Acts of a managing general agent are acts of the insurer. The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer, as provided in chapter 48.03 RCW. [1993 c 462 § 39.]

48.98.030 Violations of chapter—Penalties—Judicial review. (1) Subject to a hearing in accordance with chapters 34.05 and 48.04 RCW, upon a finding by the commissioner that any person has violated any provision of this chapter, the commissioner may order:

(a) For each separate violation, a penalty in an amount of not more than one thousand dollars;

(b) Revocation, or suspension for up to one year, of the agent's license; and

(c) The managing general agent to reimburse the insurer, the rehabilitator, or liquidator of the insurer for losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.

(2) The decision, determination, or order of the commissioner under this section is subject to judicial review under chapters 34.05 and 48.04 RCW.

(3) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in this title.

(4) Nothing contained in this chapter is intended to or in any manner limits or restricts the rights of policyholders, claimants, and auditors. [1993 c 462 § 40.]

48.98.035 Rule making. The commissioner may adopt rules for the implementation and administration of this chapter, that shall include but are not limited to licensure of managing general agents. [1993 c 462 § 41.]

48.98.040 Continued use of a managing general agent—Compliance with chapter. No insurer may continue to use the services of a managing general agent on and after January 1, 1994, unless that use complies with this chapter. [1993 c 462 § 42.]

48.98.900 Short title. This chapter may be known and cited as the Managing General Agents Act. [1993 c 462 § 34.]

48.98.901 Severability—Implementation—1993 c 462. See RCW 48.31B.901 and 48.31B.902.

Chapter 48.99 RCW

UNIFORM INSURERS LIQUIDATION ACT

Sections

48.99.010	Uniform Insurers Liquidation Act.
48.99.011	Insurer—Self-funded multiple employer welfare arrangement.
48.99.020	Delinquency proceedings—Domestic insurers.
48.99.030	Delinquency proceedings—Foreign insurers.
48.99.040	Claims of nonresidents against domestic insurer.
48.99.050	Claims of residence against foreign insurer.
48.99.060	Priority of certain claims.
48.99.070	Attachment, garnishment, execution stayed.
48.99.080	Severability—Uniformity of interpretation.
48.99.900	Severability—Implementation—1993 c 462.

48.99.010 Uniform Insurers Liquidation Act. This chapter may be known and cited as the Uniform Insurers Liquidation Act. For the purposes of this chapter:

(1) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the commissioner, or the equivalent insurance supervisory official of another state.

(2) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer.

(3) "State" means any state of the United States, and also the District of Columbia and Puerto Rico.

(4) "Foreign country" means territory not in any state.

(5) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States; and any such insurer is deemed to be domiciled in such state.

(6) "Ancillary state" means any state other than a domiciliary state.

(7) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of this chapter are in force, including the provisions requiring that the insurance commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(8) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders, or all policyholders and creditors in the United States, shall be deemed general assets.

(9) "Preferred claim" means any claim with respect to which the law of a state or of the United States accords priority of payment from the general assets of the insurer.

(10) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(11) "Secured claim" means any claim secured by mortgage, trust, deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.

(12) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require. [1993 c 462 § 78; 1961 c 194 § 12; 1947 c 79 § .31.11; Rem. Supp. 1947 § 45.31.11. Formerly RCW 48.31.110.]

48.99.011 Insurer—Self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, is an insurer under this chapter. [2004 c 260 § 21.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

48.99.020 Delinquency proceedings—Domestic insurers. (1) Whenever under the laws of this state a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the commissioner as such receiver. The court shall direct the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) As domiciliary receiver the commissioner shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer, or to liquidate the United States branch of an alien insurer domiciled in this state, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are hereinafter prescribed for ancillary receivers appointed in this state as to assets located in this state.

(3) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

(4) The commissioner as domiciliary receiver shall be responsible on his official bond for the proper administration of all assets coming into his possession or control. The court may at any time require an additional bond from him or his deputies if deemed desirable for the protection of the assets.

(5) Upon taking possession of the assets of an insurer the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by the laws of

this state for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer.

(6) In connection with delinquency proceedings the commissioner may appoint one or more special deputy commissioners to act for him, and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings. [1947 c 79 § .31.12; Rem. Supp. 1947 § 45.31.12. Formerly RCW 48.31.120.]

48.99.030 Delinquency proceedings—Foreign insurers. (1) Whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment (a) if he finds that there are sufficient assets of such insurer located in this state to justify the appointment of an ancillary receiver, or (b) if ten or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he may be entitled under the laws of this state. [1947 c 79 § .31.13; Rem. Supp. 1947 § 45.31.13. Formerly RCW 48.31.130]

48.99.040 Claims of nonresidents against domestic insurer. (1) In a delinquency proceeding begun in this state against an insurer domiciled in this state, claimants residing in reciprocal states may file claims either with the ancillary

receivers, if any, in their respective states, or with the domiciliary receiver. All claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either (a) be proved in this state as provided by law, or (b) if ancillary proceedings have been commenced in reciprocal states, be proved in those proceedings. In the event a claimant elects to prove a claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in RCW 48.99.050 with respect to ancillary proceedings in this state, the final allowance of a claim by the courts in the ancillary state must be accepted in this state as conclusive as to its amount, and must also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state. [2003 c 248 § 25; 1947 c 79 § .31.14; Rem. Supp. 1947 § 45.31.14. Formerly RCW 48.31.140.]

48.99.050 Claims of residents against foreign insurer.

(1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer, who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceeding.

(2) Controverted claims belonging to claimants residing in this state may either (a) be proved in the domiciliary state as provided by the law of that state, or (b), if ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this state, he shall file his claim with the ancillary receiver in the manner provided by the law of this state for the proving of claims against insurers domiciled in this state, and he shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least forty days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within thirty days after the giving of such notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state. [1947 c 79 § .31.15; Rem. Supp. 1947 § 45.31.15. Formerly RCW 48.31.150.]

48.99.060 Priority of certain claims. (1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims whether owing to residents or nonresidents

shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

(3) The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(4) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state. [1993 c 462 § 79; 1947 c 79 § .31.16; Rem. Supp. 1947 § 45.31.16. Formerly RCW 48.31.160.]

48.99.070 Attachment, garnishment, execution stayed. During the pendency of delinquency proceedings in this or any reciprocal state no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding. [1947 c 79 § .31.17; Rem. Supp. 1947 § 45.31.17. Formerly RCW 48.31.170.]

48.99.080 Severability—Uniformity of interpretation. (1) If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

(2) This Uniform Insurers Liquidation Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. To the extent that its provisions, when applicable, conflict with provisions of chapter 48.31 RCW, the provisions of this chapter

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shall control. [1993 c 462 § 80; 1947 c 79 § .31.18; Rem. Supp. 1947 § 45.31.18. Formerly RCW 48.31.180.]

48.99.900 Severability—Implementation—1993 c 462. See RCW 48.31B.901 and 48.31B.902.

Chapter 48.102 RCW VIATICAL SETTLEMENTS

Sections

48.102.005	Definitions.
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48.102.015	Commissioner may suspend, revoke, or refuse to issue or renew license—Information requirements—Hearing—Fine.
48.102.020	Commissioner approval required for contract form, rate, fee, commission, or other compensation charged—Finding necessary for disapproval.
48.102.025	Licensee must file annual statement.
48.102.030	Examination of business and affairs of applicant or licensee—Production of information—Expenses—Confidentiality of information—Recordkeeping requirements.
48.102.035	Requirement to provide information to the viator.
48.102.040	Requirement for provider to obtain information—Medical information is confidential—Rescission rights—Time is of the essence.
48.102.045	Must be licensed—Transfer to unlicensed entity is void—Rights in policy restored to viator—Exceptions allowed by rule.
48.102.050	Rules as necessary to implement chapter.
48.102.055	Consumer protection act applies—Civil action—Damages—Costs—Attorneys' fees.
48.102.900	Short title—1995 c 161.
48.102.901	Application of chapter 21.20 RCW—1995 c 161.

48.102.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Person" means the same as defined in RCW 48.01.070.

(2) "Viatical settlement broker" means an individual, partnership, corporation, or other entity who or which for another person, and for a fee, commission, or any other valuable consideration, does any of the following things:

(a) Offers or advertises the availability of viatical settlements;

(b) Introduces viators to viatical settlement providers;

(c) Offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. However, "viatical settlement broker" does not mean an attorney, accountant, or financial planner retained to represent the viator, whose fee or other compensation is not paid by the viatical settlement provider.

(3) "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a viator.

(4) "Viatical settlement provider" means any person that enters into an agreement with a viator under the terms of which the viatical settlement provider pays compensation or anything of value, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate of insurance to the viatical settlement provider. "Viatical settlement provider" does not mean the following:

(a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that

takes an assignment of a life insurance policy as collateral for a loan; or

(b) The issuer of a life insurance policy providing accelerated benefits, as those are defined in WAC 284-23-620(1).

(5) "Viator" means the owner of a life insurance policy, or the holder of a certificate of insurance, insuring the life of a person with a catastrophic or life-threatening illness or condition, who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate of insurance, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate of insurance to the viatical settlement provider. [1995 c 161 § 1.]

48.102.010 License required for providers and brokers—Application—Requirements—Fee—Rules. (1) On or after July 23, 1995, an individual, partnership, corporation, or other entity may not act as a viatical settlement provider or enter into or solicit a viatical settlement contract in this state, or act as a viatical settlement broker, without first obtaining a license from the commissioner.

(2) Application for a license for a viatical settlement provider or viatical settlement broker shall be made on a form prescribed by the commissioner, and the application shall be accompanied by a fee as determined by the commissioner by rule.

(3) Licenses for viatical settlement providers or viatical settlement brokers may be renewed from year to year on the anniversary date or at another interval established by rule, upon payment of the renewal fee and submission of forms of information as determined by rule. Failure to pay the fee within the time prescribed shall result in automatic revocation of the license.

(4) The applicant shall provide the information the commissioner requires on forms prescribed by the commissioner.

(a) The applicant shall disclose the identity of all stockholders, partners, and corporate officers; its parent entities and affiliates, and their stockholders, partners, and officers; to the extent prescribed by the commissioner.

(b) The commissioner may refuse to issue or renew a license if he or she is not satisfied that any officer, partner, stockholder, or employee thereof, who may materially influence the conduct of the applicant or licensee, meets the standards required by the public interest.

(c) A license issued to a partnership, corporation, or other entity authorizes all its partners, officers, and employees to act as viatical settlement providers under the license, if they were identified in the application or application for renewal.

(d) Any person who willfully misrepresents any fact required to be disclosed in an application for a license to act as either a viatical settlement provider or a viatical settlement broker shall be liable to penalties as provided by applicable law.

(5) Upon the filing of an application and the payment of the fee required by rule, the commissioner shall issue or renew a license if the commissioner finds that the applicant:

(a) Has provided a detailed and adequate plan of operation;

(b) Is competent and trustworthy and intends to act in good faith in the business covered by the license for which the applicant has applied;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business covered by the license for which the applicant has applied; and

(d) If a corporation, is incorporated under the laws of this state, or is a foreign corporation authorized to transact business in this state.

(6) The commissioner shall not issue or renew any license unless the applicant has filed with the commissioner a written irrevocable consent that any action against the applicant may be commenced by the service of process upon the commissioner. [1995 c 161 § 2.]

48.102.015 Commissioner may suspend, revoke, or refuse to issue or renew license—Information requirements—Hearing—Fine. (1) The commissioner may suspend, revoke, or refuse to issue or renew the license of any viatical settlement broker or viatical settlement provider if the commissioner finds that:

(a) There was any misrepresentation, intentional or otherwise, in the application for the license or for renewal of a license;

(b) The applicant for, or holder of any such license, is or has been subject to a final administrative action for being, or is otherwise shown to be, untrustworthy or incompetent to act as either a viatical settlement broker or a viatical settlement provider;

(c) The applicant for, or holder of any such license, demonstrates a pattern of unreasonable payments to viators;

(d) The applicant for, or holder of any such license, has been convicted of a felony or of any criminal misdemeanor of which criminal fraud is an element; or

(e) The applicant for, or holder of any such license, has violated any provision of this title.

(2) The commissioner may require an applicant or the holder of any license issued under this chapter to supply current information on the identity or capacity of stockholders, partners, officers, and employees, including but not limited to the following: Fingerprints, personal history, business experience, business records, and any other information which the commissioner may require. If required, the applicant or licensee shall furnish his or her fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check.

(3) Before the commissioner suspends or revokes any license issued under this chapter, the commissioner shall conduct a hearing, if the applicant or licensee requests this in writing. The hearing shall be in accordance with chapters 34.05 and 48.04 RCW.

(4) After a hearing or with the consent of any party licensed under this chapter and in addition to or in lieu of the suspension, revocation, or refusal to renew any license under this chapter, the commissioner may levy a fine upon the viatical settlement provider in an amount not more than ten thousand dollars, for each violation of this chapter. The order levying the fine shall specify the period within which the fine

shall be fully paid, and that period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay the fine when due, the commissioner may revoke the license if not already revoked, and the fine may be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be deposited into the general fund.

(5) If in the process of verifying fingerprints under subsection (2) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant or licensee. [2002 c 227 § 5; 1995 c 161 § 3.]

Effective date—2002 c 227: See note following RCW 48.06.040.

48.102.020 Commissioner approval required for contract form, rate, fee, commission, or other compensation charged—Finding necessary for disapproval. After a date established by rule, no viatical settlement provider or viatical settlement broker may use any viatical settlement contract or brokerage contract in this state unless the contract form has been filed with and approved by the commissioner. Any such contract filing is approved if it has not been disapproved within sixty days after it is filed with the commissioner. The rate, fee, commission, or other compensation charged must also be filed with the commissioner at the same time the contract form is filed, and any changes must be filed and approved before use. The commissioner shall disapprove any such viatical settlement contract or brokerage contract, or revoke previous approval, or rates, if the commissioner makes either of the following alternative findings:

(1) The benefits offered to the viator are unreasonable in relation to the rate, fee, or other compensation that is charged; or

(2) Any other provisions or terms of the contract are unreasonable, contrary to the public interest, misleading, or unfair to the viator. [1995 c 161 § 4.]

48.102.025 Licensee must file annual statement. Each holder of any license issued under this chapter shall file with the commissioner, on or before March 1 of each year, an annual statement containing such information as the commissioner may by rule require. [1995 c 161 § 5.]

48.102.030 Examination of business and affairs of applicant or licensee—Production of information—Expenses—Confidentiality of information—Recordkeeping requirements. (1) The commissioner may examine the business and affairs of any applicant for or holder of any license issued under this chapter. The commissioner may require any applicant for or holder of any such license to produce any records, books, files, and any other writings or information reasonably necessary to determine whether or not the applicant for or holder of any such license is acting, or has acted, in violation of any laws, or otherwise contrary to the interests of the public, or has acted in a manner demonstrating incompetence or untrustworthiness to hold any such license. The expenses incurred in conducting any examina-

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tion shall be paid by the applicant for or holder of any such license.

(2) The names and individual identification data of all viators are private and confidential information and shall not be disclosed by the commissioner, except under court order.

(3) Records of all transactions of viatical settlement contracts and brokerage contracts, and an advertising file containing the text of all advertising used and the dates and media in which it was used, shall be maintained by each holder of any license issued under this chapter. [1995 c 161 § 6.]

48.102.035 Requirement to provide information to the viator. A viatical settlement provider shall disclose, in writing, the following information to the viator no later than the date when the viatical settlement contract is signed by all parties:

(1) Possible alternatives to viatical settlement contracts for persons with catastrophic or life-threatening conditions. These shall include, but not be limited to, any available accelerated benefits on the life insurance policy;

(2) The fact that some or all of the proceeds of the viatical settlement may be taxable, and that advice and assistance should be sought from an attorney or tax professional;

(3) The fact that the proceeds of the viatical settlement could be subject to the claims of creditors, and that advice and assistance should be sought from an attorney;

(4) The fact that receiving the proceeds of the viatical settlement might adversely affect the viator's eligibility for medicaid, or other public benefits or entitlements, and that advice and assistance should be sought from an attorney;

(5) The right of the viator to rescind the contract on or before the later of (a) thirty days after the date when it is executed by all parties or (b) fifteen days after the receipt of the proceeds of the viatical settlement contract; and

(6) The date by which the proceeds will be available to the viator, and also the source of the proceeds. [1995 c 161 § 7.]

48.102.040 Requirement for provider to obtain information—Medical information is confidential—Rescission rights—Time is of the essence. (1) A viatical settlement provider entering into a viatical settlement contract with a viator shall first obtain the following:

(a) A written and signed statement from an attending medical doctor that in his or her professional opinion, the viator is of sound mind and under no undue influence;

(b) A document witnessed by a person not employed by or affiliated with the viatical settlement provider, in which the viator consents to the viatical settlement contract, acknowledges the catastrophic or life-threatening illness or condition, and represents that he or she:

(i) Has a complete understanding of the viatical settlement contract;

(ii) Has a full and complete understanding of the life insurance policy;

(iii) Releases his or her medical records for the limited and express purpose of making the viatical settlement agreement possible;

(iv) Has either obtained advice or assistance from an attorney or tax professional, or has had the opportunity to do so; and

(v) Has entered into the viatical settlement contract freely and voluntarily; and

(c) In those cases where the viator is not the insured person, a written consent to the viatical settlement agreement from the insured person or his or her legal representative.

(2) All medical information solicited or obtained by any holder of a license issued under this chapter is subject to all applicable laws governing confidentiality of medical information.

(3) All viatical settlement contracts entered into in this state shall contain a provision no less favorable than that in the event the viator exercises his or her right to rescind the viatical settlement contract, any proceeds previously paid shall be refunded no later than the earliest of (a) thirty days of the date of rescission or (b) fifteen days of payment of the proceeds.

(4) All viatical settlement contracts entered into in this state shall contain a rescission clause no less favorable than that the viator has the unconditional right to rescind the contract on or before the later of (a) thirty days of the date it is signed by all parties or (b) fifteen days of the receipt of the proceeds of the viatical settlement agreement; subject to refund of those proceeds as set forth in subsection (3) of this section.

(5) Time is of the essence in delivery of the proceeds of any viatical settlement contract by the date disclosed to the viator.

(6) No viatical settlement contract entered into in this state may contain any restrictions upon the use of the proceeds of the contract.

(7) Any viatical settlement contract entered into in this state shall establish the terms under which the viatical settlement provider shall pay compensation or anything of value, which compensation is less than the expected death benefit of the insurance policy or certificate of insurance, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. [1995 c 161 § 8.]

48.102.045 Must be licensed—Transfer to unlicensed entity is void—Rights in policy restored to viator—Exceptions allowed by rule. (1) A viatical settlement provider shall not directly or indirectly assign, transfer, sell, resell, or transfer by gift or bequest, or otherwise convey any insurance policy that is or has been the subject of a viatical settlement agreement, to any person, custodian, investor, investor group, or other entity that does not hold a Washington license as a viatical settlement provider, issued by the commissioner.

(2) Any attempted transfer to any person, custodian, investor, investor group, or other entity not holding such a license is void, and all rights in the insurance policy are restored to the viator as of the date of the purported transfer, except that the viator is not required to return the proceeds of the original viatical settlement agreement to the viatical settlement provider. The commissioner may allow exceptions to this subsection, by rule. [1995 c 161 § 9.]

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48.102.050 Rules as necessary to implement chapter.

The commissioner may adopt rules as necessary to implement this chapter. This includes, but is not limited to, the adoption of rules regarding minimum capital requirements for viatical settlement providers, training and examination requirements for viatical settlement brokers, requiring a prospective viator to contact his or her life insurer regarding possible accelerated benefits before entering into a viatical settlement agreement, licensing and examination requirements for applicants for a license as a viatical settlement broker, when benefits are or are not reasonable in relation to the rate fee, or other compensation, and bond requirements for either or both viatical settlement providers or viatical settlement brokers. [1995 c 161 § 10.]

48.102.055 Consumer protection act applies—Civil action—Damages—Costs—Attorneys' fees. (1) The legislature finds that the subject of viatical settlements is of vital importance to the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce. It is also an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) Any person who is injured by a violation of this chapter may bring a civil action against a viatical settlement provider in superior court to recover his or her actual damages. The court may increase the award of damages to an amount not more than three times the actual damages sustained, and in addition the court may award costs and attorneys' fees to the injured person. [1995 c 161 § 11.]

48.102.900 Short title—1995 c 161. This act may be known and cited as the viatical settlements act. [1995 c 161 § 12.]

48.102.901 Application of chapter 21.20 RCW—1995 c 161. The provisions of this chapter do not affect the application of chapter 21.20 RCW. [1995 c 161 § 13.]

Chapter 48.104 RCW

HOLOCAUST VICTIMS INSURANCE RELIEF ACT

Sections

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48.104.030	Definitions.
48.104.040	Holocaust survivor assistance office.
48.104.050	Holocaust insurance company registry—Authority—Availability of information.
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48.104.070	Penalties.
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48.104.090	Cooperation with international commission—Application of chapter.
48.104.100	Private rights of action preserved—Venue.
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48.104.120	Adoption of rules.
48.104.130	Annual report to legislature.
48.104.900	Short title—1999 c 8.
48.104.901	Captions not law—1999 c 8.
48.104.902	Severability—1999 c 8.
48.104.903	Expiration date—1999 c 8.

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48.104.010 Historical context—Policy declarations—

Intent. (*Expires December 31, 2010.*) (1) The legislature recognizes the existence of allegations that certain insurers doing business in the state of Washington, either directly or through related companies and affiliates, have failed to honor insurance policies issued during the World War II era. Although such policies were issued outside of the state of Washington, Washington has a clear obligation to seek justice for its citizens and residents.

(2) The legislature recognizes that allegations regarding a failure to pay legitimate insurance claims threaten the integrity of the insurance market. The basic commodity that insurers sell is trust. Policyholders pay substantial sums to insurers trusting that at a future date, perhaps decades later, the insurer will protect them and their loved ones. An insurer that violates this trust should not be authorized to do business in this state or own or control insurers doing business in this state, lest the integrity of this state's insurance market be compromised.

(3) The legislature recognizes that hundreds of Holocaust survivors and heirs of Holocaust victims are citizens or residents of the state of Washington. The legislature is concerned by allegations that citizens or residents of the state of Washington may have been deprived of their contractual entitlement to benefits under insurance policies issued by insurance companies operating in Europe prior to and during World War II. The state of Washington has a public policy interest in assuring that all of its citizens and residents, including Holocaust survivors, their families, and the heirs of Holocaust victims, who are entitled to proceeds of insurance policies are treated reasonably and fairly and that any contractual obligations are honored.

(4) The legislature recognizes that the business of insurance is one affected by the public interest, requiring that all persons conducting it be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. The insurance commissioner is currently authorized to refuse, suspend, or revoke the certificate of authority of insurers that are affiliated directly or indirectly through ownership, control, reinsurance or other insurance or business relations with any person, persons, or entities whose business operations are or have been marked, to the detriment of policyholders or the public, or by bad faith. The insurance commissioner is also currently authorized to provide assistance to members of the public in resolving complaints involving insurers. It is the intent of the legislature to provide additional resources to the insurance commissioner to implement this authority, to authorize the insurance commissioner to cooperate with other state regulators with regard to such policies, and to authorize the insurance commissioner to cooperate with and act through the international commission concerning World War II era policies established under the efforts of the national association of insurance commissioners. [1999 c 8 § 1.]

48.104.020 Findings. (*Expires December 31, 2010.*)

The legislature finds the following:

(1) In addition to the many atrocities that befell the victims of the Nazi regime, in many cases insurance policy proceeds were not paid to the victims and their families.

(2) In many instances, insurance company records are the only proof of insurance policies held. In some cases, recollection of those policies' very existence may have perished along with the Holocaust victims.

(3) Several hundred Holocaust survivors and their families, or the heirs of Holocaust victims live in Washington today.

(4) Insurance companies doing business in the state of Washington have a responsibility to ensure that any involvement they or their related companies had with insurance policies of Holocaust victims are disclosed to the state to ensure the rapid payment to victims and their survivors of any proceeds to which they may be entitled.

(5) There has been established an international commission to investigate and facilitate the payment of insurance policies to victims of the Holocaust and their survivors. It is in the best interest of the people of the state of Washington to authorize the insurance commissioner to cooperate with and coordinate his or her activities with the international commission.

(6) Other states are establishing Holocaust survivor assistance offices and registries of insurance policies and Holocaust victims in order to identify policyholders and their survivors to whom policy proceeds may be payable. It is in the best interest of the people of the state of Washington to authorize the insurance commissioner to cooperate with and coordinate his or her activities with those other states.

(7) In addition to unpaid insurance policies, Holocaust victims lost unknown billions of dollars of assets seized by Nazi Germany and its allies and collaborators in Germany and Nazi-occupied Europe between 1933 and 1945. [1999 c 8 § 2.]

48.104.030 Definitions. (*Expires December 31, 2010.*)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Holocaust survivor" or "Holocaust victim" means any person who was persecuted, imprisoned or liable to imprisonment, or had property taken or confiscated during the period of 1933 to 1945, inclusive, by Nazi Germany, its allies, or sympathizers based on that person's race, religion, ethnicity, physical or mental disability, sexual orientation, or similar class or group-based animus.

(2) "Related company" means any parent, subsidiary, successor in interest, managing general agent, or other person or company affiliated directly or indirectly through ownership, control, common ownership or control, or other business or insurance relationship with another company or insurer.

(3) "Insurer" means an entity holding a certificate of authority or license to conduct the business of insurance in this state, or whose contacts with this state satisfy the constitutional requirements for jurisdiction, that sold life, property, liability, health, annuities, dowry, educational, casualty, or any other insurance covering persons or property to persons in Europe at any time before 1945, whether directly or through or as [a] result of sales by a related company, or is itself a related company to any person, entity, or insurance company that sold such policies, whether the sale of the insurance occurred before or after becoming related.

(4) "Proceeds" means the face or other payout value of policies and annuities plus reasonable interest to date of payments without diminution for wartime or immediate postwar currency devaluation legally due under any insurance policy issued by an insurer or any related company.

(5) "International commission" means the international commission on Holocaust era insurance claims, referenced in and established under a memorandum of understanding originally dated April 8, 1998, between and among the insurance commissioner, various other state insurance regulators, various alien insurance companies, and world-wide Jewish groups, which commission held its first meeting in New York on October 21, 1998, and any successor.

(6) "Other assets" means the proceeds of bank accounts, gold, art, houses, businesses, other real estate properties or land, or the contents of homes, businesses, or other real estate properties of Holocaust survivors or victims. [1999 c 8 § 3.]

48.104.040 Holocaust survivor assistance office. (*Expires December 31, 2010.*) (1) To assist Holocaust victims, their heirs, or their beneficiaries to recover proceeds from insurance policies that were improperly denied or processed, or from other assets, or both, the insurance commissioner may establish a Holocaust survivor assistance office.

(2) The insurance commissioner may appoint or deputize personnel to be engaged or employed by the Holocaust survivor assistance office and utilize insurance department personnel to resolve or settle claims of Holocaust victims. The insurance commissioner may also engage outside auditors or other qualified personnel to assist in the investigation of claims made by Holocaust victims, their heirs, or their beneficiaries.

(3) The insurance commissioner may cooperate and exchange information with other states establishing similar Holocaust survivor assistance offices and with the international commission, and may enter into agreements whereby a single processing office may be established on behalf of, and to provide services to the residents of, several states. [1999 c 8 § 4.]

48.104.050 Holocaust insurance company registry—Authority—Availability of information. (*Expires December 31, 2010.*) (1) To facilitate the work of the Holocaust survivor assistance office, the insurance commissioner may establish and maintain a central registry containing records and information relating to insurance policies, as described in RCW 48.104.060, of victims, living and deceased, of the Holocaust. The registry shall be known as the Holocaust insurance company registry. The insurance commissioner shall establish standards and procedures to make the information in the registry available to the public to the extent necessary and appropriate to determine the existence of insurance policies and to identify beneficiaries, successors in interest, or other persons entitled to the proceeds of such policies, and to enable such persons to claim proceeds to which they may be entitled, while protecting the privacy of policyholders, their survivors, and their family members. All information received by the Holocaust insurance company registry or Holocaust survivor assistance office from any insurer, related company, or foreign government or regulator shall be consid-

ered and deemed to be matters and information relating to an examination and part of an examination report that the insurance commissioner may treat as confidential and withhold from public inspection under RCW 48.03.040(6)(c) and 48.03.050. To the extent necessary and appropriate to secure access to documents and information located in or subject to the jurisdiction of other states and countries, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all documents and information received from an entity regulated by or subject to the laws of such other state or country, or received from any agency of the government of any such state or country, will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the appropriate authority of such state or country or except as permitted or authorized by the laws of such state or country, and any such agreement shall be binding and enforceable notwithstanding chapter 42.17 RCW. To the extent necessary and appropriate to secure access to documents and information from or in the possession of the international commission as to which the international commission has given assurances of confidentiality or privacy, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all such documents and information will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the international commission or as permitted by any agreement or assurances given by the international commission, and any such agreement shall be binding and enforceable notwithstanding chapter 42.17 RCW.

(2) The insurance commissioner may cooperate and exchange information with other states establishing similar registries and with the international commission, and may enter into agreements whereby a single registry may be established on behalf of, and to provide services to the citizens and residents of, several states. [1999 c 8 § 5.]

48.104.060 Holocaust insurance company registry—Operations—Penalties—Funding. (*Expires December 31, 2010.*) (1) Any insurer that sold life, property, liability, health, annuities, dowry, educational, or casualty insurance policies, to persons in Europe, that were in effect any time between 1933 and 1945, regardless of when the policy was initially purchased or written, shall within ninety days following July 25, 1999, or such later date as the insurance commissioner may establish, file or cause to be filed the following information with the insurance commissioner to be entered into the Holocaust insurance company registry:

(a) A list of such insurance policies;

(b) The insureds, beneficiaries, and face amounts of such policies;

(c) A comparison of the names and other available identifying information of insureds and beneficiaries of such policies and the names and other identifying information of the victims of the Holocaust. The names and other identifying information of victims of the Holocaust shall be provided by the office of the insurance commissioner and may be obtained from the United States Holocaust museum and the Yad Vashem repository in Israel, or other sources;

(d) For each such policy, whichever of the following that may apply:

(i) That the proceeds of the policy have been paid to the designated beneficiaries or their heirs where that person or persons, after diligent search, could be located and identified;

(ii) That the proceeds of the policies where the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations for the purpose of assisting Holocaust survivors;

(iii) That a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders, their heirs, and beneficiaries, a plan for the distribution of the proceeds;

(iv) That the proceeds have not been distributed and the amount of those proceeds.

(2) The destruction of any records or other materials pertaining to such policies shall be a class C felony according to chapter 9A.20 RCW. Evidence of the destruction of such material shall be admissible in both administrative and judicial proceedings as evidence in support of any claim being made against the insurer involving the destroyed material.

(3) An insurer currently doing business in the state that did not sell any insurance policies in Europe prior to 1945 except through or as a result of sales by a related company shall not be subject to this section if a related company, whether or not authorized and currently doing business in the state, has made a filing with the insurance commissioner under this section.

(4) The insurance commissioner may fund the costs of operating both the Holocaust survivor assistance office and the Holocaust claims registry by assessments upon those insurers providing information to the Holocaust insurance company registry. The insurance commissioner shall establish standards and procedures to fairly allocate the costs of the Holocaust insurance company registry and Holocaust survivor assistance office among such insurers. The insurance commissioner is expressly authorized to allocate such costs based on the number of policies reported or, based on the total monetary amount of the policies as determined by their face amounts without regard to inflation, interest, or depreciation.

(5) The insurance commissioner is authorized to conduct investigations and examinations of insurers for the purpose of determining compliance with this chapter, verifying the accuracy and completeness of any and all information furnished to the Holocaust insurance company registry and the Holocaust survivor assistance office, and developing and securing such additional information as may be necessary or appropriate to determine those entitled to payment under any policy and the proceeds to which such person may be entitled, if any. Any such investigation shall be considered to be an examination under chapter 48.03 RCW. The costs of any such examination will be borne by the insurer investigated, or the insurer to whom the related company is related, pursuant to RCW 48.03.060(2). Examinations may be conducted in this state, or in the state or country of residence of the insurer or related company, or at such other place or country where the records to be examined may be located.

(6) The insurance commissioner may permit the Holocaust insurance company registry or the Holocaust survivor assistance office or both to accept information and to assist claimants with regard to the location and recovery of property or assets taken or confiscated from Holocaust victims

other than insurance policies if the insurance commissioner finds that doing so would not adversely affect the operations of the registry or Holocaust survivor assistance office with regard to insurance policies. However, all costs and expenses, including that of personnel, attributable to such noninsurance assets shall be separately accounted for and shall not be assessed against insurers under subsections (4) and (5) of this section and shall not be paid from the general funds of the office of the insurance commissioner, but shall be paid solely from contributions or donations received for that purpose.

(a) The insurance commissioner may accept contributions from any other person wishing to fund the operations of the Holocaust survivor assistance office or the Holocaust insurance company registry to facilitate the resolution of claims involving Holocaust victims.

(b) The insurance commissioner is authorized to assist in the creation of an entity to accept tax deductible contributions to support activities conducted by the Holocaust survivor assistance office and the Holocaust insurance company registry.

(c) The insurance commissioner, through the Holocaust survivor assistance office, is authorized, with the consent of the parties, to act as mediator of any dispute involving the claim of a Holocaust victim or his or her heirs or beneficiaries arising from an occurrence during the period between January 1, 1933, and December 31, 1945.

(7) The insurance commissioner is authorized to cooperate with and exchange information with other states with similar Holocaust insurance company registries or Holocaust survivor assistance offices, with the national association of insurance commissioners, with foreign countries and with the international commission. The insurance commissioner is authorized to enter into agreements to handle the processing of claims and registry functions of other states, and to have other states handle all or part of the registry and claims processing functions for this state, as the insurance commissioner may determine to be appropriate. The insurance commissioner is authorized to enter into agreements with other states and the international commission to treat and consider information submitted to them as submitted to this state for [the] purpose of complying with this chapter. As part of any such agreement, the insurance commissioner may agree to reimburse any other state for expenses or costs incurred and such reimbursement shall be recovered by the insurance commissioner as an expense of operating the Holocaust insurance company registry and Holocaust survivor assistance office under subsections (4) and (5) of this section, and to accept reimbursement from any other state for services with regard to residents of such other state.

(8) A finding by the insurance commissioner that a claim subject to the provisions of this section should be paid shall be regarded by any court as highly persuasive evidence that such claim should be paid. [1999 c 8 § 6.]

48.104.070 Penalties. (Expires December 31, 2010.)

Any insurer that knowingly files information required by this chapter that is false shall be liable for a civil penalty not to exceed ten thousand dollars for each violation. [1999 c 8 § 7.]

48.104.080 Suspension of certificate of authority for failure to comply with chapter. (*Expires December 31, 2010.*) The insurance commissioner is authorized to suspend the certificate of authority to conduct insurance business in the state of Washington of any insurer that fails to comply with the requirements of this chapter by or after one hundred twenty days after July 25, 1999, until the time that the insurer complies with this chapter. Such suspension shall not affect or relieve the insurer from its obligations to service its existing insureds, and shall not permit the insurer to terminate its existing insureds, except pursuant to the terms of the insurance contract, but shall prohibit the insurer from writing new business in this state until the suspension is lifted by the insurance commissioner. [1999 c 8 § 8.]

48.104.090 Cooperation with international commission—Application of chapter. (*Expires December 31, 2010.*) The insurance commissioner may suspend the application of this chapter to any insurer that is participating in the international commission process in good faith and is working through the international commission to resolve all outstanding claims with offers of fair settlements in a reasonable time frame. If, however, the international commission fails to establish a mechanism to accomplish identification, adjudication, and payment of insurance policy claims of Holocaust survivors or victims within a reasonable time, then all provisions of this chapter shall come into effect as to any such insurer. For purposes of this section, a reasonable time shall mean by January 1, 2000, or such later date as the insurance commissioner may establish by rule. [1999 c 8 § 9.]

48.104.100 Private rights of action preserved—Venue. (*Expires December 31, 2010.*) Any Holocaust survivor, or heir or beneficiary of a Holocaust survivor or victim, who resides in this state and has a claim against an insurer arising out of an insurance policy or policies purchased or in effect in Europe before 1945 from that insurer may bring a legal action against that insurer to recover on that claim in the superior court of the county in which any plaintiff resides, which court shall be vested with jurisdiction over that action. [1999 c 8 § 10.]

48.104.110 Extension of statute of limitations. (*Expires December 31, 2010.*) Any action brought by a Holocaust survivor or the heir or beneficiary of a Holocaust survivor or victim, seeking proceeds of the insurance policies issued or in effect before 1945 shall not be dismissed for failure to comply with the applicable statute of limitations, provided the action is commenced on or before December 31, 2010. [1999 c 8 § 11.]

48.104.120 Adoption of rules. (*Expires December 31, 2010.*) The insurance commissioner may adopt rules to implement this chapter. [1999 c 8 § 12.]

48.104.130 Annual report to legislature. (*Expires December 31, 2010.*) The insurance commissioner shall report to the legislature one year from July 25, 1999, and annually thereafter on the implementation of this law and resolution of Holocaust claims. [1999 c 8 § 13.]

48.104.900 Short title—1999 c 8. (*Expires December 31, 2010.*) This chapter shall be known and cited as the Holocaust victim insurance relief act of 1999. [1999 c 8 § 14.]

48.104.901 Captions not law—1999 c 8. (*Expires December 31, 2010.*) Captions used in this chapter are not any part of the law. [1999 c 8 § 15.]

48.104.902 Severability—1999 c 8. (*Expires December 31, 2010.*) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 8 § 17.]

48.104.903 Expiration date—1999 c 8. (*Expires December 31, 2010.*) This chapter expires December 31, 2010. [1999 c 8 § 18.]

Chapter 48.110 RCW SERVICE CONTRACTS

Sections

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48.110.901	Severability—1999 c 112.

48.110.010 Finding—Declaration—Purpose. The legislature finds that increasing numbers of businesses are selling service contracts for repair, replacement, and maintenance of appliances, computers, electronic equipment, and other consumer products. There are risks that contract obligors will close or otherwise be unable to fulfill their contract obligations that could result in unnecessary and preventable losses to citizens of this state. The legislature declares that it is necessary to establish standards that will safeguard the public from possible losses arising from the cessation of business of service contract obligors or the mismanagement of funds paid for service contracts. The purpose of this chapter is to create a legal framework within which service contracts may be sold in this state and set forth requirements for conducting a service contract business. [1999 c 112 § 1.]

48.110.015 Exempt from title—Application of chapter. (1) The following are exempt from this title:
(a) Warranties;

- (b) Maintenance agreements; and
- (c) Service contracts:
 - (i) Paid for with separate and additional consideration;
 - (ii) Issued at the point of sale, or within sixty days of the original purchase date of the property; and
 - (iii) On tangible property when the tangible property for which the service contract is sold has a purchase price of fifty dollars or less, exclusive of sales tax.
- (2) This chapter does not apply to:
 - (a) Vehicle service contracts which are governed under chapter 48.96 RCW;
 - (b) Vehicle mechanical breakdown insurance; and
 - (c) Service contracts on tangible personal property purchased by persons who are not consumers. [2000 c 208 § 1; 1999 c 112 § 2.]

48.110.020 Definitions. The definitions in this section apply throughout this chapter.

- (1) "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan.
- (2) "Commissioner" means the insurance commissioner of this state.
- (3) "Consumer" means an individual who buys any tangible personal property that is primarily for personal, family, or household use.
- (4) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.
- (5) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.
- (6) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.
- (7) "Provider fee" means the consideration paid by a consumer for a service contract.
- (8) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider to provide reimbursement to the service contract provider or to pay on behalf of the service contract provider all contractual obligations incurred by the service contract provider under the terms of the insured service contracts issued or sold by the service contract provider.
- (9) "Service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling, with or without additional provision for indemnity payments for incidental damages to other property directly caused by the failure of the property which is the subject of the service contract, provided the indemnity payment per incident does not exceed the purchase price of the property that is the subject of the service contract.
- (10) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(2004 Ed.)

(11) "Service contract provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(12) "Service contract seller" means the person who sells the service contract to the consumer.

(13) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services. [2000 c 208 § 2; 1999 c 112 § 3.]

48.110.030 Registration required—Application—Required information—Grounds for refusal—Annual renewal. (1) A person shall not act as, or offer to act as, or hold himself or herself out to be a service contract provider in this state, nor may a service contract be sold to a consumer in this state, unless the service contract provider has a valid registration as a service contract provider issued by the commissioner.

(2) Applicants to be a service contract provider shall make an application to the commissioner upon a form to be furnished by the commissioner. The application shall include or be accompanied by the following information and documents:

(a) All basic organizational documents of the service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the service contract provider's executive officer or officers directly responsible for the service contract provider's service contract business, and, if more than fifty percent of the service contract provider's gross revenue is derived from the sale of service contracts, the identities of the service contract provider's directors and stockholders having beneficial ownership of ten percent or more of any class of securities;

(c) Audited annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review the current financial condition of the applicant. If the service contract provider is relying on RCW 48.110.050(2) (a) or (c) to assure the faithful performance of its obligations to service contract holders, then the audited financial statements of the service contract provider's parent company may be substituted for the audited financial statements of the service contract provider;

(d) An application fee of two hundred fifty dollars, which shall be deposited into the insurance commissioner's regulatory account under RCW 48.02.190; and

(e) Any other pertinent information required by the commissioner.

(3) The applicant shall appoint the commissioner as its attorney to receive service of legal process in any action, suit, or proceeding in any court. This appointment is irrevocable and shall bind the service contract provider or any successor

in interest, shall remain in effect as long as there is in force in this state any contract or any obligation arising therefrom related to residents of this state, and shall be processed in accordance with RCW 48.05.210.

(4) The commissioner may refuse to issue a registration if the commissioner determines that the service contract provider, or any individual responsible for the conduct of the affairs of the service contract provider under subsection (2)(b) of this section, is not competent, trustworthy, financially responsible, or has had a license as a service contract provider or similar license denied or revoked for cause by any state.

(5) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the service contract provider and payment of a fee of two hundred dollars, which shall be deposited into the insurance commissioner's regulatory account under RCW 48.02.190. If not so renewed, the registration expires on the June 30th next preceding.

(6) A service contract provider shall keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs. [1999 c 112 § 4.]

48.110.040 Filing of annual report—Fee—Investigations—Confidentiality. (1) Every registered service contract provider that is assuring its faithful performance of its obligations to its service contract holders by complying with RCW 48.110.050(2)(b) shall file an annual report for the preceding calendar year with the commissioner on or before March 1st of each year, or within any extension of time the commissioner for good cause may grant. The report shall be in the form and contain those matters as the commissioner prescribes and shall be verified by at least two officers of the service contract provider.

(2) At the time of filing the report, the service contract provider shall pay a filing fee of twenty dollars which shall be deposited into the insurance commissioner's regulatory account under RCW 48.02.190.

(3) As part of any investigation by the commissioner, the commissioner may require a service contract provider to file monthly financial reports whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the service contract provider. Monthly financial statements shall be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial report is being filed. These monthly financial reports shall be the internal financial statements of the service contract provider. The monthly financial reports that are filed with the commissioner constitute information that might be damaging to the service contract provider if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of

enforcement actions taken by the commissioner. [1999 c 112 § 5.]

48.110.050 Obligations of service contract provider.

(1) Service contracts shall not be issued, sold, or offered for sale in this state or sold to consumers in this state unless the service contract provider has:

(a) Provided a receipt for, or other written evidence of, the purchase of the service contract to the contract holder; and

(b) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

(2) In order to assure the faithful performance of a service contract provider's obligations to its service contract holders, every service contract provider shall be responsible for complying with the requirements of one of the following:

(a) Insure all service contracts under a reimbursement insurance policy issued by an insurer holding a certificate of authority from the commissioner;

(b)(i) Maintain a funded reserve account for its obligations under its service contracts issued and outstanding in this state. The reserves shall not be less than forty percent of the gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the commissioner; and

(ii) Place in trust with the commissioner a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than twenty-five thousand dollars, consisting of one of the following:

(A) A surety bond issued by an insurer holding a certificate of authority from the commissioner;

(B) Securities of the type eligible for deposit by authorized insurers in this state;

(C) Cash;

(D) An evergreen letter of credit issued by a qualified financial institution; or

(E) Another form of security prescribed by rule by the commissioner; or

(c)(i) Maintain, or its parent company maintain, a net worth or stockholder's equity of at least one hundred million dollars; and

(ii) Upon request, provide the commissioner with a copy of the service contract provider's or the service contract provider's parent company's most recent form 10-K or form 20-F filed with the securities and exchange commission within the last calendar year, or if the company does not file with the securities and exchange commission, a copy of the service contract provider's or the service contract provider's parent company's audited financial statements, which shows a net worth of the service contract provider or its parent company of at least one hundred million dollars. If the service contract provider's parent company's form 10-K, form 20-F, or audited financial statements are filed with the commissioner to meet the service contract provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the service contract provider relating to service contracts sold by the service contract provider in this

state. A copy of the guarantee shall be filed with the commissioner. The guarantee shall be irrevocable as long as there is in force in this state any contract or any obligation arising from service contracts guaranteed, unless the parent company has made arrangements approved by the commissioner to satisfy its obligations under the guarantee.

(3) Service contracts shall require the service contract provider to permit the service contract holder to return the service contract within twenty days of the date the service contract was mailed to the service contract holder or within ten days of delivery if the service contract is delivered to the service contract holder at the time of sale, or within a longer time period permitted under the service contract. Upon return of the service contract to the service contract provider within the applicable period, if no claim has been made under the service contract prior to the return to the service contract provider, the service contract is void and the service contract provider shall refund to the service contract holder, or credit the account of the service contract holder with the full purchase price of the service contract. The right to void the service contract provided in this subsection is not transferable and shall apply only to the original service contract purchaser. A ten percent penalty per month shall be added to a refund of the purchase price that is not paid or credited within thirty days after return of the service contract to the service contract provider.

(4) Except for service contract providers, persons marketing, selling, or offering to sell service contracts for providers are exempt from the registration requirements of RCW 48.110.030.

(5) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts by service contract providers and related service contract sellers, administrators, and other persons complying with this chapter are exempt from the other provisions of this title, except chapter 48.04 RCW and as otherwise provided in this chapter. [1999 c 112 § 6.]

48.110.060 Reimbursement insurance policies insuring service contracts. (1) Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale in this state or sold to consumers in this state shall state that the insurer that issued the reimbursement insurance policy shall reimburse or pay on behalf of the service contract provider all sums the service contract provider is legally obligated to pay, including but not limited to the refund of the full purchase price of the service contract to the service contract holder or shall provide the service which the service contract provider is legally obligated to perform according to the service contract provider's contractual obligations under the service contracts issued or sold by the service contract provider.

(2) The reimbursement insurance policy shall fully insure the obligations of the service contract provider, rather than partially insure, or insure only in the event of service contract provider default.

(3) The reimbursement insurance policy shall state that the service contract holder is entitled to apply directly to the reimbursement insurance company. [1999 c 112 § 7.]

48.110.070 Service contracts—Form—Required contents. (1) Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state or sold to residents of this state shall be written, printed, or typed in clear, understandable language that is easy to read, and disclose the requirements set forth in this section, as applicable.

(2) Service contracts insured under a reimbursement insurance policy under RCW 48.110.050(2)(a) and 48.110.060 shall not be issued, sold, or offered for sale in this state or sold to residents of this state unless the service contract conspicuously contains a statement in substantially the following form: "Obligations of the service contract provider under this service contract are insured under a service contract reimbursement insurance policy." The service contract shall also conspicuously state the name and address of the issuer of the reimbursement [insurance] policy and state that the service contract holder is entitled to apply directly to the reimbursement insurance company.

(3) Service contracts not insured under a reimbursement insurance policy under RCW 48.110.050(2)(a) and 48.110.060 shall contain a statement in substantially the following form: "Obligations of the service contract provider under this contract are backed by the full faith and credit of the service contract provider."

(4) Service contracts shall state the name and address of the service contract provider and shall identify any administrator if different from the service contract provider, the service contract seller, and the service contract holder to the extent that the name of the service contract holder has been furnished by the service contract holder. The identities of such parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

(5) Service contracts shall state the purchase price of the service contract and the terms under which the service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale.

(6) Service contracts shall state the procedure to obtain service or to file a claim, including but not limited to the procedures for obtaining prior approval for repair work, the toll-free telephone number if prior approval is necessary for service, and the procedure for obtaining emergency repairs performed outside of normal business hours or provide for twenty-four-hour telephone assistance.

(7) Service contracts shall state the existence of any deductible amount, if applicable.

(8) Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(9) Service contracts shall state any restrictions governing the transferability of the service contract, if applicable.

(10) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the service contract provider or by the service contract holder, which rights can be no more restrictive than provided in RCW 48.110.050(3). The service contract provider of the service contract shall mail a written notice to the service contract holder at the last known address of the ser-

vice contract holder contained in the records of the service contract provider at least twenty-one days prior to cancellation by the service contract provider. The notice shall state the effective date of the cancellation and the true and actual reason for the cancellation.

(11) Service contracts shall set forth the obligations and duties of the service contract holder, including but not limited to the duty to protect against any further damage and any requirement to follow owner's manual instructions.

(12) Service contracts shall state whether or not the service contract provides for or excludes consequential damages or preexisting conditions.

(13) Service contracts shall not contain a provision which requires that any civil action brought in connection with the service contract must be brought in the courts of a jurisdiction other than this state. Service contracts that authorize binding arbitration to resolve claims or disputes may allow for arbitration proceedings to be held at a location in closest proximity to the service contract holder's permanent residence. [1999 c 112 § 8.]

48.110.080 Name of service contract provider—Use of legal name—False or misleading statements—Restrictions on requirement to purchase service contract. (1) A service contract provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other service contract provider. This subsection does not apply to a company that was using any of the prohibited language in its name prior to January 1, 1999. However, a company using the prohibited language in its name shall conspicuously disclose in its service contracts the following statement: "This agreement is not an insurance contract."

(2) Every service contract provider shall conduct its business in its own legal name, unless the commissioner has approved the use of another name.

(3) A service contract provider or its representative shall not in its service contracts or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted.

(4) A person, such as a bank, savings and loan association, lending institution, manufacturer, or seller shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property. [1999 c 112 § 9.]

48.110.090 Recordkeeping of service contract provider—Requirements—Duration—Form. (1) The service contract provider shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

(2) The service contract provider's accounts, books, and records shall include the following:

(a) Copies of each type of service contract sold;

(b) The name and address of each service contract holder, to the extent that the name and address have been furnished by the service contract holder;

(c) A list of the locations where the service contracts are marketed, sold, or offered for sale; and

(d) Written claim files that contain at least the dates, amounts, and descriptions of claims related to the service contracts.

(3) Except as provided in subsection (5) of this section, the service contract provider shall retain all records required to be maintained by subsection (1) of this section for at least six years after the specified coverage has expired.

(4) The records required under this chapter may be, but are not required to be, maintained on a computer disk or other recordkeeping technology. If the records are maintained in other than hard copy, the records shall be capable of duplication to legible hard copy.

(5) A service contract provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to service contract holders in this state. [1999 c 112 § 10.]

48.110.100 Termination of reimbursement insurance policy. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with RCW 48.18.290 has been given to the service contract provider and has been delivered to the commissioner. The termination of a reimbursement insurance policy does not reduce the issuer's responsibility for service contracts issued by service contract providers prior to the effective date of the termination. [1999 c 112 § 11.]

48.110.110 Service contract provider—Agent of insurer which issued reimbursement insurance policy.

(1) Service contract providers are considered to be the agent of the insurer which issued the reimbursement insurance policy for purposes of obligating the insurer to service contract holders in accordance with the service contract and this chapter. Payment of the provider fee by the consumer to the service contract seller, service contract provider, or administrator constitutes payment by the consumer to the service contract provider and to the insurer which issued the reimbursement insurance policy. In cases where a service contract provider is acting as an administrator and enlists other service contract providers, the service contract provider acting as the administrator shall notify the insurer of the existence and identities of the other service contract providers.

(2) Chapter 112, Laws of 1999 does not prevent or limit the right of an insurer which issued a reimbursement insurance policy to seek indemnification or subrogation against a service contract provider if the issuer pays or is obligated to pay the service contract holder sums that the service contract provider was obligated to pay under the provisions of the service contract. [1999 c 112 § 12.]

48.110.120 Commissioner may conduct investigations. (1) The commissioner may conduct investigations of service contract providers, administrators, service contract sellers, insurers, and other persons to enforce this chapter and protect service contract holders in this state. Upon request of

the commissioner, the service contract provider shall make all accounts, books, and records concerning service contracts sold by the service contract provider available to the commissioner which are necessary to enable the commissioner to determine compliance or noncompliance with this chapter.

(2) The commissioner may take actions under RCW 48.02.080 or 48.04.050 which are necessary or appropriate to enforce this chapter and the commissioner's rules and orders, and to protect service contract holders in this state. [1999 c 112 § 13.]

48.110.130 Denial, suspension, or revocation of registration—Immediate suspension without notice or hearing—Fine. (1) The commissioner may, subject to chapter 48.04 RCW, deny, suspend, or revoke the registration of a service contract provider if the commissioner finds that the service contract provider:

(a) Has violated this chapter or the commissioner's rules and orders;

(b) Has refused to be investigated or to produce its accounts, records, and files for investigation, or if any of its officers have refused to give information with respect to its affairs or refused to perform any other legal obligation as to an investigation, when required by the commissioner;

(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused service contract holders to accept less than the amount due them or caused service contract holders to employ attorneys or bring suit against the service contract provider to secure full payment or settlement of claims;

(d) Is affiliated with or under the same general management or interlocking directorate or ownership as another service contract provider which unlawfully transacts business in this state without having a registration;

(e) At any time fails to meet any qualification for which issuance of the registration could have been refused had such failure then existed and been known to the commissioner;

(f) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony;

(g) Is under suspension or revocation in another state with respect to its service contract business;

(h) Has made a material misstatement in its application for registration;

(i) Has obtained or attempted to obtain a registration through misrepresentation or fraud;

(j) Has, in the transaction of business under its registration, used fraudulent, coercive, or dishonest practices; or

(k) Has failed to pay any judgment rendered against it in this state regarding a service contract within sixty days after the judgment has become final.

(2) The commissioner may, without advance notice or hearing thereon, immediately suspend the registration of a service contract provider if the commissioner finds that any of the following circumstances exist:

(a) The provider is insolvent;

(b) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the service contract provider has been commenced in any state; or

(c) The financial condition or business practices of the service contract provider otherwise pose an imminent threat

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to the public health, safety, or welfare of the residents of this state.

(3) If the commissioner finds that grounds exist for the suspension or revocation of a registration issued under this chapter, the commissioner may, in lieu of suspension or revocation, impose a fine upon the service contract provider in an amount not more than two thousand dollars per violation. [1999 c 112 § 14.]

48.110.140 Application of consumer protection act.

The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act or practice in the conduct of trade or commerce and an unfair method of competition, as specifically contemplated by RCW 19.86.020, and is a violation of the consumer protection act, chapter 19.86 RCW. Any service contract holder injured as a result of a violation of a provision of this chapter shall be entitled to maintain an action pursuant to chapter 19.86 RCW against the service contract provider and the insurer issuing the applicable service contract reimbursement [insurance] policy and shall be entitled to all of the rights and remedies afforded by that chapter. [1999 c 112 § 15.]

48.110.150 Rules. The commissioner may adopt rules to implement and administer this chapter. [1999 c 112 § 16.]

48.110.900 Date of application to service contracts. This chapter applies to all service contracts sold or offered for sale ninety or more days after July 25, 1999. [1999 c 112 § 17.]

48.110.901 Severability—1999 c 112. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 112 § 19.]

Chapter 48.115 RCW

RENTAL CAR INSURANCE

Sections

48.115.001	Short title.
48.115.005	Definitions.
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48.115.015	Licensing rental car companies as rental car agents.
48.115.020	Rental car agent endorsees—Duties of rental car agent—Training—Transaction records.
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48.115.035	Enforcement—Commissioner may revoke, suspend, or refuse to issue or renew license.
48.115.040	Treatment of moneys collected from renters purchasing insurance.
48.115.045	Rule making.
48.115.900	Captions not law.

48.115.001 Short title. This chapter may be known and cited as the rental car insurance limited agent license act. [2002 c 273 § 1.]

48.115.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Endorsee" means an unlicensed employee or agent of a rental car agent who meets the requirements of this chapter.

(2) "Person" means an individual or a business entity.

(3) "Rental agreement" means any written master, corporate, group, or individual agreement setting forth the terms and conditions governing the use of a rental car rented or leased by a rental car company.

(4) "Rental car" means any motor vehicle that is intended to be rented or leased for a period of thirty consecutive days or less by a driver who is not required to possess a commercial driver's license to operate the motor vehicle and the motor vehicle is either of the following:

(a) A private passenger motor vehicle, including a passenger van, recreational vehicle, minivan, or sports utility vehicle; or

(b) A cargo vehicle, including a cargo van, pickup truck, or truck with a gross vehicle weight of less than twenty-six thousand pounds.

(5) "Rental car agent" means any rental car company that is licensed to offer, sell, or solicit rental car insurance under this chapter.

(6) "Rental car company" means any person in the business of renting rental cars to the public, including a franchisee.

(7) "Rental car insurance" means insurance offered, sold, or solicited in connection with and incidental to the rental of rental cars, whether at the rental office or by preselection of coverage in master, corporate, group, or individual agreements that: (a) Is nontransferable; (b) applies only to the rental car that is the subject of the rental agreement; and (c) is limited to the following kinds of insurance:

(i) Personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

(ii) Liability insurance, including uninsured or underinsured motorist coverage, whether offered separately or in combination with other liability insurance, that provides protection to the renters and to other authorized drivers of a rental car for liability arising from the operation of the rental car during the rental period;

(iii) Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period; and

(iv) Roadside assistance and emergency sickness protection insurance.

(8) "Renter" means any person who obtains the use of a vehicle from a rental car company under the terms of a rental agreement. [2002 c 273 § 2.]

48.115.010 License required. (1) A rental car company, or officer, director, employee, or agent of a rental car company, may not offer, sell, or solicit the purchase of rental car insurance unless that person is licensed under chapter 48.17 RCW or is in compliance with this chapter.

(2) The commissioner may issue a license to a rental car company that is in compliance with this chapter authorizing

the rental car company to act as a rental car agent under this chapter, in connection with and incidental to rental agreements, on behalf of any insurer authorized to write rental car insurance in this state. [2002 c 273 § 3.]

48.115.015 Licensing rental car companies as rental car agents. A rental car company may apply to be licensed as a rental car agent under, and if in compliance with, this chapter by filing the following documents with the commissioner:

(1) A written application for licensure, signed by the applicant or by an officer of the applicant, in the form prescribed by the commissioner that includes a listing of all locations at which the rental car company intends to offer, sell, or solicit rental car insurance; and

(2)(a) A certificate by the insurer that is to be named in the rental car agent license, stating that: (i) The insurer has satisfied itself that the named applicant is trustworthy and competent to act as its rental car agent, limited to this purpose; (ii) the insurer has reviewed the endorsee training and education program required by RCW 48.115.020(4) and believes that it satisfies the statutory requirements; and (iii) the insurer will appoint the applicant to act as its rental car agent to offer, sell, or solicit rental car insurance, if the license for which the applicant is applying is issued by the commissioner.

(b) The certification shall be subscribed by an authorized representative of the insurer on a form prescribed by the commissioner. [2002 c 273 § 4.]

48.115.020 Rental car agent endorsees—Duties of rental car agent—Training—Transaction records. (1) An employee or agent of a rental car agent may be an endorsee authorized to offer, sell, or solicit rental car insurance under the authority of the rental car agent license, if all of the following conditions have been satisfied:

(a) The employee or agent is eighteen years of age or older;

(b) The employee or agent is a trustworthy person and has not committed any act set forth in RCW 48.17.530;

(c) The employee or agent has completed a training and education program;

(d) The rental car company, at the time it submits its rental car agent license application, also submits a list of the names of all endorsees to its rental car agent license on forms prescribed by the commissioner. The list shall be updated and submitted to the commissioner quarterly on a calendar year basis. Each list shall be retained by the rental car company for a period of three years from submission; and

(e) The rental car company or its agent submits to the commissioner with its initial rental car agent license application, and annually thereafter, a certification subscribed by an officer of the rental car company on a form prescribed by the commissioner, stating all of the following:

(i) No person other than an endorsee offers, sells, or solicits rental car insurance on its behalf or while working as an employee or agent of the rental car agent; and

(ii) All endorsees have completed the training and education program under subsection (4) of this section.

(2) A rental car agent's endorsee may only act on behalf of the rental car agent in the offer, sale, or solicitation of a rental car insurance. A rental car agent is responsible for, and must supervise, all actions of its endorsees related to the offering, sale, or solicitation of rental car insurance. The conduct of an endorsee acting within the scope of his or her employment or agency is the same as the conduct of the rental car agent for purposes of this chapter.

(3) The manager at each location of a rental car agent, or the direct supervisor of the rental car agent's endorsees at each location, must be an endorsee of that rental car agent and is responsible for the supervision of each additional endorsee at that location. Each rental car agent shall identify the endorsee who is the manager or direct supervisor at each location in the endorsee list that it submits under subsection (1)(d) of this section.

(4) Each rental car agent shall provide a training and education program for each endorsee prior to allowing an endorsee to offer, sell, or solicit rental car insurance. Details of the program must be submitted to the commissioner, along with the license application, for approval prior to use, and resubmitted for approval of any changes prior to use. This training program shall meet the following minimum standards:

(a) Each endorsee shall receive instruction about the kinds of insurance authorized under this chapter that may be offered for sale to prospective renters; and

(b) Each endorsee shall receive training about the requirements and limitations imposed on car rental agents and endorsees under this chapter. The training must include specific instruction that the endorsee is prohibited by law from making any statement or engaging in any conduct express or implied, that would lead a consumer to believe that the:

(i) Purchase of rental car insurance is required in order for the renter to rent a motor vehicle;

(ii) Renter does not have insurance policies in place that already provide the coverage being offered by the rental car company under this chapter; or

(iii) Endorsee is qualified to evaluate the adequacy of the renter's existing insurance coverages.

(5) The training and education program submitted to the commissioner is approved if no action is taken within thirty days of its submission.

(6) An endorsee's authorization to offer, sell, or solicit rental car insurance expires when the endorsee's employment with the rental car company is terminated.

(7) The rental car agent shall retain for a period of one year from the date of each transaction records which enable it to identify the name of the endorsee involved in each rental transaction when a renter purchases rental car insurance. [2002 c 273 § 5.]

48.115.025 Restrictions on offer, sale, or solicitation—Consumer information. Insurance may not be offered, sold, or solicited under this section, unless:

(1) The rental period of the rental car agreement is thirty consecutive days or less;

(2) At every location where rental agreements are executed, the rental car agent or endorsee provides brochures or other written materials to each renter who purchases rental

car insurance that clearly, conspicuously, and in plain language:

(a) Summarize, clearly and correctly, the material terms, exclusions, limitations, and conditions of coverage offered to renters, including the identity of the insurer;

(b) Describe the process for filing a claim in the event the renter elects to purchase coverage, including a toll-free telephone number to report a claim;

(c) Provide the rental car agent's name, address, telephone number, and license number, as well as the commissioner's consumer hotline number;

(d) Inform the consumer that the rental car insurance offered, sold, or solicited by the rental car agent may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(e) Inform the consumer that the purchase by the renter of the rental car insurance is not required in order to rent a rental car from the rental car agent; and

(f) Inform the consumer that the rental car agent and the rental car agent's endorsees are not qualified to evaluate the adequacy of the renter's existing insurance coverages;

(3) The purchaser of rental car insurance acknowledges in writing the receipt of the brochures or written materials required by subsection (2) of this section;

(4) Evidence of the rental car insurance coverage is stated on the face of the rental agreement;

(5) All costs for the rental car insurance are separately itemized in the rental agreement;

(6) When the rental car insurance is not the primary source of coverage, the consumer is informed in writing in the form required by subsection (2) of this section that their personal insurance will serve as the primary source of coverage; and

(7) For transactions conducted by electronic means, the rental car agent must comply with the requirements of this section, and the renter must acknowledge in writing or by electronic signature the receipt of the following disclosures:

(a) The insurance policies offered by the rental car agent may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(b) The purchase by the renter of rental car insurance is not required in order to rent a rental car from the rental car agent; and

(c) The rental car agent and the rental car agent's endorsees are not qualified to evaluate the adequacy of the renter's existing insurance coverages. [2002 c 273 § 6.]

48.115.030 Rental car agent prohibitions. A rental car agent may not:

(1) Offer, sell, or solicit the purchase of insurance except in conjunction with and incidental to rental car agreements;

(2) Advertise, represent, or otherwise portray itself or any of its employees or agents as licensed insurers, insurance agents, or insurance brokers;

(3) Pay any person, including a rental car agent endorsee, any compensation, fee, or commission that is dependent primarily on the placement of insurance under the license issued under this chapter;

(4) Make any statement or engage in any conduct, express or implied, that would lead a customer to believe that the:

(a) Insurance policies offered by the rental car agent do not provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(b) Purchase by the renter of rental car insurance is required in order to rent a rental car from the rental car agent; and

(c) Rental car agent or the rental car agent's endorsees are qualified to evaluate the adequacy of the renter's existing insurance coverages. [2002 c 273 § 7.]

48.115.035 Enforcement—Commissioner may revoke, suspend, or refuse to issue or renew license. (1) Every rental car agent licensed under this chapter shall promptly reply in writing to an inquiry of the commissioner relative to the business of car rental insurance.

(2)(a) In the event of a violation of this chapter by a rental car agent, the commissioner may revoke, suspend, or refuse to issue or renew any rental car agent's license that is issued or may be issued under this chapter for any cause specified in any other provision of this title, or for any of the following causes:

(i) For any cause that the issuance of this license could have been refused had it then existed and been known to the commissioner;

(ii) If the licensee or applicant willfully violates or knowingly participates in a violation of this title or any proper order or rule of the commissioner;

(iii) If the licensee or applicant has obtained or attempted to obtain a license through willful misrepresentation or fraud;

(iv) If the licensee or applicant has misappropriated or converted funds that belong to, or should be paid to, another person as a result of, or in connection with, a car rental or insurance transaction;

(v) If the licensee or applicant has, with intent to deceive, materially misrepresented the terms or effects of any insurance contract, or has engaged, or is about to engage, in any fraudulent transaction;

(vi) If the licensee or applicant or officer of the licensee or applicant has been convicted by final judgment of a felony;

(vii) If the licensee or applicant is shown to be, and is determined by the commissioner, incompetent or untrustworthy, or a source of injury and loss to the public; and

(viii) If the licensee has dealt with, or attempted to deal with, insurances, or has exercised powers relative to insurance outside the scope of the car rental agent license or other insurance licenses.

(b) If any natural person named under a firm or corporate car rental agent license, or application therefore, commits or has committed any act, or fails or has failed to perform any duty, that constitutes grounds for the commissioner to revoke, suspend, or refuse to issue or renew the license or application for license, the commissioner may revoke, suspend, refuse to renew, or refuse to issue the license or application for a license of the corporation or firm.

(c) Any conduct of an applicant or licensee that constitutes grounds for disciplinary action under this title may be

addressed under this section regardless of where the conduct took place.

(d) The holder of any license that has been revoked or suspended shall surrender the license to the commissioner at the commissioner's request.

(e) After notice and hearing the commissioner may impose other penalties, including suspending the transaction of insurance at specific rental locations where violations of this section have occurred and imposing fines on the manager or supervisor at each location responsible for the supervision and conduct of each endorsee, as the commissioner determines necessary or convenient to carry out the purpose of this chapter.

(3) The commissioner may suspend, revoke, or refuse to renew any car rental agent license by an order served by mail or personal service upon the licensee not less than fifteen days prior to its effective date. The order is subject to the right of the licensee to a hearing under chapter 48.04 RCW.

(4) The commissioner may temporarily suspend a license by an order served by mail or personal service upon the licensee not less than three days prior to its effective date. However, the order must contain a notice of revocation and include a finding that the public safety or welfare imperatively requires emergency action. These suspensions may continue only until proceedings for revocation are concluded. The commissioner may also temporarily suspend a license in cases when proceedings for revocation are pending if it is found that the public safety or welfare imperatively requires emergency action.

(5) Service by mail under this section means posting in the United States mail, addressed to the licensee at the most recent address shown in the commissioner's licensing records for the licensee. Service by mail is complete upon deposit in the United States mail.

(6) If any person sells insurance in connection with or incidental to rental car agreements, or holds himself or herself or a company out as a rental car agent, without satisfying the requirements of this chapter, the commissioner is authorized to issue a cease and desist order. [2002 c 273 § 8.]

48.115.040 Treatment of moneys collected from renters purchasing insurance. A rental car agent is not required to treat moneys collected from renters purchasing rental car insurance as funds received in a fiduciary capacity, if:

(1) The charges for rental car insurance coverage are itemized and ancillary to a rental transaction; and

(2) The insurer has consented in writing, signed by an officer of the insurer, that premiums need not be segregated from funds received by the rental car agent. [2002 c 273 § 9.]

48.115.045 Rule making. The commissioner may adopt rules necessary to implement this chapter, including rules establishing licensing fees to defray the cost of administering this chapter. [2002 c 273 § 10.]

48.115.900 Captions not law. Captions used in this act are not any part of the law. [2002 c 273 § 12.]

Chapter 48.120 RCW

SPECIALTY PRODUCER LICENSES—
COMMUNICATIONS EQUIPMENT OR SERVICES

Sections

48.120.005	Definitions.
48.120.010	License required—Application.
48.120.015	Scope of license—Authorization.
48.120.020	Issuance of insurance—Restrictions—Conduct of employees and authorized representatives.
48.120.025	Statutes governing vendor misconduct—Rules necessary to implement chapter.

48.120.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Communications equipment" means handsets, pagers, personal digital assistants, portable computers, automatic answering devices, batteries, and their accessories or other devices used to originate or receive communications signals or service approved for coverage by rule of the commissioner, and also includes services related to the use of the devices.

(2) "Communications equipment insurance program" means an insurance program as described in RCW 48.120.015.

(3) "Communications service" means the service necessary to send, receive, or originate communications signals.

(4) "Customer" means a person or entity purchasing or leasing communications equipment or communications services from a vendor.

(5) "Specialty producer license" means a license issued under RCW 48.120.010 that authorizes a vendor to offer or sell insurance as provided in RCW 48.120.015.

(6) "Supervising agent" means an agent licensed under RCW 48.17.060 who provides training as described in RCW 48.120.020 and is affiliated to a licensed vendor.

(7) "Vendor" means a person or entity resident or with offices in this state in the business of leasing, selling, or providing communications equipment or communications service to customers.

(8) "Appointing insurer" means the insurer appointing the vendor as its agent under a specialty producer license. [2002 c 357 § 1.]

48.120.010 License required—Application. (1) A vendor that intends to offer insurance under RCW 48.120.015 must file a specialty producer license application with the commissioner. Before the commissioner issues such a license, the vendor must be appointed as the agent of one or more authorized appointing insurers under a vendor's specialty producer license.

(2) Upon receipt of an application, if the commissioner is satisfied that the application is complete, the commissioner may issue a specialty producer license to the vendor. [2002 c 357 § 2.]

48.120.015 Scope of license—Authorization. A specialty producer license authorizes a vendor and its employees and authorized representatives to offer and sell to, enroll in, and bill and collect premiums from customers for insurance covering communications equipment on a master, corporate, group, or individual policy basis. [2002 c 357 § 3.]

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48.120.020 Issuance of insurance—Restrictions—Conduct of employees and authorized representatives.

(1) A vendor issued a specialty producer license may not issue insurance under RCW 48.120.015 unless:

(a) At every location where customers are enrolled in communications equipment insurance programs, written material regarding the program is made available to prospective customers; and

(b) The communications equipment insurance program is operated with the participation of a supervising agent who, with authorization and approval from the appointing insurer, supervises a training program for employees of the licensed vendor.

(2) Employees and authorized representatives of a vendor issued a specialty producer license may only act on behalf of the vendor in the offer, sale, solicitation, or enrollment of customers in a communications equipment insurance program. The conduct of these employees and authorized representatives within the scope of their employment or agency is the same as conduct of the vendor for purposes of this title. [2002 c 357 § 4.]

48.120.025 Statutes governing vendor misconduct—Rules necessary to implement chapter.

(1) A vendor issued a specialty producer license under this chapter is subject to RCW 48.17.540 through 48.17.560.

(2) The commissioner may adopt rules necessary for the implementation of this chapter, including, but not limited to, rules governing:

(a) The specialty producer license application process, including any forms required to be used;

(b) The standards for approval and the required content of written materials required under RCW 48.120.020(1)(a);

(c) The approval and required content of training materials required under RCW 48.120.020(1)(b);

(d) Establishing license fees to defray the cost of administering the specialty producer licensure program;

(e) Establishing requirements for the remittance of premium funds to the supervising agent under authority from the program insurer; and

(f) Determining the applicability or nonapplicability of other provisions of this title to this chapter. [2002 c 357 § 5.]

Chapter 48.125 RCW

SELF-FUNDED MULTIPLE EMPLOYER
WELFARE ARRANGEMENTS

Sections

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48.125.003 Short title. This chapter may be cited as the "self-funded multiple employer welfare arrangement regulation act." [2004 c 260 § 1.]

48.125.005 Purposes. The purposes of this chapter are to:

- (1) Provide for the authorization and registration of self-funded multiple employer welfare arrangements;
- (2) Regulate self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements;
- (3) Provide reporting requirements for self-funded multiple employer welfare arrangements; and
- (4) Provide for sanctions against self-funded multiple employer welfare arrangements organized, operated, providing benefits, or maintained in this state that do not comply with this chapter. [2004 c 260 § 2.]

48.125.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bona fide association" means an association of employers that has been in existence for a period of not less than ten years prior to sponsoring a self-funded multiple employer welfare arrangement, during which time the association has engaged in substantial activities relating to the common interests of member employers, and that continues to engage in substantial activities in addition to sponsoring an arrangement. However, an association that was formed and began sponsoring an arrangement prior to October 1, 1995, is not subject to the requirement that the association be in existence for ten years prior to sponsoring an arrangement.

(2) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more other persons or who contracts with one or more persons, the essence of which is the personal labor of that person or persons.

(3) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(4) "Incurred claims" means the value of all amounts paid or payable under a multiple employer welfare arrangement determined by contract to be a liability with an incurred claims date during the valuation period. It includes all payments during the valuation period plus a reasonable estimate of unpaid claims liabilities.

(5) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as defined by 29 U.S.C. Sec. 1002, but does not include an arrangement, plan, program, or interlocal agreement of or between any political subdivisions of this state, any federal agencies, or any con-

tractors or subcontractors with federal agencies at a federal government facility within this state.

(6) "Qualified actuary" means an individual who:

(a) Is a member in good standing of the American academy of actuaries; and

(b) Is qualified to sign statements of actuarial opinion for health annual statements in accordance with the American academy of actuaries qualification standards for actuaries signing the statements.

(7) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies licensed under this title.

(8) "Surplus" means the excess of the assets of a self-funded multiple employer welfare arrangement over the liabilities of the arrangement. The assets and liabilities should be determined in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law. [2004 c 260 § 3.]

48.125.020 Certificate of authority required. (1) Except as provided in subsection (3) of this section, a person may not establish, operate, provide benefits, or maintain a self-funded multiple employer welfare arrangement in this state unless the arrangement first obtains a certificate of authority from the commissioner.

(2) An arrangement is considered to be established, operated, providing benefits, or maintained in this state if (a) one or more of the employer members participating in the arrangement is either domiciled in or maintains a place of business in this state, or (b) the activities of the arrangement or employer members fall under the scope of RCW 48.01.020.

(3) An arrangement established, operated, providing benefits, or maintained in this state prior to December 31, 2003, has until April 1, 2005, to file a substantially complete application for a certificate of authority. An arrangement that files a substantially complete application for a certificate of authority by that date is allowed to continue to operate without a certificate of authority until the commissioner approves or denies the arrangement's application for a certificate of authority. [2004 c 260 § 4.]

48.125.030 Certificate of authority—Requirements for issuance. The commissioner may not issue a certificate of authority to a self-funded multiple employer welfare arrangement unless the arrangement establishes to the satisfaction of the commissioner that the following requirements have been satisfied by the arrangement:

(1) The employers participating in the arrangement are members of a bona fide association;

(2) The employers participating in the arrangement exercise control over the arrangement, as follows:

(a) Subject to (b) of this subsection, control exists if the board of directors of the bona fide association or the employers participating in the arrangement have the right to elect at least seventy-five percent of the individuals designated in the

arrangement's organizational documents as having control over the operations of the arrangement and the individuals designated in the arrangement's organizational documents in fact exercise control over the operation of the arrangement; and

(b) The use of a third-party administrator to process claims and to assist in the administration of the arrangement is not evidence of the lack of exercise of control over the operation of the arrangement;

(3) In this state, the arrangement provides only health care services;

(4) In this state, the arrangement provides or arranges benefits for health care services in compliance with those provisions of this title that mandate particular benefits or offerings and with provisions that require access to particular types or categories of health care providers and facilities;

(5) In this state, the arrangement provides or arranges benefits for health care services in compliance with RCW 48.43.500 through 48.43.535, 48.43.545, and 48.43.550;

(6) The arrangement provides health care services to not less than twenty employers and not less than seventy-five employees;

(7) The arrangement may not solicit participation in the arrangement from the general public. However, the arrangement may employ licensed insurance agents who receive a commission, unlicensed individuals who do not receive a commission, and may contract with a licensed insurance producer who may be paid a commission or other remuneration, for the purpose of enrolling and renewing the enrollments of employers in the arrangement;

(8) The arrangement has been in existence and operated actively for a continuous period of not less than ten years as of December 31, 2003, except for an arrangement that has been in existence and operated actively since December 31, 2000, and is sponsored by an association that has been in existence more than twenty-five years; and

(9) The arrangement is not organized or maintained solely as a conduit for the collection of premiums and the forwarding of premiums to an insurance company. [2004 c 260 § 5.]

48.125.040 Certificate of authority—Continued compliance with certain conditions—Commissioner's discretion. (1) In addition to the requirements under RCW 48.125.030, self-funded multiple employer welfare arrangements are subject to the following requirements:

(a) Arrangements must maintain a calendar year for operations and reporting purposes;

(b) Arrangements must satisfy one of the following requirements:

(i)(A) The arrangement must deposit two hundred thousand dollars with the commissioner to be used for the payment of claims in the event that the arrangement becomes insolvent; and

(B) The arrangement must submit to the commissioner a written plan of operation that, in the reasonable discretion of the commissioner, ensures the financial integrity of the arrangement; or

(ii) The arrangement demonstrates to the reasonable satisfaction of the commissioner the ability of the arrangement

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to remain financially solvent, for which purpose the commissioner may consider:

(A) The pro forma financial statements of the arrangement;

(B) The types and levels of excess of loss insurance coverage, including the attachment points of the coverage and whether the points are reflected as annual or monthly levels;

(C) Whether a deposit is required for each employee covered under the arrangement equal to at least one month's cost of providing benefits under the arrangement;

(D) The experience of the individuals who will be involved in the management of the arrangement, including employees, independent contractors, and consultants; and

(E) Other factors as reasonably determined by the commissioner to be relevant to a determination of whether the arrangement is able to operate in a financially solvent manner.

(2) The commissioner may require that the articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement provide that employers participating in the arrangement are subject to pro rata assessment for all liabilities of the arrangement.

(3) Self-funded multiple employer welfare arrangements with fewer than one thousand covered persons are required to have aggregate stop loss coverage, with an attachment point of one hundred twenty-five percent of expected claims. If the arrangement is allowed to assess the participating employers to cover actual or projected claims in excess of plan assets, then the attachment point shall be increased by the amount of the allowable assessments. If the required attachment point exceeds one hundred seventy-five percent of expected claims, aggregate stop loss coverage shall be waived. Arrangements with one thousand covered persons or more are not required to have aggregate stop loss coverage.

(4) The arrangement must demonstrate continued compliance with respect to the conditions set forth in this section as a condition of receiving and maintaining a certificate of authority. The commissioner may waive continued compliance with respect to the conditions in this section at any time after the commissioner has granted a certificate of authority to an arrangement. [2004 c 260 § 6.]

48.125.050 Certificate of authority—Application—Form—Documentation. A self-funded multiple employer welfare arrangement must apply for a certificate of authority on a form prescribed by the commissioner and must submit the application, together with the following documents, to the commissioner:

(1) A copy of all articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement;

(2) A copy of the summary plan description or summary plan descriptions of the arrangement, including those filed or required to be filed with the United States department of labor, together with any amendments to the description;

(3) Evidence of coverage of or letters of intent to participate executed by at least twenty employers providing allowable benefits to at least seventy-five employees;

(4) A copy of the arrangement's most recent year's financial statements that must include, at a minimum, a balance sheet, an income statement, a statement of changes in financial position, and an actuarial opinion signed by a qualified actuary stating that the unpaid claim liability of the arrangement satisfies the standards under this title;

(5) Proof that the arrangement maintains or will maintain fidelity bonds required by the United States department of labor under the employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et seq.;

(6) A copy of any excess of loss insurance coverage policies maintained or proposed to be maintained by the arrangement;

(7) Biographical reports on forms prescribed by the national association of insurance commissioners evidencing the general trustworthiness and competence of each individual who is serving or who will serve as an officer, director, trustee, employee, or fiduciary of the arrangement;

(8) Fingerprint cards and current fees payable to the Washington state patrol to perform a state and national criminal history background check of any person who exercises control over the financial dealings and operations of the self-funded multiple employer welfare arrangement, including collection of employer contributions, investment of assets, payment of claims, rate setting, and claims adjudication. The fingerprints and any additional information may be submitted to the federal bureau of investigation and any results of the check must be returned to the office of the insurance commissioner. The results may be disseminated to any governmental agency or entity authorized to receive them; and

(9) A statement executed by a representative of the arrangement certifying, to the best knowledge and belief of the representative, that:

(a) The arrangement is in compliance with RCW 48.125.030;

(b) The arrangement is in compliance with the requirements of the employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et seq., or a statement of any requirements with which the arrangement is not in compliance and a statement of proposed corrective actions; and

(c) The arrangement is in compliance with RCW 48.125.060 and 48.125.070. [2004 c 260 § 7.]

48.125.060 Surplus required—Amount—Enforcement. Self-funded multiple employer welfare arrangements must maintain continuously a surplus equal to at least ten percent of the next twelve months projected incurred claims or two million dollars, whichever is greater. The commissioner may proceed against self-funded multiple employer welfare arrangements that fail to maintain the level of surplus required by this section in any manner that the commissioner is authorized to proceed against a health care service contractor that failed to maintain minimum net worth. [2004 c 260 § 8.]

48.125.070 Contribution rates. A self-funded multiple employer welfare arrangement must establish and maintain contribution rates for participation under the arrangement that satisfy either of the following requirements:

(1) Contribution rates must equal or exceed the sum of projected incurred claims for the year, plus all projected costs of operation of the arrangement for the year, plus an amount equal to any deficiency in the surplus of the arrangement for the prior year, minus an amount equal to the surplus of the arrangement in excess of the minimum required level of surplus; or

(2) Contribution rates must equal or exceed a funding level established by a report prepared by a qualified actuary. [2004 c 260 § 9.]

48.125.080 Certificate of authority—Granting or denying application. (1) The commissioner shall grant or deny an application for a certificate of authority within one hundred eighty days of the date that a completed application, together with the items designated in RCW 48.125.050, is submitted to the commissioner.

(2) The commissioner shall grant the application of an arrangement that satisfies the applicable requirements of RCW 48.125.030 through 48.125.070.

(3) The commissioner shall deny the application of an arrangement that does not satisfy the applicable requirements of RCW 48.125.030 through 48.125.070. Denial of an application for a certificate of authority is subject to appeal under chapter 34.05 RCW.

(4) A certificate of authority granted to an arrangement is effective unless revoked by the commissioner under RCW 48.125.100. [2004 c 260 § 10.]

48.125.090 Reporting requirements. (1) A self-funded multiple employer welfare arrangement must comply with the reporting requirements of this section.

(2) Every arrangement holding a certificate of authority from the commissioner must file its financial statements as required by this title and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law.

(3) Every arrangement must comply with the provisions of chapters 48.12 and 48.13 RCW.

(4) Every arrangement holding a certificate of authority shall, annually, before the first day of March, file with the commissioner a true statement of its financial condition, transactions, and affairs as of the thirty-first day of December of the preceding year. The statement forms must be those forms approved by the national association of insurance commissioners for health insurance. The statement must be verified by the oaths of at least two officers of the arrangement. Additional information may be required by this title or by the request of the commissioner.

(5) Every arrangement must report their annual and other statements in the same manner required of other insurers by rule of the commissioner.

(6) The arrangement must file with the commissioner a copy of the arrangement's internal revenue service form 5500 together with all attachments to the form, at the time required for filing the form. [2004 c 260 § 11.]

48.125.100 Failure to comply with chapter—Sanctions. (1) The commissioner may impose sanctions against a

self-funded multiple employer welfare arrangement that fails to comply with this chapter. The maximum fine may not exceed ten thousand dollars for each violation.

(2) The commissioner may issue a notice of intent to revoke the certificate of authority of a self-funded multiple employer welfare arrangement that fails to comply with RCW 48.125.060, 48.125.070, or 48.125.090. If, within sixty days of receiving notice under this subsection, the arrangement fails to file with the commissioner a plan to bring the arrangement into compliance with RCW 48.125.060, 48.125.070, or 48.125.090, the commissioner may revoke the arrangement's certificate of authority. A revocation of a certificate of authority is subject to appeal under chapter 34.05 RCW.

(3) An arrangement that fails to maintain the level of surplus required by RCW 48.125.060 is subject to the sanctions authorized in RCW 48.44.160 through 48.44.166. [2004 c 260 § 12.]

48.125.110 Certificate of authority—Failure to obtain. A self-funded multiple employer welfare arrangement organized, operated, providing benefits, or maintained in this state without a certificate of authority is in violation of this title. [2004 c 260 § 13.]

48.125.120 Policy must contain specific notice. Each policy issued by a self-funded multiple employer welfare arrangement must contain, in ten-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by a self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for a self-funded multiple employer welfare arrangement." [2004 c 260 § 14.]

48.125.130 Additional compliance requirements. A self-funded multiple employer welfare arrangement is subject to RCW 48.43.300 through 48.43.370, the rehabilitation provisions under chapter 48.31 RCW, and chapter 48.99 RCW. [2004 c 260 § 15.]

48.125.140 Examination of operations—Commissioner's powers—Definition of affiliate. (1) The commissioner may make an examination of the operations of any self-funded multiple employer welfare arrangement as often as he or she deems necessary in order to carry out the purposes of this chapter.

(2) Every self-funded multiple employer welfare arrangement shall submit its books and records relating to its operation for financial condition and market conduct examinations and in every way facilitate them. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the [self-funded] multiple employer welfare arrangement.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the self-funded multiple employer welfare

arrangement in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his or her report of the examination.

(4)(a) The commissioner may also examine any affiliate of the self-funded multiple employer welfare arrangement. An examination of an affiliate is limited to the activities or operations of the affiliate that may impact the financial position of the arrangement.

(b) For the purposes of this section, "affiliate" has the same meaning as defined in RCW 48.31C.010.

(5) Whenever an examination is made, all of the provisions of chapter 48.03 RCW not inconsistent with this chapter shall be applicable. In lieu of making an examination himself or herself, the commissioner may, in the case of a foreign self-funded multiple employer welfare arrangement, accept an examination report of the applicant by the regulatory official in its state of domicile. In the case of a domestic self-funded multiple employer welfare arrangement, the commissioner may accept an examination report of the applicant by the regulatory official of a state that has already licensed the arrangement. [2004 c 260 § 16.]

48.125.150 Chapter not applicable. This chapter does not apply to:

- (1) Single employer entities;
- (2) Taft-Hartley plans; or
- (3) Self-funded multiple employer welfare arrangements that do not provide coverage for health care services. [2004 c 260 § 17.]

48.125.160 Taxable amounts—Participant contributions. Participant contributions used to determine the taxable amounts in this state under RCW 48.14.0201 shall be determined in the same manner as premiums taxable in this state are determined under RCW 48.14.090. [2004 c 260 § 18.]

48.125.900 Severability--2004 c 260. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2004 c 260 § 28.]

48.125.901 Effective date--2004 c 260. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]. [2004 c 260 § 29.]

Title 49

LABOR REGULATIONS

Chapters

- 49.04 Apprenticeship.**
- 49.08 Arbitration of disputes.**
- 49.12 Industrial welfare.**
- 49.17 Washington industrial safety and health act.**
- 49.19 Safety—Health care settings.**
- 49.22 Safety—Crime prevention.**
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- 49.28 Hours of labor.**
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- 49.56 Wages—Priorities—Preferences.**
- 49.60 Discrimination—Human rights commission.**
- 49.64 Employee benefit plans.**
- 49.66 Health care activities.**
- 49.70 Worker and community right to know act.**
- 49.74 Affirmative action.**
- 49.78 Family leave.**

Reviser's note: Throughout this title, "director of labor and industries" has been substituted for "commissioner of labor," such office having been abolished by the administrative code of 1921 (1921 c 7 §§ 3, 80, and 135).

- Apprentices to be paid prevailing wage on public works: RCW 39.12.021.*
- Collective bargaining with employees of city-owned utilities: RCW 35.22.350.*
- Community renewal law: Chapter 35.81 RCW.*
- Department of labor and industries: Chapter 43.22 RCW.*
- Elevators, lifting devices and moving walks: Chapter 70.87 RCW.*
- Employee benefit plans when private utility acquired: RCW 54.04.130.*
- Employment agencies: Chapter 19.31 RCW.*
- Industrial products of prisoners: RCW 72.01.150, chapter 72.60 RCW.*
- Job protection for members of state militia: RCW 38.40.050.*
- Labor and employment of prisoners: Chapter 72.64 RCW.*
- Lien of employees for contributions to benefit plans: Chapter 60.76 RCW.*
- Marine employees—Public employment relations: Chapter 47.64 RCW.*
- Occupational and environmental research facility at University of Washington: RCW 28B.20.450 through 28B.20.458.*
- Promotional printing contracts of apple, fruit, dairy products commissions—Conditions of employment: RCW 15.24.086.*
- Public employees' collective bargaining, arbitration of disputes: RCW 41.56.100.*
- Public employment: Title 41 RCW.*
- Sheriff's office, civil service: Chapter 41.14 RCW.*
- Unemployment compensation: Title 50 RCW.*
- Unfair practices—Consumer protection—Act does not impair labor organizations: RCW 19.86.070.*
- Workers' compensation: Title 51 RCW.*
- Youth development and conservation corps: RCW 79A.05.500.*

Chapter 49.04 RCW APPRENTICESHIP

Sections

- 49.04.010 Apprenticeship council created—Composition—Terms—Compensation—Duties.
- 49.04.030 Supervisor of apprenticeship—Duties.
- 49.04.040 Apprenticeship committees—Composition—Duties.
- 49.04.050 Apprenticeship program standards.
- 49.04.060 Apprenticeship agreements.
- 49.04.070 Limitation.
- 49.04.080 On-the-job training agreements and projects—Supervisor to promote.
- 49.04.090 On-the-job training agreements and projects—Agreements with federal agencies.
- 49.04.100 Apprenticeship programs—Civil rights act advancement.
- 49.04.110 Woman and racial minority representation in apprenticeship programs—Noncompliance.
- 49.04.120 Woman and racial minority representation—Community colleges, vocational, or high schools to enlist woman and racial minority representation in apprenticeship programs.
- 49.04.130 Woman and racial minority representation—Employer and employee organizations, apprenticeship council and committees, etc., to enlist woman and racial minority representation in apprenticeship programs.
- 49.04.141 Transportation opportunities—Report.
- 49.04.150 Associate degree pathway.
- 49.04.900 Severability—1941 c 231.
- 49.04.910 Chapter not affected by certain laws against discrimination in employment because of age.

Apprenticeship agreements, inmates of state school for girls (Maple Lane school): RCW 72.20.090.

Child labor: RCW 26.28.060, 26.28.070.

49.04.010 Apprenticeship council created—Composition—Terms—Compensation—Duties. The director of labor and industries shall appoint an apprenticeship council, composed of three representatives each from employer and employee organizations, respectively. The terms of office of the members of the apprenticeship council first appointed by the director of labor and industries shall be as follows: One representative each of employers and employees shall be appointed for one year, two years, and three years, respectively. Thereafter, each member shall be appointed for a term of three years. The governor shall appoint a public member to the apprenticeship council for a three-year term. The appointment of the public member is subject to confirmation by the senate. Each member shall hold office until a successor is appointed and has qualified and any vacancy shall be filled by appointment for the unexpired portion of the term. A designated representative from each of the following: The work force training and education coordinating board, state board for community and technical colleges, employment security department, and United States department of labor, apprenticeship, training, employer, and labor services, shall be ex officio members of the apprenticeship council. Ex officio members shall have no vote. Each member of the council, not otherwise compensated by public moneys, shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and shall be compensated in accordance with RCW 43.03.240. The apprenticeship council is

authorized to approve apprenticeship programs, and establish apprenticeship program standards as rules, including requirements for apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The council shall consider recommendations from the state board for community and technical colleges on matters of apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The rules for apprenticeship instructor qualifications shall either be by reference or reasonably similar to the applicable requirements established by or pursuant to chapter 28B.50 RCW. The council is further authorized to issue such rules as may be necessary to carry out the intent and purposes of this chapter, including a procedure to resolve an impasse should a tie vote of the council occur, and perform such other duties as are hereinafter imposed.

Not less than once a year the apprenticeship council shall make a report to the director of labor and industries of its activities and findings which shall be available to the public. [2001 c 204 § 1; 1984 c 287 § 97; 1982 1st ex.s. c 39 § 2; 1979 ex.s. c 37 § 1; 1977 c 75 § 72; 1975-'76 2nd ex.s. c 34 § 143; 1967 c 6 § 1; 1961 c 114 § 1; 1941 c 231 § 1; Rem. Supp. 1941 § 7614-3. Formerly RCW 49.04.010 and 49.04.020.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

49.04.030 Supervisor of apprenticeship—Duties.

Subject to the confirmation of the state apprenticeship council by a majority vote, the director of labor and industries shall appoint and deputize an assistant director to be known as the supervisor of apprenticeship. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor shall: (1) Encourage and promote apprenticeship programs conforming to the standards established under this chapter, and in harmony with the policies of the United States department of labor; (2) act as secretary of the apprenticeship council and of state apprenticeship committees; (3) when authorized by the apprenticeship council, register apprenticeship agreements that are in the best interests of the apprentice and conform with standards established under this chapter; (4) keep a record of apprenticeship agreements and upon successful completion issue certificates of completion of apprenticeship; and (5) terminate or cancel any apprenticeship agreements in accordance with the provisions of the agreements.

The supervisor may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally. The director of labor and industries is authorized to appoint such other personnel as may be necessary to aid the supervisor of apprenticeship in the execution of the supervisor's functions under this chapter. [2001 c 204 § 2; 1979 ex.s. c 37 § 2; 1961 c 114 § 2; 1941 c 231 § 2; Rem. Supp. 1941 § 7614-4.]

Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.

49.04.040 Apprenticeship committees—Composition—Duties. Upon July 22, 2001, all newly approved

apprenticeship programs must be represented by either a unilateral or joint apprenticeship committee. Apprenticeship committees must conform to this chapter, the rules adopted by the apprenticeship council, and 29 C.F.R. Part 29 and must be approved by the apprenticeship council. Apprenticeship committees may be approved whenever the apprentice training needs justify such establishment. Such apprenticeship committees shall be composed of an equal number of employer and employee representatives who may be chosen:

(1) From names submitted by the respective local or state employer and employee organizations served by the apprenticeship committee; or

(2) In a manner which selects representatives of management and nonmanagement served by the apprenticeship committee. The council may act as the apprentice representative when the council determines there is no feasible method to choose nonmanagement representatives.

Apprenticeship committees shall devise standards for apprenticeship programs and operate such programs in accordance with the standards established by this chapter and by council-adopted rules. The council and supervisor may provide aid and technical assistance to apprenticeship program sponsors and applicants, or potential applicants. [2001 c 204 § 3; 1941 c 231 § 3; Rem. Supp. 1941 § 7614-5.]

49.04.050 Apprenticeship program standards. To be eligible for registration, apprenticeship program standards must conform to the rules adopted by the apprenticeship council. [2001 c 204 § 4; 1979 ex.s. c 37 § 3; 1961 c 114 § 3; 1941 c 231 § 4; Rem. Supp. 1941 § 7614-6.]

49.04.060 Apprenticeship agreements. For the purposes of this chapter an apprenticeship agreement is a written agreement between an apprentice and either the apprentice's employer or employers, or an apprenticeship committee acting as agent for an employer or employers, containing the terms and conditions of the employment and training of the apprentice. [2001 c 204 § 5; 1941 c 231 § 5; Rem. Supp. 1941 § 7614-7.]

49.04.070 Limitation. The provisions of this chapter shall apply to a person, firm, corporation or craft only after such person, firm, corporation or craft has voluntarily elected to conform with its provisions. [1941 c 231 § 6; Rem. Supp. 1941 § 7614-8.]

49.04.080 On-the-job training agreements and projects—Supervisor to promote. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor of apprenticeship shall encourage and promote the making of such other types of on-the-job training agreements and projects, in addition to apprenticeship agreements, as the supervisor shall find meritorious. [2001 c 204 § 6; 1963 c 172 § 1.]

49.04.090 On-the-job training agreements and projects—Agreements with federal agencies. The director of labor and industries shall have authority to enter into and perform, through the supervisor of apprenticeship, agree-

ments with appropriate federal departments or agencies for the development, administration and servicing of on-the-job training projects. Further, the director of labor and industries, through the supervisor of apprenticeship, shall have power to receive and administer funds provided by the federal government for such purposes. [1963 c 172 § 2.]

49.04.100 Apprenticeship programs—Civil rights act advancement. As provided by the rules adopted by the apprenticeship council, apprenticeship programs entered into under authority of this chapter with five or more apprentices shall conform with 29 C.F.R. Part 30 to the extent required by federal law while advancing the nondiscriminatory principles of the Washington state civil rights act, RCW 49.60.400. [2001 c 204 § 7; 1995 c 67 § 7; 1990 c 72 § 1; 1985 c 6 § 17; 1969 ex.s. c 183 § 2.]

Purpose—Construction—1990 c 72; 1969 ex.s. c 183: "It is the policy of the legislature and the purpose of this act to provide every citizen in this state a reasonable opportunity to enjoy employment and other associated rights, benefits, privileges, and to help women and racial minorities realize in a greater measure the goals upon which this nation and this state were founded. All the provisions of this act shall be liberally construed to achieve these ends, and administered and enforced with a view to carry out the above declaration of policy." [1990 c 72 § 5; 1969 ex.s. c 183 § 1.]

Severability—1969 ex.s. c 183: "If any provision of this 1969 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 183 § 8.]

49.04.110 Woman and racial minority representation in apprenticeship programs—Noncompliance. When it shall appear to the department of labor and industries that any apprenticeship program referred to in RCW 49.04.100 has failed to comply with the woman or racial minority representation requirement hereinabove in such section referred to by January 1, 1970, which fact shall be determined by reports the department may request or in such other manner as it shall see fit, then the same shall be deemed prima facie evidence of noncompliance with RCW 49.04.100 through 49.04.130 and thereafter no state funds or facilities shall be expended upon such program: PROVIDED, That prior to such withdrawal of funds evidence shall be received and state funds or facilities shall not be denied if there is a showing of a genuine effort to comply with the provisions of RCW 49.04.100 through 49.04.130 as to entrance of women and racial minorities into the program. The director shall notify the appropriate federal authorities if there is noncompliance with the woman and racial minority representation qualification under any apprenticeship program as provided for in RCW 49.04.100 through 49.04.130. [1990 c 72 § 2; 1969 ex.s. c 183 § 3.]

49.04.120 Woman and racial minority representation—Community colleges, vocational, or high schools to enlist woman and racial minority representation in apprenticeship programs. Every community college, vocational school, or high school carrying on a program of vocational education shall make every effort to enlist woman and racial minority representation in the apprenticeship programs within the state and are authorized to carry out such purpose in such ways as they shall see fit. [1990 c 72 § 3; 1969 ex.s. c 183 § 4.]

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49.04.130 Woman and racial minority representation—Employer and employee organizations, apprenticeship council and committees, etc., to enlist woman and racial minority representation in apprenticeship programs. Every employer and employee organization as well as the apprenticeship council and local and state apprenticeship committees and vocational schools shall make every effort to enlist woman and racial minority representation in the apprenticeship programs of the state and shall be aided therein by the department of labor and industries insofar as such department may be able to so do without undue interference with its other powers and duties. In addition, the legislature, in fulfillment of the public welfare, mandates those involved in apprenticeship training with the responsibility of making every effort to see that woman and racial minority representatives in such programs pursue the same to a successful conclusion. [1990 c 72 § 4; 1969 ex.s. c 183 § 5.]

49.04.141 Transportation opportunities—Report. The apprenticeship council shall work with the department of transportation, local transportation jurisdictions, local and statewide joint apprenticeships, other apprenticeship programs, representatives of labor and business organizations with interest and expertise in the transportation work force, and representatives of the state's universities and community and vocational colleges to establish technical apprenticeship opportunities specific to the needs of transportation. The council shall issue a report of findings and recommendations to the transportation committees of the legislature by December 1, 2003. The report must include, but not be limited to, findings and recommendations regarding the establishment of transportation technical training programs within the community and vocational college system and in the state universities. [2003 c 363 § 202.]

Findings—Intent—2003 c 363 §§ 201 through 206: "(1) The legislature finds that a skilled technical work force is necessary for maintaining, preserving, and improving Washington's transportation system. The Blue Ribbon Commission on Transportation found that state and local transportation agencies are showing signs of a work force that is insufficiently skilled to operate the transportation system at its highest level. Sections 201 through 206 of this act are intended to explore methods for fostering a stronger industry in transportation planning and engineering.

(2) It is the intent of the legislature that the state prevailing wage process operate efficiently, that the process allow contractors and workers to be paid promptly, and that new technologies and innovative outreach methods be used to enhance wage surveys in order to better reflect current wages in counties across the state.

(3) The legislature finds that in order to enhance the prevailing wage process it is appropriate for all intent and affidavit fees paid by contractors be dedicated to the sole purpose of administering the state prevailing wage program.

(4) To accomplish the intent of this section and in order to enhance the response of businesses and labor representatives to the prevailing wage survey process, the department of labor and industries shall undertake the following activities:

(a) Establish a goal of conducting surveys for each trade every three years;

(b) Actively promote increased response rates from all survey recipients in every county both urban and rural. The department shall provide public education and technical assistance to businesses, labor representatives, and public agencies in order to promote a better understanding of prevailing wage laws and increased participation in the prevailing wage survey process;

(c) Actively work with businesses, labor representatives, public agencies, and others to ensure the integrity of information used in the development of prevailing wage rates, and ensure uniform compliance with requirements of sections 201 through 206 of this act;

(d) Maintain a timely processing of intents and affidavits, with a target

processing time no greater than seven working days from receipt of completed forms;

(e) Develop and implement electronic processing of intents and affidavits and promote the efficient and effective use of technology to improve the services provided by the prevailing wage program." [2003 c 363 § 201.]

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

49.04.150 Associate degree pathway. (1) An apprenticeship committee may recommend to its community or technical college partner or partners that an associate degree pathway be developed for the committee's program.

(2) In consultation with the state board for community and technical colleges, the apprenticeship committee and the college or colleges involved with the program shall consider the extent apprentices in the program are likely to pursue an associate degree and the extent a pathway could reduce redundancy of course requirements between the apprenticeship and a degree.

(3) If the apprenticeship committee and the college or colleges involved with the program determine that a pathway would be beneficial for apprentices and assist them in obtaining an associate degree, the apprenticeship committee may request that a pathway be established as provided in RCW 28B.50.890. [2003 c 128 § 2.]

Findings—2003 c 128: "The legislature finds that:

(1) Apprenticeships are very rigorous and highly structured programs with specific academic and work training requirements;

(2) There is a misperception that apprenticeships are only for noncollege bound students; and

(3) The state should expand opportunities for individuals to progress from an apprenticeship to college by creating pathways that build on the apprenticeship experience and permit apprentices to earn an associate degree." [2003 c 128 § 1.]

49.04.900 Severability—1941 c 231. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. [1941 c 231 § 8; no RRS.]

49.04.910 Chapter not affected by certain laws against discrimination in employment because of age. The amendments made by chapter 100, Laws of 1961 shall not be construed as modifying chapter 231, Laws of 1941 as amended, or as applying to any standards established thereunder or employment pursuant to any bona fide agreements entered into thereunder. [1961 c 100 § 6.]

Reviser's note: (1) Chapter 100, Laws of 1961 amended RCW 49.60.180, 49.60.190, 49.60.200 and reenacted RCW 49.60.310 to include age as an element of discrimination, and such chapter added a new section codified as RCW 49.44.090 relating to unfair practices in employment because of age.

(2) Chapter 231, Laws of 1941 is the apprenticeship law codified in chapter 49.04 RCW.

Chapter 49.08 RCW

ARBITRATION OF DISPUTES

Sections

49.08.010	Duty of director—Mediation—Board of arbitration selected—Board's findings final.
49.08.020	Procedure for arbitration.
49.08.030	Service of process.

49.08.040	Compensation and travel expenses of arbitrators.
49.08.050	Failure to arbitrate—Statement of facts—Publicity.
49.08.060	Tender on exhaustion of available funds.

Arbitration: Chapter 7.04 RCW.

Collective bargaining with employees of city-owned utilities: RCW 35.22.350.

Marine employees—Public employment relations: Chapter 47.64 RCW.

Supervisor of industrial relations: RCW 43.22.260.

49.08.010 Duty of director—Mediation—Board of arbitration selected—Board's findings final. It shall be the duty of the chairman of the public employment relations commission upon application of any employer or employee having differences, as soon as practicable, to visit the location of such differences and to make a careful inquiry into the cause thereof and to advise the respective parties, what, if anything, ought to be done or submitted to by both to adjust said dispute and should said parties then still fail to agree to a settlement through said chairman, then said chairman shall endeavor to have said parties consent in writing to submit their differences to a board of arbitrations to be chosen from citizens of the state as follows, to wit: Said employer shall appoint one and said employees acting through a majority, one, and these two shall select a third, these three to constitute the board of arbitration and the findings of said board of arbitration to be final. [1975 1st ex.s. c 296 § 36; 1903 c 58 § 1; RRS § 7667.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Public employment relations commission: Chapter 41.58 RCW.

49.08.020 Procedure for arbitration. The proceedings of said board of arbitration shall be held before the chairman of the public employment relations commission who shall act as moderator or chairman, without the privilege of voting, and who shall keep a record of the proceedings, issue subpoenas and administer oaths to the members of said board, and any witness said board may deem necessary to summon. [1975 1st ex.s. c 296 § 37; 1903 c 58 § 2; RRS § 7668.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

49.08.030 Service of process. Any notice or process issued by the board herein created, shall be served by any sheriff, coroner or constable to whom the same may be directed, or in whose hands the same may be placed for service. [1903 c 58 § 3; RRS § 7669.]

49.08.040 Compensation and travel expenses of arbitrators. Such arbitrators shall receive five dollars per day for each day actually engaged in such arbitration and travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended to be paid upon certificates of the director of labor and industries out of the fund appropriated for the purpose or at the disposal of the department of labor and industries applicable to such expenditure. [1975-'76 2nd ex.s. c 34 § 144; 1903 c 58 § 4; RRS § 7670.]

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

49.08.050 Failure to arbitrate—Statement of facts—Publicity. Upon the failure of the director of labor and industries, in any case, to secure the creation of a board of arbitra-

tion, it shall become his duty to request a sworn statement from each party to the dispute of the facts upon which their dispute and their reasons for not submitting the same to arbitration are based. Any sworn statement made to the director of labor and industries under this provision shall be for public use and shall be given publicly in such newspapers as desire to use it. [1903 c 58 § 5; RRS § 7671.]

49.08.060 Tender on exhaustion of available funds.

There is hereby appropriated out of the state treasury from funds not otherwise appropriated the sum of three thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this chapter. In case the funds herein provided are exhausted and either party to a proposed arbitration shall tender the necessary expenses for conducting said arbitration, then it shall be the duty of the director of labor and industries to request the opposite party to arbitrate such differences in accordance with the provisions of this chapter. [1903 c 58 § 6; RRS § 7672.]

Chapter 49.12 RCW INDUSTRIAL WELFARE

Sections

49.12.005	Definitions.
49.12.010	Declaration.
49.12.020	Conditions of employment—Wages.
49.12.033	Administration and enforcement of chapter by director of labor and industries.
49.12.041	Investigation of wages, hours and working conditions—Statements, inspections authorized.
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49.12.101	Hearing.
49.12.105	Variance order—Application—Issuance—Contents—Termination.
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49.12.320	Definitions.
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49.12.360	Parental leave—Discrimination prohibited.
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49.12.460	Volunteer fire fighters, reserve officers—Employer duties—Violations.
49.12.900	Severability—1973 2nd ex.s. c 16.
49.12.901	Severability—1991 c 303.
49.12.902	Effective date—1991 c 303 §§ 3-7.

Reviser's note: Throughout this chapter, the words "the committee" have been substituted for "the industrial welfare commission" or "the commission."

The industrial welfare commission was abolished and its powers and duties transferred to a new agency by the administrative code of 1921. In particular, 1921 c 7 § 135 abolished the commission while 1921 c 7 § 82 created an unnamed committee "which shall have the power and it shall be its duty:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the industrial welfare commission."

1921 c 7 § 82 was codified by the 1941 Code Committee as RCW 43.22.280, wherein the Code Committee revised the wording of the session law to designate the unnamed committee as the "industrial welfare committee." The committee was apparently commonly known by that name, but such designation has no foundation in the statutes. RCW 43.22.280 was repealed by 1982 c 163 § 23. Powers, duties, and functions of the industrial welfare committee were transferred to the director of labor and industries. See RCW 43.22.282.

Child labor: RCW 26.28.060, 26.28.070.

Food and beverage establishment workers' permits: Chapter 69.06 RCW.

Hours of labor: Chapter 49.28 RCW.

49.12.005 Definitions.

For the purposes of this chapter:

(1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries, or the director's designated representative.

(3)(a) Before May 20, 2003, "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees but does not include the state, any state institution, any state agency, political subdivision of the state, or any municipal corporation or quasi-municipal corporation. However, for the purposes of RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370, 49.12.450, and 49.12.460 only, "employer" also includes the state, any state institution, any state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(b) On and after May 20, 2003, "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. However, this chapter and the rules adopted thereunder apply to these public employers only to the extent that this chapter and the rules adopted thereunder do not conflict

with: (i) Any state statute or rule; and (ii) respect to political subdivisions of the state and any municipal or quasi-municipal corporation, any local resolution, ordinance, or rule adopted under the authority of the local legislative authority before April 1, 2003.

(4) "Employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise.

(5) "Conditions of labor" means and includes the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(6) For the purpose of chapter 16, Laws of 1973 2nd ex. sess. a minor is defined to be a person of either sex under the age of eighteen years. [2003 c 401 § 2; 1998 c 334 § 1; 1994 c 164 § 13; 1988 c 236 § 8; 1973 2nd ex.s. c 16 § 1.]

Findings—Purpose—Intent—Effective date—2003 c 401: See notes following RCW 49.12.187.

Construction—1998 c 334: See note following RCW 49.12.450.

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.010 Declaration. The welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect. [1973 2nd ex.s. c 16 § 2; 1913 c 174 § 1; RRS § 7623.]

49.12.020 Conditions of employment—Wages. It shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health; and it shall be unlawful to employ workers in any industry within the state of Washington at wages which are not adequate for their maintenance. [1973 2nd ex.s. c 16 § 3; 1913 c 174 § 2; RRS § 7624.]

49.12.033 Administration and enforcement of chapter by director of labor and industries. See RCW 43.22.270(5).

49.12.041 Investigation of wages, hours and working conditions—Statements, inspections authorized. It shall be the responsibility of the director to investigate the wages, hours and conditions of employment of all employees, including minors, except as may otherwise be provided in chapter 16, Laws of 1973 2nd ex. sess. The director, or the director's authorized representative, shall have full authority to require statements from all employers, relative to wages, hours and working conditions and to inspect the books, records and physical facilities of all employers subject to chapter 16, Laws of 1973 2nd ex. sess. Such examinations shall take place within normal working hours, within reason-

able limits and in a reasonable manner. [1994 c 164 § 14; 1973 2nd ex.s. c 16 § 5.]

49.12.050 Employer's record of employees. Every employer shall keep a record of the names of all employees employed by him, and shall on request permit the director to inspect such record. [1994 c 164 § 15; 1973 2nd ex.s. c 16 § 14; 1913 c 174 § 7; RRS § 7626.]

49.12.091 Investigation information—Findings—Rules prescribing minimum wages, working conditions. After an investigation has been conducted by the department of wages, hours and conditions of labor subject to chapter 16, Laws of 1973 2nd ex. sess., the director shall be furnished with all information relative to such investigation of wages, hours and working conditions, including current statistics on wage rates in all occupations subject to the provisions of chapter 16, Laws of 1973 2nd ex. sess. Within a reasonable time thereafter, if the director finds that in any occupation, trade or industry, subject to chapter 16, Laws of 1973 2nd ex. sess., the wages paid to employees are inadequate to supply the necessary cost of living, but not to exceed the state minimum wage as prescribed in RCW 49.46.020, as now or hereafter amended, or that the conditions of labor are detrimental to the health of employees, the director shall have authority to prescribe rules and regulations for the purpose of adopting minimum wages for occupations not otherwise governed by minimum wage requirements fixed by state or federal statute, or a rule or regulation adopted under such statute, and, at the same time have the authority to prescribe rules and regulations fixing standards, conditions and hours of labor for the protection of the safety, health and welfare of employees for all or specified occupations subject to chapter 16, Laws of 1973 2nd ex. sess. Thereafter, the director shall conduct a public hearing in accordance with the procedures of the administrative procedure act, chapter 34.05 RCW, for the purpose of the adoption of rules and regulations fixing minimum wages and standards, conditions and hours of labor subject to the provisions of chapter 16, Laws of 1973 2nd ex. sess. After such rules become effective, copies thereof shall be supplied to employers who may be affected by such rules and such employers shall post such rules, where possible, in such place or places, reasonably accessible to all employees of such employer. After the effective date of such rules, it shall be unlawful for any employer in any occupation subject to chapter 16, Laws of 1973 2nd ex. sess. to employ any person for less than the rate of wages specified in such rules or under conditions and hours of labor prohibited for any occupation specified in such rules: PROVIDED, That this section shall not apply to sheltered workshops. [1994 c 164 § 16; 1973 2nd ex.s. c 16 § 6.]

49.12.101 Hearing. Whenever wages, standards, conditions and hours of labor have been established by rule and regulation of the director, the director may upon application of either employers or employees conduct a public hearing for the purpose of the adoption, amendment or repeal of rules and regulations adopted under the authority of chapter 16, Laws of 1973 2nd ex. sess. [1994 c 164 § 17; 1973 2nd ex.s. c 16 § 7.]

49.12.105 Variance order—Application—Issuance—Contents—Termination. An employer may apply to the director for an order for a variance from any rule or regulation establishing a standard for wages, hours, or conditions of labor adopted by the director under this chapter. The director shall issue an order granting a variance if the director determines or decides that the applicant for the variance has shown good cause for the lack of compliance. Any order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, standards and processes which the employer must adopt and utilize to the extent they differ from the standard in question. At any time the director may terminate and revoke such order, provided the employer was notified by the director of the termination at least thirty days prior to said termination. [1994 c 164 § 18; 1973 2nd ex.s. c 16 § 8.]

49.12.110 Exceptions to minimum scale—Special certificate or permit. For any occupation in which a minimum wage has been established, the director may issue to an employer, a special certificate or permit for an employee who is physically or mentally handicapped to such a degree that he or she is unable to obtain employment in the competitive labor market, or to a trainee or learner not otherwise subject to the jurisdiction of the apprenticeship council, a special certificate or permit authorizing the employment of such employee for a wage less than the legal minimum wage; and the director shall fix the minimum wage for said person, such special certificate or permit to be issued only in such cases as the director may decide the same is applied for in good faith and that such certificate or permit shall be in force for such length of time as the director shall decide and determine is proper. [1994 c 164 § 19; 1977 ex.s. c 80 § 35; 1973 2nd ex.s. c 16 § 13; 1913 c 174 § 13; RRS § 7632.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

49.12.121 Wages and working conditions of minors—Special rules—Work permits. (1) The department may at any time inquire into wages, hours, and conditions of labor of minors employed in any trade, business, or occupation in the state of Washington and may adopt special rules for the protection of the safety, health, and welfare of minor employees. However, the rules may not limit the hours per day or per week, or other specified work period, that may be worked by minors who are emancipated by court order.

(2) The department shall issue work permits to employers for the employment of minors, after being assured the proposed employment of a minor meets the standards for the health, safety, and welfare of minors as set forth in the rules adopted by the department. No minor person shall be employed in any occupation, trade, or industry subject to chapter 16, Laws of 1973 2nd ex. sess., unless a work permit has been properly issued, with the consent of the parent, guardian, or other person having legal custody of the minor and with the approval of the school which such minor may then be attending. However, the consent of a parent, guardian, or other person, or the approval of the school which the minor may then be attending, is unnecessary if the minor is emancipated by court order.

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(3) The minimum wage for minors shall be as prescribed in RCW 49.46.020. [1993 c 294 § 9; 1989 c 1 § 3 (Initiative Measure No. 518, approved November 8, 1988); 1973 2nd ex.s. c 16 § 15.]

Effective date—1993 c 294: See RCW 13.64.900.

Effective date—1989 c 1 (Initiative Measure No. 518): See note following RCW 49.46.010.

49.12.123 Work permit for minor required. In implementing state policy to assure the attendance of children in the public schools it shall be required of any person, firm or corporation employing any minor under the age of eighteen years to obtain a work permit as set forth in RCW 49.12.121 and keep such permit on file during the employment of such minor, and upon termination of such employment of such minor to return such permit to the department of labor and industries. [1991 c 303 § 8; 1983 c 3 § 156; 1973 c 51 § 3.]

Severability—1973 c 51: See note following RCW 28A.225.010.

49.12.124 Actors or performers—Work permits and variances for minors. For all minors employed as actors or performers in film, video, audio, or theatrical productions, the department shall issue a permit under RCW 49.12.121 and a variance under RCW 49.12.105 upon finding that the terms of the employment sufficiently protect the minor's health, safety, and welfare. The findings shall be based on information provided to the department including, but not limited to, the minor's working conditions and planned work schedule, adult supervision of the minor, and any planned educational programs. [1994 c 62 § 2.]

49.12.130 Witness protected—Penalty. Any employer who discharges, or in any other manner discriminates against any employee because such employee has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings relative to the enforcement of RCW 49.12.010 through 49.12.180, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of from twenty-five dollars to one hundred dollars for each such misdemeanor. [1913 c 174 § 16; RRS § 7635.]

49.12.140 Complaint of noncompliance. Any worker or the parent or guardian of any minor to whom RCW 49.12.010 through 49.12.180 applies may complain to the director that the wages paid to the workers are less than the minimum rate and the director shall investigate the same and proceed under RCW 49.12.010 through 49.12.180 in behalf of the worker. [1994 c 164 § 20; 1913 c 174 § 17 1/2; RRS § 7637.]

49.12.150 Civil action to recover underpayment. If any employee shall receive less than the legal minimum wage, except as hereinbefore provided in RCW 49.12.110, said employee shall be entitled to recover in a civil action the full amount of the legal minimum wage as herein provided for, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited

with any wages which have been paid upon account. [1913 c 174 § 18; RRS § 7638.]

49.12.170 Penalty. Except as otherwise provided in RCW 49.12.390 or 49.12.410, any employer employing any person for whom a minimum wage or standards, conditions, and hours of labor have been specified, at less than said minimum wage, or under standards, or conditions of labor or at hours of labor prohibited by the rules and regulations of the director; or violating any other of the provisions of chapter 16, Laws of 1973 2nd ex. sess., shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars. [1994 c 164 § 21; 1991 c 303 § 6; 1973 2nd ex.s. c 16 § 16; 1913 c 174 § 17; RRS § 7636.]

Witnesses protected—Penalty: RCW 49.12.130.

49.12.175 Wage discrimination due to sex prohibited—Penalty—Civil recovery. Any employer in this state, employing both males and females, who shall discriminate in any way in the payment of wages as between sexes or who shall pay any female a less wage, be it time or piece work, or salary, than is being paid to males similarly employed, or in any employment formerly performed by males, shall be guilty of a misdemeanor. If any female employee shall receive less compensation because of being discriminated against on account of her sex, and in violation of this section, she shall be entitled to recover in a civil action the full amount of compensation that she would have received had she not been discriminated against. In such action, however, the employer shall be credited with any compensation which has been paid to her upon account. A differential in wages between employees based in good faith on a factor or factors other than sex shall not constitute discrimination within the meaning of RCW 49.12.010 through 49.12.180. [1943 c 254 § 1; Rem. Supp. 1943 § 7636-1. Formerly RCW 49.12.210.]

49.12.180 Annual report. The director shall report annually to the governor on its investigations and proceedings. [1994 c 164 § 22; 1977 c 75 § 73; 1913 c 174 § 20; RRS § 7640.]

49.12.185 Exemptions from chapter. Chapter 16, Laws of 1973 2nd ex. sess. shall not apply to newspaper vendors or carriers and domestic or casual labor in or about private residences and agricultural labor as defined in RCW 50.04.150, as now or hereafter amended. [1973 2nd ex.s. c 16 § 17.]

49.12.187 Collective bargaining rights not affected. This chapter shall not be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment. However, rules adopted under this chapter regarding appropriate rest and meal periods as applied to employees in the construction trades may be superseded by a collective bargaining agreement negotiated under the national labor relations act, 29 U.S.C. Sec. 151 et seq., if the terms of the collective bargaining agreement covering

such employees specifically require rest and meal periods and prescribe requirements concerning those rest and meal periods.

Employees of public employers may enter into collective bargaining contracts, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, rules adopted under this chapter regarding appropriate rest and meal periods. [2003 c 401 § 3; 2003 c 146 § 1; 1973 2nd ex.s. c 16 § 18.]

Reviser's note: This section was amended by 2003 c 146 § 1 and by 2003 c 401 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Purpose—Intent—2003 c 401: "The legislature finds that the enactment of chapter 236, Laws of 1988 amended the definition of employer under the industrial welfare act, chapter 49.12 RCW, to ensure that the family care provisions of that act applied to the state and political subdivisions. The legislature further finds that this amendment of the definition of employer may be interpreted as creating an ambiguity as to whether the other provisions of chapter 49.12 RCW have applied to the state and its political subdivisions. The purpose of this act is to make retroactive, remedial, curative, and technical amendments to clarify the intent of chapter 49.12 RCW and chapter 236, Laws of 1988 and resolve any ambiguity. It is the intent of the legislature to establish that, prior to May 20, 2003, chapter 49.12 RCW and the rules adopted thereunder did not apply to the state or its agencies and political subdivisions except as expressly provided for in RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370, 49.12.450, and 49.12.460." [2003 c 401 § 1.]

Effective date—2003 c 401: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 401 § 6.]

49.12.200 Women may pursue any calling open to men. That hereafter in this state every avenue of employment shall be open to women; and any business, vocation, profession and calling followed and pursued by men may be followed and pursued by women, and no person shall be disqualified from engaging in or pursuing any business, vocation, profession, calling or employment or excluded from any premises or place of work or employment on account of sex. [1963 c 229 § 1; 1890 p 519 § 1; RRS § 7620.]

Qualifications of electors: State Constitution Art. 6 § 1 (Amendment 63).

Sex equality—Rights and responsibility: State Constitution Art. 31 § 1, 2 (Amendment 61).

49.12.240 Employee inspection of personnel file. Every employer shall, at least annually, upon the request of an employee, permit that employee to inspect any or all of his or her own personnel file(s). [1985 c 336 § 1.]

Destruction or retention of information relating to state employee misconduct: RCW 41.06.450 through 41.06.460.

49.12.250 Employee inspection of personnel file—Erroneous or disputed information. (1) Each employer shall make such file(s) available locally within a reasonable period of time after the employee requests the file(s).

(2) An employee annually may petition that the employer review all information in the employee's personnel file(s) that are regularly maintained by the employer as a part of his business records or are subject to reference for information given to persons outside of the company. The employer shall determine if there is any irrelevant or erroneous information in the file(s), and shall remove all such infor-

mation from the file(s). If an employee does not agree with the employer's determination, the employee may at his or her request have placed in the employee's personnel file a statement containing the employee's rebuttal or correction. Nothing in this subsection prevents the employer from removing information more frequently.

(3) A former employee shall retain the right of rebuttal or correction for a period not to exceed two years. [1985 c 336 § 2.]

49.12.260 Employee inspection of personnel file—Limitations. RCW 49.12.240 and 49.12.250 do not apply to the records of an employee relating to the investigation of a possible criminal offense. RCW 49.12.240 and 49.12.250 do not apply to information or records compiled in preparation for an impending lawsuit which would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts. [1985 c 336 § 3.]

49.12.265 Sick leave, time off—Care of family members—Definitions. The definitions in this section apply throughout RCW 49.12.270 through 49.12.295 unless the context clearly requires otherwise.

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(2) "Grandparent" means a parent of a parent of an employee.

(3) "Parent" means a biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

(4) "Parent-in-law" means a parent of the spouse of an employee.

(5) "Sick leave or other paid time off" means time allowed under the terms of an appropriate collective bargaining agreement or employer policy, as applicable, to an employee for illness, vacation, and personal holiday.

(6) "Spouse" means a husband or wife, as the case may be. [2002 c 243 § 2.]

Effective date—2002 c 243: "This act takes effect January 1, 2003." [2002 c 243 § 4.]

49.12.270 Sick leave, time off—Care of family members. (1) If, under the terms of a collective bargaining agreement or employer policy applicable to an employee, the employee is entitled to sick leave or other paid time off, then an employer shall allow an employee to use any or all of the employee's choice of sick leave or other paid time off to care for: (a) A child of the employee with a health condition that requires treatment or supervision; or (b) a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency condition. An employee may not take advance leave until it has been earned. The employee taking leave under the circumstances described in this section must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms relating to the choice of leave.

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(2) Use of leave other than sick leave or other paid time off to care for a child, spouse, parent, parent-in-law, or grandparent under the circumstances described in this section shall be governed by the terms of the appropriate collective bargaining agreement or employer policy, as applicable. [2002 c 243 § 1; 1988 c 236 § 3.]

Effective date—2002 c 243: See note following RCW 49.12.265.

Legislative findings—1988 c 236: "The legislature recognizes the changing nature of the work force brought about by increasing numbers of working mothers, single parent households, and dual career families. The legislature finds that the needs of families must be balanced with the demands of the workplace to promote family stability and economic security. The legislature further finds that it is in the public interest for employers to accommodate employees by providing reasonable leaves from work for family reasons. In order to promote family stability, economic security, and the public interest, the legislature hereby establishes a minimum standard for family care. Nothing contained in this act shall prohibit any employer from establishing family care standards more generous than the minimum standards set forth in this act." [1988 c 236 § 1.]

Effective date—1988 c 236: "This act shall take effect on September 1, 1988." [1988 c 236 § 12.]

Implementation—1988 c 236: "Prior to September 1, 1988, the department of labor and industries may take such steps as are necessary to ensure that chapter 236, Laws of 1988 is implemented on September 1, 1988." [1988 c 236 § 10.]

Severability—1988 c 236: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 236 § 11.]

49.12.275 Sick leave, time off—Care of family members—Poster required. The department shall develop and furnish to each employer a poster which describes an employer's obligations and an employee's rights under RCW 49.12.270 through 49.12.295. The poster must include notice about any state law, rule, or regulation governing maternity disability leave and indicate that federal or local ordinances, laws, rules, or regulations may also apply. The poster must also include a telephone number and an address of the department to enable employees to obtain more information regarding RCW 49.12.270 through 49.12.295. Each employer must display this poster in a conspicuous place. Every employer shall also post its leave policies, if any, in a conspicuous place. Nothing in this section shall be construed to create a right to continued employment. [1988 c 236 § 2.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.280 Sick leave, time off—Care of family members—Administration and enforcement. The department shall administer and investigate violations of RCW 49.12.270 and 49.12.275. [1988 c 236 § 4.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.285 Sick leave, time off—Care of family members—Monetary penalties. The department may issue a notice of infraction if the department reasonably believes that an employer has failed to comply with RCW 49.12.270 or 49.12.275. The form of the notice of infraction shall be adopted by rule pursuant to chapter 34.05 RCW. An employer who is found to have committed an infraction under RCW 49.12.270 or 49.12.275 may be assessed a monetary penalty not to exceed two hundred dollars for each vio-

lation. An employer who repeatedly violates RCW 49.12.270 or 49.12.275 may be assessed a monetary penalty not to exceed one thousand dollars for each violation. For purposes of this section, the failure to comply with RCW 49.12.275 as to an employee or the failure to comply with RCW 49.12.270 as to a period of leave sought by an employee shall each constitute separate violations. An employer has twenty days to appeal the notice of infraction. Any appeal of a violation determined to be an infraction shall be heard and determined by an administrative law judge. Monetary penalties collected under this section shall be deposited into the general fund. [1988 c 236 § 5.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.287 Sick leave, time off—Care of family members—Discharge of employee not permitted. An employer shall not discharge, threaten to discharge, demote, suspend, discipline, or otherwise discriminate against an employee because the employee: (1) Has exercised, or attempted to exercise, any right provided under RCW 49.12.270 through 49.12.295; or (2) has filed a complaint, testified, or assisted in any proceeding under RCW 49.12.270 through 49.12.295. [2002 c 243 § 3.]

Effective date—2002 c 243: See note following RCW 49.12.265.

49.12.290 Sick leave, time off—Care of family members—Collective bargaining agreement not reduced. Nothing in RCW 49.12.270 through 49.12.295 shall be construed to reduce any provision in a collective bargaining agreement. [1988 c 236 § 6.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.295 Sick leave, time off—Care of family members—Notification of employers. The department shall notify all employers of the provisions of RCW 49.12.270 through 49.12.290. [1988 c 236 § 7.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.300 House-to-house sales by minor—Registration of employer. (1) No person under sixteen years of age may be employed in house-to-house sales unless the department grants a variance permitting specific employment under criteria adopted by department rule.

(2) No person sixteen or seventeen years of age may be employed in house-to-house sales unless the employer:

(a) Obtains and maintains a validated registration certificate issued by the department. Application for registration shall be made on a form prescribed by the director, which shall include but not be limited to:

(i) The employer's name, permanent address, and telephone number;

(ii) The employer's social security number and industrial insurance number or, in lieu of these numbers, the employer's unified business identifier account number; and

(iii) A description of the work to be performed by persons aged sixteen or seventeen and the working conditions under which the work will be performed;

(b) Provides each employee sixteen or seventeen years of age, before beginning work, an identification card in a form prescribed by the director. The card shall include, but not be limited to, a picture of the employee, the employee's name, the name and address of the employer, a statement that the employer is registered with the department of labor and industries, and the registration number. The person employed in house-to-house sales shall show the identification card to each customer or potential customer of the person;

(c) Ensures supervision by a person aged twenty-one years or over during all working hours, with each supervisor responsible for no more than five persons; and

(d) If transporting an employee sixteen or seventeen years of age to another state, obtains the express written consent of the employee's parent or legal guardian.

(3) An employer may not employ a person sixteen or seventeen years of age in house-to-house sales after the hour of nine p.m.

(4) The department shall adopt by rule procedures for the renewal, denial, or revocation of registrations required by this section. [1989 c 216 § 1.]

49.12.310 House-to-house sales by minor—Advertising by employer—Penalty. (1) Any person advertising to employ a person in house-to-house sales with an advertisement specifically prescribing a minimum age requirement that is under the age of twenty-one shall:

(a) Register with the department as provided in RCW 49.12.300(2)(a); and

(b) Include the following information in any advertisement:

(i) The registration number required by subsection (1)(a) of this section;

(ii) The specific nature of the employment and the product or services to be sold; and

(iii) The average monthly compensation paid in the previous six months to new employees, taking into account any deductions made pursuant to the employment contract.

(2) Advertising to recruit or employ a person in house-to-house sales shall not be false, misleading, or deceptive.

(3) A violation of this section is an unfair act or practice in violation of the consumer protection act, chapter 19.86 RCW. The remedies and sanctions provided under chapter 19.86 RCW shall not preclude application of other available remedies and sanctions.

(4) No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement may be subject to penalties by reason of dissemination of any false, misleading, or deceptive advertisement, or for an advertisement that fails to meet the requirements of subsection (1) of this section, unless he or she has refused on the request of the director to furnish the name and address of the person purchasing the advertising. [1989 c 216 § 2.]

49.12.320 Definitions. For the purposes of RCW 49.12.300 and 49.12.310:

(1) "Employ" includes to engage, suffer, or permit to work, but does not include voluntary or donated services performed for no compensation, or without expectation or con-

templation of compensation as the adequate consideration for the services performed, for an educational, charitable, religious, state or local government body or agency, or nonprofit organization, or services performed by a newspaper vendor or a person in the employ of his or her parent or stepparent.

(2) "House-to-house sales" includes a sale or other transaction in consumer goods, the demonstration of products or equipment, the obtaining of orders for consumer goods, or the obtaining of contracts for services, in which the employee personally solicits the sale or transaction at a place other than the place of business of the employer. [1989 c 216 § 3.]

49.12.330 Rules. The department shall adopt rules to implement RCW 49.12.300 through 49.12.320. [1989 c 216 § 4.]

49.12.350 Parental leave—Legislative findings. The legislature finds that employers often distinguish between biological parents, and adoptive parents and stepparents in their employee leave policies. Many employers who grant leave to their employees to care for a newborn child either have no policy or establish a more restrictive policy regarding whether an adoptive parent or stepparent can take similar leave. The legislature further finds that many employers establish different leave policies for men and women regarding the care of a newborn or newly placed child. The legislature recognizes that the bonding that occurs between a parent and child is important to the nurturing of that child, regardless of whether the parent is the child's biological parent and regardless of the gender of the parent. For these reasons, the legislature declares that it is the public policy of this state to require that employers who grant leave to their employees to care for a newborn child make the same leave available upon the same terms for adoptive parents and stepparents, men and women. [1989 1st ex.s. c 11 § 22.]

Severability—Effective date—1989 1st ex.s. c 11: See RCW 49.78.900 and 49.78.901.

49.12.360 Parental leave—Discrimination prohibited. (1) An employer must grant an adoptive parent or a stepparent, at the time of birth or initial placement for adoption of a child under the age of six, the same leave under the same terms as the employer grants to biological parents. As a term of leave, an employer may restrict leave to those living with the child at the time of birth or initial placement.

(2) An employer must grant the same leave upon the same terms for men as it does for women.

(3) The department shall administer and investigate violations of this section. Notices of infraction, penalties, and appeals shall be administered in the same manner as violations under RCW 49.12.285.

(4) For purposes of this section, "leave" means any leave from employment granted to care for a newborn or a newly adopted child at the time of placement for adoption.

(5) Nothing in this section requires an employer to:

(a) Grant leave equivalent to maternity disability leave; or

(b) Establish a leave policy to care for a newborn or newly placed child if no such leave policy is in place for any of its employees. [2003 c 401 § 4; 1989 1st ex.s. c 11 § 23.]

(2004 Ed.)

Findings—Purpose—Intent—Effective date—2003 c 401: See notes following RCW 49.12.187.

Severability—Effective date—1989 1st ex.s. c 11: See RCW 49.78.900 and 49.78.901.

49.12.370 Parental leave—Collective bargaining agreement or employee benefit plan—Application. In the case of employees covered by an unexpired collective bargaining agreement that expires on or after September 1, 1989, or by an employee benefit program or plan with a stated year ending on or after September 1, 1989, the effective date of RCW 49.12.360 shall be the later of: (1) The first day following expiration of the collective bargaining agreement; or (2) the first day of the next plan year. [1989 1st ex.s. c 11 § 24.]

Severability—Effective date—1989 1st ex.s. c 11: See RCW 49.78.900 and 49.78.901.

49.12.380 Child labor laws—Information program. Upon adoption of the rules under *section 1 of this act, the department of labor and industries shall implement a comprehensive program to inform employers of the rules adopted. The program shall include mailings, public service announcements, seminars, and any other means deemed appropriate to inform all Washington employers of their rights and responsibilities regarding the employment of minors. [1991 c 303 § 2.]

***Reviser's note:** Section 1 of this act, which amended RCW 49.12.121, was vetoed by the governor.

49.12.390 Child labor laws—Violations—Civil penalties—Restraining orders. (1)(a) Except as otherwise provided in subsection (2) of this section, if the director, or the director's designee, finds that an employer has violated any of the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, a citation stating the violations shall be issued to the employer. The citation shall be in writing, describing the nature of the violation including reference to the standards, rules, or orders alleged to have been violated. An initial citation for failure to comply with RCW 49.12.123 or rules requiring a minor work permit and maintenance of records shall state a specific and reasonable time for abatement of the violation to allow the employer to correct the violation without penalty. The director or the director's designee may establish a specific time for abatement of other nonserious violations in lieu of a penalty for first time violations. The citation and a proposed penalty assessment shall be given to the highest management official available at the workplace or be mailed to the employer at the workplace. In addition, the department shall mail a copy of the citation and proposed penalty assessment to the central personnel office of the employer. Citations issued under this section shall be posted at or near the place where the violation occurred.

(b) Except when an employer corrects a violation as provided in (a) of this subsection, he or she shall be assessed a civil penalty of not more than one thousand dollars depending on the size of the business and the gravity of the violation. The employer shall pay the amount assessed within thirty days of receipt of the assessment or notify the director of his or her intent to appeal the citation or the assessment penalty as provided in RCW 49.12.400.

(2) If the director, or the director's designee, finds that an employer has committed a serious or repeated violation of the requirements of RCW 49.12.121 or 49.12.123, or any rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, the employer is subject to a civil penalty of not more than one thousand dollars for each day the violation continues. For the purposes of this subsection, a serious violation shall be deemed to exist if death or serious physical harm has resulted or is imminent from a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use by the employer, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) In addition to any other authority provided in this section, if, upon inspection or investigation, the director, or director's designee, believes that an employer has violated RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, and that the violation creates a danger from which there is a substantial probability that death or serious physical harm could result to a minor employee, the director, or director's designee, may issue an order immediately restraining the condition, practice, method, process, or means creating the danger in the workplace. An order issued under this subsection may require the employer to take steps necessary to avoid, correct, or remove the danger and to prohibit the employment or presence of a minor in locations or under conditions where the danger exists.

(4) An employer who violates any of the posting requirements of RCW 49.12.121 or rules adopted implementing RCW 49.12.121 shall be assessed a civil penalty of not more than one hundred dollars for each violation.

(5) A person who gives advance notice, without the authority of the director, of an inspection to be conducted under this chapter shall be assessed a civil penalty of not more than one thousand dollars.

(6) Penalties assessed under this section shall be paid to the director and deposited into the general fund. [1991 c 303 § 3.]

49.12.400 Child labor laws—Appeal. A person, firm, or corporation aggrieved by an action taken or decision made by the department under RCW 49.12.390 may appeal the action or decision to the director by filing notice of the appeal with the director within thirty days of the department's action or decision. A notice of appeal filed under this section shall stay the effectiveness of a citation or notice of the assessment of a penalty pending review of the appeal by the director, but such appeal shall not stay the effectiveness of an order of immediate restraint issued under RCW 49.12.390. Upon receipt of an appeal, a hearing shall be held in accordance with chapter 34.05 RCW. The director shall issue all final orders after the hearing. The final orders are subject to appeal in accordance with chapter 34.05 RCW. Orders not appealed within the time period specified in chapter 34.05 RCW are final and binding. [1991 c 303 § 4.]

49.12.410 Child labor laws—Violations—Criminal penalties. (1) An employer who knowingly or recklessly

violates the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, is guilty of a gross misdemeanor.

(2) An employer whose practices in violation of the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, result in the death or permanent disability of a minor employee is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 273; 1991 c 303 § 5.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

49.12.420 Child labor laws—Exclusive remedies. The penalties established in RCW 49.12.390 and 49.12.410 for violations of RCW 49.12.121 and 49.12.123 are exclusive remedies. [1991 c 303 § 7.]

49.12.450 Compensation for required employee work apparel—Exceptions—Changes—Rules—Expiration of subsection. (1) Notwithstanding the provisions of chapter 49.46 RCW or other provisions of this chapter, the obligation of an employer to furnish or compensate an employee for apparel required during work hours shall be determined only under this section.

(2) Employers are not required to furnish or compensate employees for apparel that an employer requires an employee to wear during working hours unless the required apparel is a uniform.

(3) As used in this section, "uniform" means:

(a) Apparel of a distinctive style and quality that, when worn outside of the workplace, clearly identifies the person as an employee of a specific employer;

(b) Apparel that is specially marked with an employer's logo;

(c) Unique apparel representing an historical time period or an ethnic tradition; or

(d) Formal apparel.

(4) Except as provided in subsection (5) of this section, if an employer requires an employee to wear apparel of a common color that conforms to a general dress code or style, the employer is not required to furnish or compensate an employee for that apparel. For the purposes of this subsection, "common color" is limited to the following colors or light or dark variations of such colors: White, tan, or blue, for tops; and tan, black, blue, or gray, for bottoms. An employer is permitted to require an employee to obtain two sets of wearing apparel to accommodate for the seasonal changes in weather which necessitate a change in wearing apparel.

(5) If an employer changes the color or colors of apparel required to be worn by any of his or her employees during a two-year period of time, the employer shall furnish or compensate the employees for the apparel. The employer shall be required to furnish or compensate only those employees who are affected by the change. The two-year time period begins on the date the change in wearing apparel goes into effect and ends two years from this date. The beginning and end of the two-year time period applies to all employees regardless of when the employee is hired.

(6) The department shall utilize negotiated rule making as defined by RCW 34.05.310(2)(a) in the development and

adoption of rules defining apparel that conforms to a general dress code or style. This subsection expires January 1, 2000.

(7) For the purposes of this section, personal protective equipment required for employee protection under chapter 49.17 RCW is not deemed to be employee wearing apparel. [1998 c 334 § 2.]

Construction—1998 c 334: "Nothing in this act shall be construed to alter the terms, conditions, or practices contained in any collective bargaining agreement in effect at the time of June 11, 1998, until the expiration date of such agreement." [1998 c 334 § 3.]

49.12.460 Volunteer fire fighters, reserve officers—Employer duties—Violations. (1) An employer may not discharge from employment or discipline a volunteer fire fighter or reserve officer because of leave taken related to an alarm of fire or an emergency call.

(2)(a) A volunteer fire fighter or reserve officer who believes he or she was discharged or disciplined in violation of this section may file a complaint alleging the violation with the director. The volunteer fire fighter or reserve officer may allege a violation only by filing such a complaint within ninety days of the alleged violation.

(b) Upon receipt of the complaint, the director must cause an investigation to be made as the director deems appropriate and must determine whether this section has been violated. Notice of the director's determination must be sent to the complainant and the employer within ninety days of receipt of the complaint.

(c) If the director determines that this section was violated and the employer fails to reinstate the employee or withdraw the disciplinary action taken against the employee, whichever is applicable, within thirty days of receipt of notice of the director's determination, the volunteer fire fighter or reserve officer may bring an action against the employer alleging a violation of this section and seeking reinstatement or withdrawal of the disciplinary action.

(d) In any action brought under this section, the superior court shall have jurisdiction, for cause shown, to restrain violations under this section and to order reinstatement of the employee or withdrawal of the disciplinary action.

(3) For the purposes of this section:

(a) "Alarm of fire or emergency call" means responding to, working at, or returning from a fire alarm or an emergency call, but not participating in training or other nonemergency activities.

(b) "Employer" means an employer who had twenty or more full-time equivalent employees in the previous year.

(c) "Reinstatement" means reinstatement with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the employee's personnel file, if a file is maintained by the employer.

(d) "Withdrawal of disciplinary action" means withdrawal of disciplinary action with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the employee's personnel file, if a file is maintained by the employer.

(e) "Volunteer fire fighter" means a fire fighter who:

(i) Is not paid;

(ii) Is not already at his or her place of employment when called to serve as a volunteer, unless the employer agrees to provide such an accommodation; and

(iii) Has been ordered to remain at his or her position by the commanding authority at the scene of the fire.

(f) "Reserve officer" has the meaning provided in RCW 41.24.010.

(4) The legislature declares that the public policies articulated in this section depend on the procedures established in this section and no civil or criminal action may be maintained relying on the public policies articulated in this section without complying with the procedures set forth in this section, and to that end all civil actions and civil causes of action for such injuries and all jurisdiction of the courts of this state over such causes are hereby abolished, except as provided in this section. [2004 c 44 § 1; 2003 c 401 § 5; 2001 c 173 § 1.]

Findings—Purpose—Intent—Effective date—2003 c 401: See notes following RCW 49.12.187.

49.12.900 Severability—1973 2nd ex.s. c 16. If any provision of this 1973 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 16 § 20.]

49.12.901 Severability—1991 c 303. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 303 § 10.]

49.12.902 Effective date—1991 c 303 §§ 3-7. Sections 3 through 7 of this act shall take effect April 1, 1992. [1991 c 303 § 12.]

Chapter 49.17 RCW

WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

Sections

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49.17.010 Purpose. The legislature finds that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the industrial insurance act. Therefore, in the public interest for the welfare of the people of the state of Washington and in order to assure, insofar as may reasonably be possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature in the exercise of its police power, and in keeping with the mandates of Article II, section 35 of the state Constitution, declares its purpose by the provisions of this chapter to create, maintain, continue, and enhance the industrial safety and health program of the state, which program shall equal or exceed the standards prescribed by the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590). [1973 c 80 § 1.]

Industrial insurance: Title 51 RCW.

49.17.020 Definitions. For the purposes of this chapter:

(1) The term "agriculture" means farming and includes, but is not limited to:

- (a) The cultivation and tillage of the soil;
- (b) Dairying;
- (c) The production, cultivation, growing, and harvesting of any agricultural or horticultural commodity;
- (d) The raising of livestock, bees, fur-bearing animals, or poultry; and
- (e) Any practices performed by a farmer or on a farm, incident to or in connection with such farming operations, including but not limited to preparation for market and delivery to:
 - (i) Storage;
 - (ii) Market; or
 - (iii) Carriers for transportation to market.

The term "agriculture" does not mean a farmer's processing for sale or handling for sale a commodity or product

grown or produced by a person other than the farmer or the farmer's employees.

(2) The term "director" means the director of the department of labor and industries, or his designated representative.

(3) The term "department" means the department of labor and industries.

(4) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: PROVIDED, That any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee.

(5) The term "employee" means an employee of an employer who is employed in the business of his employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his personal labor for an employer under this chapter whether by way of manual labor or otherwise.

(6) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(7) The term "safety and health standard" means a standard which requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(8) The term "work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all work places covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(9) The term "working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this chapter, shall be computed by excluding the first working day and including the last working day. [1997 c 362 § 2; 1973 c 80 § 2.]

Department of labor and industries: Chapter 43.22 RCW.

49.17.022 Legislative findings and intent—Definition of agriculture. The legislature finds that the state's farms are diverse in their nature and the owners, managers, and their employees continually find new ways to plant, raise, harvest, process, store, market, and distribute their products. The legislature further finds that the department of labor and industries needs guidance in determining when activities related to agricultural products are to be regulated as agricultural activities and when they should be regulated as other activities. It is the intent of the legislature that activities performed by a farmer as incident to or in conjunction with his or her farming

activities be regulated as agricultural activities. For this purpose, an agricultural activity is to be interpreted broadly, based on the definition of "agriculture" in RCW 49.17.020. [1997 c 362 § 1.]

49.17.030 Application of chapter—Fees and charges.

This chapter shall apply with respect to employment performed in any work place within the state. The department of labor and industries shall provide by rule for a schedule of fees and charges to be paid by each employer subject to this chapter who is not subject to or obtaining coverage under the industrial insurance laws and who is not a self-insurer. The fees and charges collected shall be for the purpose of defraying such employer's pro rata share of the expenses of enforcing and administering this chapter. [1973 c 80 § 3.]

49.17.040 Rules and regulations—Authority—Procedure. The director shall make, adopt, modify, and repeal rules and regulations governing safety and health standards for conditions of employment as authorized by this chapter after a public hearing in conformance with the administrative procedure act and the provisions of this chapter. At least thirty days prior to such public hearing, the director shall cause public notice of such hearing to be made in newspapers of general circulation in this state, of the date, time, and place of such public hearing, along with a general description of the subject matter of the proposed rules and information as to where copies of any rules and regulations proposed for adoption may be obtained and with a solicitation for recommendations in writing or suggestions for inclusion or changes in such rules to be submitted not later than five days prior to such public hearing. Any preexisting rules adopted by the department of labor and industries relating to health and safety standards in work places subject to the jurisdiction of the department shall remain effective insofar as such rules are not inconsistent with the provisions of this chapter. [1973 c 80 § 4.]

49.17.041 Agricultural safety standards—Limitation on adopting or establishing between January 1, 1995, through January 15, 1996—Requirements. (1)(a) Except as provided in (b) of this subsection, no rules adopted under this chapter amending or establishing agricultural safety standards shall take effect during the period beginning January 1, 1995, and ending January 15, 1996. This subsection applies, but is not limited to applying, to a rule adopted before January 1, 1995, but with an effective date which is during the period beginning January 1, 1995, and ending January 15, 1996, and to provisions of rules adopted prior to January 1, 1995, which provisions are to become effective during the period beginning January 1, 1995, and ending January 15, 1996.

(b) Subsection (1)(a) of this section does not apply to: Provisions of rules that were in effect before January 1, 1995; emergency rules adopted under RCW 34.05.350; or revisions to chapter 296-306 WAC regarding rollover protective structures that were adopted in 1994 and effective March 1, 1995, and that are additionally revised to refer to the variance process available under this chapter.

(2004 Ed.)

(2) The rules for agricultural safety adopted under this chapter must:

(a) Establish, for agricultural employers, an agriculture safety standard that includes agriculture-specific rules and specific references to the general industry safety standard adopted under chapter 49.17 RCW; and

(b) Exempt agricultural employers from the general industry safety standard adopted under chapter 49.17 RCW for all rules not specifically referenced in the agriculture safety standard.

(3) The department shall publish in one volume all of the occupational safety rules that apply to agricultural employers and shall make this volume available to all agricultural employers before January 15, 1996. This volume must be available in both English and Spanish.

(4) The department shall provide training, education, and enhanced consultation services concerning its agricultural safety rules to agricultural employers before the rules' effective dates. The training, education, and consultation must continue throughout the winter of 1995-1996. Training and education programs must be provided throughout the state and must be coordinated with agricultural associations in order to meet their members' needs.

(5) The department shall provide, for informational purposes, a list of commercially available rollover protective structures for tractors used in agricultural operations manufactured before October 25, 1976. The list must include the name and address of the manufacturer and the approximate price of the structure. Included with the list shall be a statement indicating that an employer may apply for a variance from the rules requiring rollover protective structures under this chapter and that variances may be granted in appropriate circumstances on a case-by-case basis. The statement shall also provide examples of circumstances under which a variance may be granted. The list and statement shall be generally available to the agricultural community before the department may take any action to enforce rules requiring rollover protective structures for tractors used in agricultural operations manufactured before October 25, 1976. [1995 c 371 § 2.]

Finding—1995 c 371: "The legislature finds that:

(1) The state's highly productive and efficient agricultural sector is composed predominately of family-owned and managed farms and an industrious and efficient work force;

(2) A reasonable level of safety regulations is needed to protect workers;

(3) The smaller but highly efficient farming operations would benefit from safety rules that are easily referenced and agriculture-specific to the extent possible; and

(4) There should be lead time between the adoption of agriculture safety rules and their effective date in order to allow the department of labor and industries to provide training, education, and enhanced consultation services to family-owned and managed farms." [1995 c 371 § 1.]

Application—1995 c 371 § 2: "Section 2(1) of this act is remedial in nature and applies to rules and provisions of rules regarding agricultural safety that would take effect after December 31, 1994." [1995 c 371 § 4.]

49.17.050 Rules and regulations—Guidelines—Standards. In the adoption of rules and regulations under the authority of this chapter, the director shall:

(1) Provide for the preparation, adoption, amendment, or repeal of rules and regulations of safety and health standards

governing the conditions of employment of general and special application in all work places;

(2) Provide for the adoption of occupational health and safety standards which are at least as effective as those adopted or recognized by the United States secretary of labor under the authority of the Occupational Safety and Health Act of 1970 (Public Law 91-596; 84 Stat. 1590);

(3) Provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards at their work places and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(4) Provide for the promulgation of health and safety standards and the control of conditions in all work places concerning gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life; any such standards shall require where appropriate the use of protective devices or equipment and for monitoring or measuring any such gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents;

(5) Provide for appropriate reporting procedures by employers with respect to such information relating to conditions of employment which will assist in achieving the objectives of this chapter;

(6) Provide for the frequency, method, and manner of the making of inspections of work places without advance notice; and,

(7) Provide for the publication and dissemination to employers, employees, and labor organizations and the posting where appropriate by employers of informational, education, or training materials calculated to aid and assist in achieving the objectives of this chapter;

(8) Provide for the establishment of new and the perfection and expansion of existing programs for occupational safety and health education for employers and employees, and, in addition institute methods and procedures for the establishment of a program for voluntary compliance solely through the use of advice and consultation with employers and employees with recommendations including recommendations of methods to abate violations relating to the requirements of this chapter and all applicable safety and health standards and rules and regulations promulgated pursuant to the authority of this chapter;

(9) Provide for the adoption of safety and health standards requiring the use of safeguards in trenches and excavations and around openings of hoistways, hatchways, elevators, stairways, and similar openings;

(10) Provide for the promulgation of health and safety standards requiring the use of safeguards for all vats, pans, trimmers, cut off, gang edger, and other saws, planers, presses, formers, cogs, gearing, belting, shafting, coupling, set screws, live rollers, conveyors, mangles in laundries, and machinery of similar description, which can be effectively guarded with due regard to the ordinary use of such machin-

ery and appliances and the danger to employees therefrom, and with which the employees of any such work place may come in contact while in the performance of their duties and prescribe methods, practices, or processes to be followed by employers which will enhance the health and safety of employees in the performance of their duties when in proximity to machinery or appliances mentioned in this subsection;

(11) Certify that no later than twenty business days prior to the effective date of any significant legislative rule, as defined by RCW 34.05.328, a meeting of impacted parties is convened to: (a) Identify ambiguities and problem areas in the rule; (b) coordinate education and public relations efforts by all parties; (c) provide comments regarding internal department training and enforcement plans; and (d) provide comments regarding appropriate evaluation mechanisms to determine the effectiveness of the new rule. The meeting shall include a balanced representation of both business and labor from impacted industries, department personnel responsible for the above subject areas, and other agencies or key stakeholder groups as determined by the department. An existing advisory committee may be utilized if appropriate. [1998 c 224 § 1; 1973 c 80 § 5.]

49.17.055 WISHA advisory committee—Appointment of members—Duties—Terms, compensation, and expenses. The director shall appoint a WISHA advisory committee composed of ten members: Four members representing subject workers, each of whom shall be appointed from a list of at least three names submitted by a recognized statewide organization of employees, representing a majority of employees; four members representing subject employers, each of whom shall be appointed from a list of at least three names submitted by a recognized statewide organization of employers, representing a majority of employers; and two ex officio members, without a vote, one of whom shall be the chairperson of the board of industrial insurance appeals, and the other representing the department. The member representing the department shall be chairperson. The committee shall provide comment on department rule making, policies, and other initiatives. The committee shall also conduct a continuing study of any aspect of safety and health the committee determines to require their consideration. The committee shall report its findings to the department or the board of industrial insurance appeals for action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1997, and the terms of the members representing the workers and employers shall be staggered so that the director shall designate one member from each group initially appointed whose term shall expire on June 30, 1998, and one member from each group whose term shall expire on June 30, 1999. The members shall serve without compensation, but are entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060. The committee may hire such experts, if any, as it requires to discharge its duties and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it needs, without charge. All expenses of the committee must be paid by the department. [1997 c 107 § 1.]

49.17.060 Employer—General safety standard—Compliance. Each employer:

(1) Shall furnish to each of his employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his employees: PROVIDED, That no citation or order assessing a penalty shall be issued to any employer solely under the authority of this subsection except where no applicable rule or regulation has been adopted by the department covering the unsafe or unhealthful condition of employment at the work place; and

(2) Shall comply with the rules, regulations, and orders promulgated under this chapter. [1973 c 80 § 6.]

49.17.070 Right of entry—Inspections and investigations—Subpoenas—Contempt. The director, or his authorized representative, in carrying out his duties under this chapter, upon the presentation of appropriate credentials to the owner, manager, operator, or agent in charge, is authorized:

(1) To enter without delay and at all reasonable times the factory, plant, establishment, construction site, or other area, work place, or environment where work is performed by an employee of an employer; and

(2) To inspect, survey, and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such work place and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee;

(3) In making inspections and making investigations under this chapter the director may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the superior courts. In the case of contumacy, failure, or refusal of any person to obey such an order, any superior court within the jurisdiction of which such person is found, or resides, or transacts business, upon the application of the director, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof. [1973 c 80 § 7.]

49.17.080 Variance from safety and health standards—Application—Contents—Procedure. (1) Any employer may apply to the director for a temporary order granting a variance from any safety and health standard promulgated by rule or regulation under the authority of this chapter. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection (2) of this section and establishes that the employer is unable to comply with a safety or health standard because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the safety and health standard or because necessary construction or alteration of facilities cannot be completed by the effective date of such safety and health standard, that he is taking all available steps to safeguard his employees against the hazards covered by the safety and

health standard, and he has an effective program for coming into compliance with such safety and health standard as quickly as practicable. Any temporary order issued under the authority of this subsection shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the safety and health standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing upon request of the employer or any affected employee. The name of any affected employee requesting a hearing under the provisions of this subsection shall be confidential and shall not be disclosed without the consent of such employee. The director may issue one interim order to be effective until a determination is made or a decision rendered if a hearing is demanded. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter, except that such an order may be renewed not more than twice, so long as the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date of the order. No renewal of a temporary order may remain in effect for longer than one hundred eighty days.

(2) An application for a temporary order under this section shall contain:

(a) A specification of the safety and health standard or portion thereof from which the employer seeks a variance;

(b) A representation by the employer, supported by representations from qualified persons having first hand knowledge of the facts represented, that he is unable to comply with the safety and health standard or portion thereof and a detailed statement of the reasons therefor;

(c) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;

(d) A statement as to when the employer expects to be able to comply with the standard or portion thereof and what steps he has taken and will take, with dates specified, to come into compliance with the standard; and

(e) A certification that the employer, by the date of mailing or delivery of the application to the director, has informed his employees of the application by providing a copy thereof to his employees or their authorized representative by posting a copy of such application in a place or places reasonably accessible to all employees or by other appropriate means of notification and by mailing a copy to the authorized representative of such employees; the application shall set forth the manner in which the employees have been so informed. The application shall also advise employees and their employee representatives of their right to apply to the director to conduct a hearing upon the application for a variance. [1973 c 80 § 8.]

49.17.090 Variance from safety and health standards—Notice—Hearing—Order—Modification or revocation. Any employer may apply to the director for an order for a variance from any rule or regulation establishing a safety and health standard promulgated under this chapter. Affected employees shall be given notice of each such application and in the manner prescribed by RCW 49.17.080 shall

be informed of their right to request a hearing on any such application. The director shall issue such order granting a variance, after opportunity for an inspection, if he determines or decides after a hearing has been held, if request for hearing has been made, that the applicant for the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by such applicant employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the safety and health standard or standards from which the variance is sought. The order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. At any time after six months has elapsed from the date of the issuance of the order granting a variance upon application of an employer, employee, or the director on his own motion, after notice has been given in the manner prescribed for the issuance of such order may modify or revoke the order granting the variance from any standard promulgated under the authority of this chapter. [1973 c 80 § 9.]

49.17.100 Inspection—Employer and employee representatives. A representative of the employer and an employee representative authorized by the employees of such employer shall be given an opportunity to accompany the director, or his authorized representative, during the physical inspection of any work place for the purpose of aiding such inspection. Where there is no authorized employee representative, the director or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the work place. The director may adopt procedural rules and regulations to implement the provisions of this section: PROVIDED, That neither this section, nor any other provision of this chapter, shall be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment which equal or exceed those established under the authority of this chapter. [1986 c 192 § 1; 1973 c 80 § 10.]

49.17.110 Compliance by employee—Violations—Notice—Review. Each employee shall comply with the provisions of this chapter and all rules, regulations, and orders issued pursuant to the authority of this chapter which are applicable to his own actions and conduct in the course of his employment. Any employee or representative of employees who in good faith believes that a violation of a safety or health standard, promulgated by rule under the authority of this chapter exists that threatens physical harm to employees, or that an imminent danger to such employees exists, may request an inspection of the work place by giving notice to the director or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the

employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to any provision of this chapter. If upon receipt of such notification the director determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection as soon as practicable, to determine if such violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employer and the employee or representative of the employees in writing of such determination.

Prior to or during any inspection of a work place, any employee or representative of employees employed in such work place may notify the director or any representative of the director responsible for conducting the inspection, in writing, of any violation of this chapter which he has reason to believe exists in such work place. The director shall, by rule, establish procedures for informal review of any refusal by a representative of the director to issue a citation with respect to any such alleged violation, and shall furnish the employee or representative of employees requesting such review a written statement of the reasons for the director's final disposition of the case. [1973 c 80 § 11.]

49.17.120 Violations—Citations. (1) If upon inspection or investigation the director or his or her authorized representative believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rule adopted by the director, or the conditions of any order granting a variance pursuant to this chapter, the director shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the statute, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.

(2) The director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(3) Each citation, or a copy or copies thereof, issued under the authority of this section and RCW 49.17.130 shall be prominently posted, at or near each place a violation referred to in the citation occurred or as may otherwise be prescribed in regulations issued by the director. The director shall provide by rule for procedures to be followed by an employee representative upon written application to receive copies of citations and notices issued to any employer having employees who are represented by such employee representative. Such rule may prescribe the form of such application, the time for renewal of applications, and the eligibility of the applicant to receive copies of citations and notices.

(4) No citation may be issued under this section or RCW 49.17.130 after the expiration of six months following a compliance inspection, investigation, or survey revealing any such violation.

(5)(a) No citation may be issued under this section if there is unpreventable employee misconduct that led to the violation, but the employer must show the existence of:

- (i) A thorough safety program, including work rules, training, and equipment designed to prevent the violation;
- (ii) Adequate communication of these rules to employees;
- (iii) Steps to discover and correct violations of its safety rules; and
- (iv) Effective enforcement of its safety program as written in practice and not just in theory.

(b) This subsection (5) does not eliminate or modify any other defenses that may exist to a citation. [1999 c 93 § 1; 1973 c 80 § 12.]

49.17.130 Violations—Dangerous conditions—Citations and orders of immediate restraint—Restraints—Restraining orders. (1) If upon inspection or investigation, the director, or his authorized representative, believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rules of the department, or any conditions of an order granting a variance, which violation is such that a danger exists from which there is a substantial probability that death or serious physical harm could result to any employee, the director or his authorized representative shall issue a citation and may issue an order immediately restraining any such condition, practice, method, process, or means in the work place. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation in order that the resumption of normal operations may be had without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. In addition, if any machine or equipment, or any part thereof, is in violation of a requirement of RCW 49.17.060 or any safety or health standard promulgated by rules of the department, and the operation of such machine or equipment gives rise to a substantial probability that death or serious physical harm could result to any employee, and an order of immediate restraint of the use of such machine or equipment has been issued under this subsection, the use of such machine or equipment is prohibited, and a notice to that effect shall be attached thereto by the director or his authorized representative.

(2) Whenever the director, or his authorized representative, concludes that a condition of employment described in subsection (1) of this section exists in any work place, he shall promptly inform the affected employees and employers of the danger.

(3) At any time that a citation or a citation and order restraining any condition of employment or practice described in subsection (1) of this section is issued by the director, or his authorized representative, he may in addition request the attorney general to make an application to the superior court of the county wherein such condition of employment or practice exists for a temporary restraining

order or such other relief as appears to be appropriate under the circumstances. [1973 c 80 § 13.]

49.17.140 Appeal to board—Citation or notification of assessment of penalty—Final order—Procedure—Redetermination—Hearing. (1) If after an inspection or investigation the director or the director's authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer by certified mail of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that the employer wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that the employer intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (3) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted in the citation for its correction, which period shall not begin to run until the entry of a final order in the case of any appeal proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the director shall notify the employer by certified mail of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If any employer notifies the director that the employer intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days. The thirty-working-day redetermination

period may be extended up to fifteen additional working days upon agreement of all parties to the appeal. The redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the redetermination period. A notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond the employer's control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation. [1994 c 61 § 1; 1986 c 20 § 1; 1973 c 80 § 14.]

49.17.150 Appeal to superior court—Review or enforcement of orders. (1) Any person aggrieved by an order of the board of industrial insurance appeals issued under RCW 49.17.140(3) may obtain a review of such order in the superior court for the county in which the violation is alleged to have occurred, by filing in such court within thirty days following the communication of the board's order or denial of any petition or petitions for review, a written notice of appeal praying that the order be modified or set aside. Such appeal shall be perfected by filing with the clerk of the court and by serving a copy thereof by mail, or personally, on the director and on the board. The board shall thereupon transmit a copy of the notice of appeal to all parties who participated in proceedings before the board, and shall file in the court the complete record of the proceedings. Upon such filing the court shall have jurisdiction of the proceeding and of the

question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings and the record of proceedings a decree affirming, modifying, or setting aside in all or in part, the decision of the board of industrial insurance appeals and enforcing the same to the extent that such order is affirmed or modified. The commencement of appellate proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the board of industrial insurance appeals. No objection that has not been urged before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board or hearing examiner where the board has denied a petition or petitions for review with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact are supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and the judgment and decree shall be final, except as the same shall be subject to review by the supreme court. Appeals filed under this subsection shall be heard expeditiously.

(2) The director may also obtain review or enforcement of any final order of the board by filing a petition for such relief in the superior court for the county in which the alleged violation occurred. The provisions of subsection (1) of this section shall govern such proceeding to the extent applicable. If a notice of appeal, as provided in subsection (1) of this section, is not filed within thirty days after service of the board's order, the board's findings of fact, decision, and order or the examiner's findings of fact, decision, and order when a petition or petitions for review have been denied shall be conclusive in connection with any petition for enforcement which is filed by the director after the expiration of such thirty day period. In any such case, as well as in the case of an unappealed citation or a notification of the assessment of a penalty by the director, which has become a final order under subsection (1) or (2) of RCW 49.17.140 upon application of the director, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the citation and notice of assessment of penalty and shall transmit a copy of such decree to the director and the employer named in the director's petition. In any contempt proceeding brought to enforce a decree of the superior court entered pursuant to this subsection or subsection (1) of this section the superior court may assess the penalties provided in RCW 49.17.180, in addition to invoking any other available remedies. [1982 c 109 § 1; 1973 c 80 § 15.]

49.17.160 Discrimination against employee filing complaint, instituting proceedings, or testifying prohibited—Procedure—Remedy. (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after such violation occurs, file a complaint with the director alleging such discrimination. Upon receipt of such complaint, the director shall cause such investigation to be made as he deems appropriate. If upon such investigation, the director determines that the provisions of this section have been violated, he shall bring an action in the superior court of the county wherein the violation is alleged to have occurred against the person or persons who is alleged to have violated the provisions of this section. If the director determines that the provisions of this section have not been violated, the employee may institute the action on his own behalf within thirty days of such determination. In any such action the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within ninety days of the receipt of the complaint filed under this section, the director shall notify the complainant of his determination under subsection (2) of this section. [1973 c 80 § 16.]

49.17.170 Injunctions—Temporary restraining orders. (1) In addition to and after having invoked the powers of restraint vested in the director as provided in RCW 49.17.130 the superior courts of the state of Washington shall have jurisdiction upon petition of the director, through the attorney general, to enjoin any condition or practice in any work place from which there is a substantial probability that death or serious physical harm could result to any employee immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation to resume normal operation without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(2) Upon the filing of any such petition the superior courts of the state of Washington shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of enforcement proceedings pursuant to this chapter, except that no temporary restraining order issued without notice shall be effective for a period longer than five working days.

(3) Whenever and as soon as any authorized representative of the director concludes that a condition or practice described in subsection (1) exists in any work place, he shall inform the affected employees and employers of the danger and may recommend to the director that relief be sought under this section.

(4) If the director arbitrarily or capriciously fails to invoke his restraining authority under RCW 49.17.130 or fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the director in the superior court for the county in which the danger is alleged to exist for a writ of mandamus to compel the director to seek such an order and for such further relief as may be appropriate or seek the director to exercise his restraining authority under RCW 49.17.130. [1973 c 80 § 17.]

49.17.180 Violations—Civil penalties. (1) Except as provided in RCW 43.05.090, any employer who willfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed seventy thousand dollars for each violation. A minimum penalty of five thousand dollars shall be assessed for a willful violation.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (6) of this section, shall be assessed a civil penalty not to exceed seven thousand dollars for each such violation.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (6) of this section, may be assessed a civil penalty not to exceed seven thousand dollars for each such violation, unless such violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues.

(5) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules promulgated by the department pursuant to

this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall be assessed a penalty not to exceed seven thousand dollars for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty not to exceed seven thousand dollars for each such violation.

(6) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(7) The director, or his authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(8) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150. [1995 c 403 § 629; 1991 c 108 § 1; 1986 c 20 § 2; 1973 c 80 § 18.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

49.17.190 Violations—Criminal penalties. (1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months or by both.

(3) Any employer who wilfully and knowingly violates the requirements of RCW 49.17.060, any safety or health standard promulgated under this chapter, any existing rule or regulation governing the safety or health conditions of employment and adopted by the director, or any order issued granting a variance under RCW 49.17.080 or 49.17.090 and that violation caused death to any employee shall, upon conviction be guilty of a gross misdemeanor and be punished by

a fine of not more than one hundred thousand dollars or by imprisonment for not more than six months or by both; except, that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than two hundred thousand dollars or by imprisonment for not more than one year, or by both.

(4) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or means in the work place, pursuant to RCW 49.17.130 or 49.17.170, and who nevertheless continues such condition, practice, method, process, or means, or who continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached, shall be guilty of a gross misdemeanor, and upon conviction shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months, or by both.

(5) Any employer who shall knowingly remove, displace, damage, or destroy, or cause to be removed, displaced, damaged, or destroyed any safety device or safeguard required to be present and maintained by any safety or health standard, rule, or order promulgated pursuant to this chapter, or pursuant to the authority vested in the director under RCW 43.22.050 shall, upon conviction, be guilty of a misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or by both.

(6) Whenever the director has reasonable cause to believe that any provision of this section defining a crime has been violated by an employer, the director shall cause a record of such alleged violation to be prepared, a copy of which shall be referred to the prosecuting attorney of the county wherein such alleged violation occurred, and the prosecuting attorney of such county shall in writing advise the director of the disposition he shall make of the alleged violation. [1986 c 20 § 3; 1973 c 80 § 19.]

49.17.200 Confidentiality—Trade secrets. All information reported to or otherwise obtained by the director, or his authorized representative, in connection with any inspection or proceeding under the authority of this chapter, which contains or which might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. [1973 c 80 § 20.]

Uniform trade secrets act: Chapter 19.108 RCW.

49.17.210 Research, experiments, and demonstrations for safety purposes—Confidentiality of information—Variances. The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. Employer identity, employee identity, and personal identifiers of voluntary participants in research, experiments, and demonstrations shall be deemed confidential and shall not be open to public inspection. Information obtained from such

voluntary activities shall not be deemed to be medical information for the purpose of RCW 51.36.060 and shall be deemed confidential and shall not be open to public inspection. The director, in his or her discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he or she determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, and the experiment is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment. [1991 c 89 § 1; 1973 c 80 § 21.]

49.17.220 Records—Reports—Notice to employee exposed to harmful materials. (1) Each employer shall make, keep, and preserve, and make available to the director such records regarding his activities relating to this chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The director shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health standards.

(2) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this chapter and shall inform any employee who is being thus exposed of the corrective action being taken. [1973 c 80 § 22.]

49.17.230 Compliance with federal act—Agreements and acceptance of grants authorized. The director is authorized to adopt by rule any provision reasonably necessary to enable this state to qualify a state plan under section 18 of the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590) to enable this state to assume the

responsibility for the development and enforcement of occupational safety and health standards in all work places within this state subject to the legislative jurisdiction of the state of Washington. The director is authorized to enter into agreement with the United States and to accept on behalf of the state of Washington grants of funds to implement the development and enforcement of this chapter and the Occupational Safety and Health Act of 1970. [1973 c 80 § 23.]

49.17.240 Safety and health standards. (1) The director in the promulgation of rules under the authority of this chapter shall establish safety and health standards for conditions of employment of general and/or specific applicability for all industries, businesses, occupations, crafts, trades, and employments subject to the provisions of this chapter, or those that are a national or accepted federal standard. In adopting safety and health standards for conditions of employment, the director shall solicit and give due regard to all recommendations by any employer, employee, or labor representative of employees.

(2) Any safety and health standard adopted by rule of the director shall, where appropriate, prescribe the use of labels or other forms of warning to insure that employees are apprised of all hazards to which they may be exposed, relevant symptoms, and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such rules shall so prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be reasonably necessary for the protection of employees. In addition, where appropriate, any such rule shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event that such medical examinations are in the nature of research, as determined by the director, such examinations may be furnished at the expense of the department. The results of such examinations or tests shall be furnished only to the director, other appropriate agencies of government, and at the request of the employee to his physician.

(3) Whenever the director adopts by rule any safety and health standard he may at the same time provide by rule the effective date of such standard which shall not be less than thirty days, excepting emergency rules, but may be made effective at such time in excess of thirty days from the date of adoption as specified in any rule adopting a safety and health standard. Any rule not made effective thirty days after adoption, having a delayed effectiveness in excess of thirty days, may only be made upon a finding made by the director that such delayed effectiveness of the rule is reasonably necessary to afford the affected employers a reasonable opportunity to make changes in methods, means, or practices to meet the requirements of the adopted rule. Temporary orders granting a variance may be utilized by the director in lieu of the delayed effectiveness in the adoption of any rule. [1973 c 80 § 24.]

49.17.250 Voluntary compliance program—Consultation and advisory services. (1) In carrying out the responsibilities for the development of a voluntary compliance program under the authority of RCW 49.17.050(8) and the rendering of advisory and consultative services to employers, the director may grant an employer's application for advice and consultation, and for the purpose of affording such consultation and advice visit the employer's work place. Such consultation and advice shall be limited to the matters specified in the request affecting the interpretation and applicability of safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's work place. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or an authorized representative, will make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: **PROVIDED**, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any work place which has been visited for consultative purposes. However, in the event of a subsequent inspection, the director, or an authorized representative, may in his or her discretion take into consideration any information obtained during the consultation visit of that work place in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be advised of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. Infor-

mation obtained by the department as a result of employer-requested consultation and training services shall be deemed confidential and shall not be open to public inspection. Within thirty days of receipt, the employer shall make voluntary services reports available to employees or their collective bargaining representatives for review. Employers may satisfy the availability requirement by requesting a copy of the reports from the department. The director may provide by rule for the frequency, manner, and method of the rendering of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter. [1991 c 89 § 2; 1973 c 80 § 25.]

49.17.260 Statistics—Investigations—Reports. In furtherance of the objects and purposes of this chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any work place subject to this chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this chapter, or any safety and health standard, rule, or order promulgated pursuant to this chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the superior court after notice to the director and an opportunity for hearing: **PROVIDED**, That such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured workman or his legal representative or his labor organization representative, or to the legal representative or labor organization representative of a deceased workman who was the subject of an investigation, or to the employer of the injured or deceased workman or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action. [1973 c 80 § 26.]

49.17.270 Administration of chapter. The department shall be the sole and paramount administrative agency responsible for the administration of the provisions of this chapter, and any other agency of the state or any municipal corporation or political subdivision of the state having administrative authority over the inspection, survey, investigation, or any regulatory or enforcement authority of safety and health standards related to the health and safety of employees in any work place subject to this chapter, shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter and subject to interagency agreement or agreements with the department made under the authority of the interlocal cooperation act (chapter 39.34 RCW) relative to the procedures to be fol-

lowed in the enforcement of this chapter: PROVIDED, That in relation to employers using or possessing sources of ionizing radiation the department of labor and industries and the department of social and health services shall agree upon mutual policies, rules, and regulations compatible with policies, rules, and regulations adopted pursuant to chapter 70.98 RCW insofar as such policies, rules, and regulations are not inconsistent with the provisions of this chapter. [1973 c 80 § 27.]

49.17.280 Agricultural workers and handlers of agricultural pesticides—Coordination of regulation and enforcement with department of agriculture. (1) As used in this section, "federal worker protection standard" or "federal standard" means the worker protection standard for agricultural workers and handlers of agricultural pesticides adopted by the United States environmental protection agency in 40 C.F.R., part 170 as it exists on June 6, 1996.

(2)(a) No rule adopted under this chapter may impose requirements that make compliance with the federal worker protection standard impossible.

(b) The department shall adopt by rule safety and health standards that are at least as effective as the federal standard. Standards adopted by the department under this section shall be adopted in coordination with the department of agriculture.

(3) If a violation of the federal worker protection standard, or of state rules regulating activities governed by the federal standard, is investigated by the department and by the department of agriculture, the agencies shall conduct a joint investigation if feasible, and shall share relevant information. However, an investigation conducted by the department under Title 51 RCW solely with regard to industrial insurance shall not be considered to be an investigation by the department for this purpose. The agencies shall not issue duplicate citations to an individual or business for the same violation of the federal standard or state rules regulating activities governed by the federal standard. By December 1, 1996, the department and the department of agriculture shall jointly establish a formal agreement that: Identifies the roles of each of the two agencies in conducting investigations of activities governed by the federal standard; and provides for protection of workers and enforcement of standards that is at least as effective as provided to all workers under this chapter. The department's role under the agreement shall not extend beyond protection of safety and health in the workplace as provided under this chapter. [1996 c 260 § 2.]

Finding—Intent—1996 c 260: "The legislature finds that the state's highly productive and efficient agriculture sector is composed predominately of family owned and managed farms and an industrious and efficient work force. It is the intent of the legislature that the department of agriculture and the department of labor and industries coordinate adoption, implementation, and enforcement of a common set of worker protection standards related to pesticides in order to avoid inconsistency and conflict in the application of those rules. It is also the intent of the legislature that the department of agriculture and the department of labor and industries coordinate investigations with the department of health as well. Further, coordination of enforcement procedures under chapter 260, Laws of 1996 shall not reduce the effectiveness of the enforcement provisions of the Washington industrial safety and health act of 1973 or the Washington pesticide application act. Finally, when the department of agriculture or the department of labor and industries anticipates regulatory changes to standards regarding pesticide application and handling, they shall involve the affected parties in the rule-making process and solicit relevant information. The department of agriculture and the

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department of labor and industries shall identify differences in their respective jurisdictions and penalty structures and publish those differences." [1996 c 260 § 1.]

Severability—1996 c 260: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 260 § 6.]

Department of agriculture authority: RCW 17.21.440.

49.17.285 Medical monitoring—Records on covered pesticides—Reports. Employers whose employees receive medical monitoring under chapter 296-307 WAC, Part J-1, shall submit records to the department of labor and industries each month indicating the name of each worker tested, the number of hours that each worker handled covered pesticides during the thirty days prior to testing, and the number of hours that each worker handled covered pesticides during the current calendar year. The department of labor and industries shall work with the department of health to correlate this data with each employee's test results. No later than January 1, 2005, the department of labor and industries shall require employers to report this data to the physician or other licensed health care professional and department of health public health laboratory or other approved laboratory when each employee's cholinesterase test is taken. The department shall also require employers to provide each employee who receives medical monitoring with: (1) A copy of the data that the employer reports for that employee upon that employee's request; and (2) access to the records on which the employer's report is based. [2004 c 272 § 1.]

Effective date—2004 c 272: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2004]." [2004 c 272 § 4.]

49.17.288 Cholinesterase monitoring—Reports. By January 1, 2005, January 1, 2006, and January 1, 2007, the department of labor and industries shall report the results of its data collection, correlation, and analysis related to cholinesterase monitoring to the house of representatives committees on agriculture and natural resources and commerce and labor, or their successor committees, and the senate committees on agriculture and commerce and trade, or their successor committees. These reports shall also identify any technical issues regarding the testing of cholinesterase levels or the administration of cholinesterase monitoring. [2004 c 272 § 2.]

Effective date—2004 c 272: See note following RCW 49.17.285.

49.17.300 Temporary worker housing—Electricity—Storage, handling, preparation of food—Rules. By December 1, 1998, the department of labor and industries shall adopt rules requiring electricity in all temporary worker housing and establishing minimum requirements to ensure the safe storage, handling, and preparation of food in these camps, regardless of whether individual or common cooking facilities are in use. [1998 c 37 § 3.]

49.17.310 Temporary worker housing—Licensing, operation, and inspection—Rules—Definition. The department and the department of health shall adopt joint rules for the licensing, operation, and inspection of temporary

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worker housing, and the enforcement thereof. For the purposes of this section "temporary worker housing" has the same meaning as given in RCW 70.114A.020. [1999 c 374 § 2.]

49.17.320 Temporary worker housing operation standards—Departments' agreement—Enforcement—

Definition. By December 1, 1999, the department and the department of health shall jointly establish a formal agreement that identifies the roles of each of the two agencies with respect to the enforcement of temporary worker housing operation standards.

The agreement shall, to the extent feasible, provide for inspection and enforcement actions by a single agency, and shall include measures to avoid multiple citations for the same violation.

For the purposes of this section, "temporary worker housing" has the same meaning as provided in RCW 70.114A.020. [1999 c 374 § 4.]

49.17.350 Flaggers. (1) The director of the department of labor and industries shall adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards governing flaggers.

(2) The transportation commission shall adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards governing flaggers.

(3) The utilities and transportation commission shall adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards and employment qualifications governing flaggers.

(4) The permanent rules adopted pursuant to this section shall be designed to improve options available to ensure the safety of flaggers, ensure that flaggers have adequate visual warning of objects approaching from behind them, and, with respect to the utilities and transportation commission rules, update employment qualifications for flaggers.

(5) In developing permanent rules adopted pursuant to this section, state agencies and commissions shall consult with other persons with an interest in improving safety standards and updating employment qualifications for flaggers. State agencies and commissions shall coordinate and make consistent, to the extent possible, permanent rules. State agencies and commissions shall report, by April 22, 2001, to the senate labor and workforce development committee and the house of representatives commerce and labor committee on the permanent rules adopted pursuant to this section. [2000 c 239 § 2.]

Emergency rules: "(1) The director of the department of labor and industries shall adopt emergency rules that take effect no later than June 1, 2000, revising any safety standards governing flaggers.

(2) The transportation commission shall adopt emergency rules that take effect no later than June 1, 2000, revising any safety standards governing flaggers.

(3) The utilities and transportation commission shall adopt emergency rules that take effect no later than June 1, 2000, revising any safety standards governing flaggers.

(4) Notwithstanding RCW 34.05.350, the emergency rules adopted pursuant to this section shall remain in effect or be adopted in sequence until March 1, 2001, or the effective date of the permanent rules adopted pursuant to RCW 49.17.350, whichever is earlier.

(5) The emergency rules adopted pursuant to this section shall be designed to improve options available to ensure the safety of flaggers, and

ensure that flaggers have adequate visual warning of objects approaching from behind them.

(6) In developing emergency rules adopted pursuant to this section, state agencies and commissions shall consult with other persons with an interest in improving safety standards for flaggers. State agencies and commissions shall report, by September 15, 2000, to the senate labor and workforce development committee and the house of representatives commerce and labor committee on the emergency rules adopted pursuant to this section." [2000 c 239 § 1.]

Effective date—2000 c 239 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 31, 2000]." [2000 c 239 § 9.]

Short title—2000 c 239 §§ 1 and 2: "Sections 1 and 2 of this act may be known and cited as the "Kim Vendl Worker Safety Act."" [2000 c 239 § 10.]

Captions not law—2000 c 239: "Captions used in this act are not any part of the law." [2000 c 239 § 11.]

49.17.360 Ergonomics Initiative—Intent. Washington must aid businesses in creating new jobs. Governor Locke's competitiveness council has identified repealing the state ergonomics regulations as a top priority for improving the business climate and creating jobs in Washington state. A broad coalition of democrats and republicans have introduced bills repeatedly to bring legislative oversight to this issue. This measure will repeal an expensive, unproven rule. This measure will aid in creating jobs and employing the people of Washington. [2004 c 1 § 1 (Initiative Measure No. 841, approved November 4, 2003).]

Construction—Severability—2004 c 1 (Initiative Measure No. 841): See notes following RCW 49.17.370.

49.17.370 Ergonomics Initiative—Definition—Rule repeal. For the purposes of this section, "state ergonomics regulations" are defined as the rules addressing musculoskeletal disorders, adopted on May 26, 2000, by the director of the department of labor and industries, and codified as WAC 296-62-05101 through 296-62-05176. The state ergonomics regulations, filed on May 26, 2000, by the director and codified as WAC 296-62-05101 through 296-62-05176 are repealed. The director shall not have the authority to adopt any new or amended rules dealing with musculoskeletal disorders, or that deal with the same or similar activities as these rules being repealed, until and to the extent required by congress or the federal occupational safety and health administration. [2004 c 1 § 2 (Initiative Measure No. 841, approved November 4, 2003).]

Construction—2004 c 1 (Initiative Measure No. 841): "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2004 c 1 § 3 (Initiative Measure No. 841, approved November 4, 2003).]

Severability—2004 c 1 (Initiative Measure No. 841): "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 1 § 4 (Initiative Measure No. 841, approved November 4, 2003).]

49.17.900 Short title. This act shall be known and cited as the Washington Industrial Safety and Health Act of 1973. [1973 c 80 § 29.]

49.17.910 Severability—1973 c 80. If any provision of this act, or its application to any person or circumstance is

held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 80 § 30.]

Chapter 49.19 RCW

SAFETY—HEALTH CARE SETTINGS

Sections

49.19.005	Findings—1999 c 377.
49.19.010	Definitions.
49.19.020	Workplace violence plan—Security and safety assessment.
49.19.030	Violence prevention training.
49.19.040	Violent acts—Records.
49.19.050	Noncompliance—Penalties.
49.19.060	Health care setting—Assistance.
49.19.070	Intent—Finding—Enforcement.

49.19.005 Findings—1999 c 377. The legislature finds that:

(1) Violence is an escalating problem in many health care settings in this state and across the nation;

(2) Based on an analysis of workers' compensation claims, the department of labor and industries reports that health care employees face the highest rate of workplace violence in Washington state;

(3) The actual incidence of workplace violence in health care settings is likely to be greater than documented because of failure to report or failure to maintain records of incidents that are reported;

(4) Patients, visitors, and health care employees should be assured a reasonably safe and secure environment in health care settings; and

(5) Many health care settings have undertaken efforts to assure that patients, visitors, and employees are safe from violence, but additional personnel training and appropriate safeguards may be needed to prevent workplace violence and minimize the risk and dangers affecting people in health care settings. [1999 c 377 § 1.]

49.19.010 Definitions. For purposes of this chapter:

(1) "Health care setting" means:

(a) Hospitals as defined in RCW 70.41.020;

(b) Home health, hospice, and home care agencies under chapter 70.127 RCW, subject to RCW 49.19.070;

(c) Evaluation and treatment facilities as defined in *RCW 71.05.020(12); and

(d) Community mental health programs as defined in RCW 71.24.025(5).

(2) "Department" means the department of labor and industries.

(3) "Employee" means an employee as defined in RCW 49.17.020.

(4) "Violence" or "violent act" means any physical assault or verbal threat of physical assault against an employee of a health care setting. [2000 c 94 § 18; 1999 c 377 § 2.]

*Reviser's note: "Evaluation and treatment facility" is defined in RCW 71.05.020(13).

49.19.020 Workplace violence plan—Security and safety assessment. (1) By July 1, 2000, each health care setting shall develop and implement a plan to reasonably pre-

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vent and protect employees from violence at the setting. The plan shall address security considerations related to the following items, as appropriate to the particular setting, based upon the hazards identified in the assessment required under subsection (2) of this section:

(a) The physical attributes of the health care setting;

(b) Staffing, including security staffing;

(c) Personnel policies;

(d) First aid and emergency procedures;

(e) The reporting of violent acts; and

(f) Employee education and training.

(2) Before the development of the plan required under subsection (1) of this section, each health care setting shall conduct a security and safety assessment to identify existing or potential hazards for violence and determine the appropriate preventive action to be taken. The assessment shall include, but is not limited to, a measure of the frequency of, and an identification of the causes for and consequences of, violent acts at the setting during at least the preceding five years or for the years records are available for assessments involving home health, hospice, and home care agencies.

(3) In developing the plan required by subsection (1) of this section, the health care setting may consider any guidelines on violence in the workplace or in health care settings issued by the department of health, the department of social and health services, the department of labor and industries, the federal occupational safety and health administration, medicare, and health care setting accrediting organizations. [1999 c 377 § 3.]

49.19.030 Violence prevention training. By July 1, 2001, and on a regular basis thereafter, as set forth in the plan developed under RCW 49.19.020, each health care setting shall provide violence prevention training to all its affected employees as determined by the plan. The training shall occur within ninety days of the employee's initial hiring date unless he or she is a temporary employee. For temporary employees, training would take into account unique circumstances. The training may vary by the plan and may include, but is not limited to, classes, videotapes, brochures, verbal training, or other verbal or written training that is determined to be appropriate under the plan. The training shall address the following topics, as appropriate to the particular setting and to the duties and responsibilities of the particular employee being trained, based upon the hazards identified in the assessment required under RCW 49.19.020:

(1) General safety procedures;

(2) Personal safety procedures;

(3) The violence escalation cycle;

(4) Violence-predicting factors;

(5) Obtaining patient history from a patient with violent behavior;

(6) Verbal and physical techniques to de-escalate and minimize violent behavior;

(7) Strategies to avoid physical harm;

(8) Restraining techniques;

(9) Appropriate use of medications as chemical restraints;

(10) Documenting and reporting incidents;

(11) The process whereby employees affected by a violent act may debrief;

(12) Any resources available to employees for coping with violence; and

(13) The health care setting's workplace violence prevention plan. [1999 c 377 § 4.]

49.19.040 Violent acts—Records. Beginning no later than July 1, 2000, each health care setting shall keep a record of any violent act against an employee, a patient, or a visitor occurring at the setting. At a minimum, the record shall include:

- (1) The health care setting's name and address;
- (2) The date, time, and specific location at the health care setting where the act occurred;
- (3) The name, job title, department or ward assignment, and staff identification or social security number of the victim if an employee;
- (4) A description of the person against whom the act was committed as:
 - (a) A patient;
 - (b) A visitor;
 - (c) An employee; or
 - (d) Other;
- (5) A description of the person committing the act as:
 - (a) A patient;
 - (b) A visitor;
 - (c) An employee; or
 - (d) Other;
- (6) A description of the type of violent act as a:
 - (a) Threat of assault with no physical contact;
 - (b) Physical assault with contact but no physical injury;
 - (c) Physical assault with mild soreness, surface abrasions, scratches, or small bruises;
 - (d) Physical assault with major soreness, cuts, or large bruises;
 - (e) Physical assault with severe lacerations, a bone fracture, or a head injury; or
 - (f) Physical assault with loss of limb or death;
 - (7) An identification of any body part injured;
 - (8) A description of any weapon used;
 - (9) The number of employees in the vicinity of the act when it occurred; and
 - (10) A description of actions taken by employees and the health care setting in response to the act. Each record shall be kept for at least five years following the act reported, during which time it shall be available for inspection by the department upon request. [1999 c 377 § 5.]

49.19.050 Noncompliance—Penalties. Failure of a health care setting to comply with this chapter shall subject the setting to citation under chapter 49.17 RCW. [1999 c 377 § 6.]

49.19.060 Health care setting—Assistance. A health care setting needing assistance to comply with this chapter may contact the federal department of labor or the state department of labor and industries for assistance. The state departments of labor and industries, social and health services, and health shall collaborate with representatives of health care settings to develop technical assistance and training seminars on plan development and implementation, and

shall coordinate their assistance to health care settings. [1999 c 377 § 7.]

49.19.070 Intent—Finding—Enforcement. It is the intent of the legislature that any violence protection and prevention plan developed under this chapter be appropriate to the setting in which it is to be implemented. To that end, the legislature recognizes that not all professional health care is provided in a facility or other formal setting, such as a hospital. Many services are provided by home health, hospice, and home care agencies. The legislature finds that it is inappropriate and impractical for these agencies to address workplace violence in the same manner as other, facility-based, health care settings. When enforcing this chapter as to home health, hospice, and home care agencies, the department shall allow agencies sufficient flexibility in recognition of the unique circumstances in which these agencies deliver services. [1999 c 377 § 8.]

Chapter 49.22 RCW

SAFETY—CRIME PREVENTION

Sections

49.22.010	Definitions.
49.22.020	Late night retail establishments—Duties.
49.22.030	Enforcement.
49.22.900	Effective date—Implementation—1989 c 357.

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

(1) "Department" means the department of labor and industries.

(2) "Late night retail establishment" means any business or commercial establishment making sales to the public between the hours of eleven o'clock p.m. and six o'clock a.m., except restaurants, hotels, taverns, or any lodging facility.

(3) "Employer" means the operator, lessee, or franchisee of a late night retail establishment. [1989 c 357 § 1.]

49.22.020 Late night retail establishments—Duties. In addition to providing crime prevention training as provided in *section 2 of this act, all employers operating late night retail establishments shall:

(1) Post a conspicuous sign in the window or door which states that there is a safe on the premises and it is not accessible to the employees on the premises and that the cash register contains only the minimal amount of cash needed to conduct business: PROVIDED, That an employer shall not be subject to penalties under RCW 49.22.030 for having moneys in the cash register in excess of the minimal amount needed to conduct business;

(2) So arrange all material posted in the window or door so as to provide a clear and unobstructed view of the cash register, provided the cash register is otherwise in a position visible from the street;

(3) Have a drop-safe, limited access safe, or comparable device on the premises; and

(4) Operate the outside lights for that portion of the parking area that is necessary to accommodate customers during all night hours the late night retail establishment is open, if

the late night retail establishment has a parking area for its customers. [1989 c 357 § 3.]

***Reviser's note:** "Section 2 of this act" was vetoed by the governor.

49.22.030 Enforcement. The requirements of this chapter shall be implemented and enforced, including rules, citations, violations, penalties, appeals, and other administrative procedures by the director of the department of labor and industries pursuant to the Washington industrial safety and health act of 1973, chapter 49.17 RCW. [1989 c 357 § 4.]

49.22.900 Effective date—Implementation—1989 c 357. This act shall take effect January 1, 1990. The director of the department of labor and industries may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1989 c 357 § 7.]

Chapter 49.24 RCW HEALTH AND SAFETY— UNDERGROUND WORKERS

Sections

49.24.010	Pressure defined.
49.24.020	Compressed air safety requirements.
49.24.030	Medical and nursing attendants.
49.24.040	Examination as to physical fitness.
49.24.060	Penalty.
49.24.070	Enforcement.
49.24.080	Requirements for underground labor.
49.24.100	Lighting appliances.
49.24.110	Exhaust valves.
49.24.120	Fire prevention.
49.24.130	Air chambers—Hanging walks.
49.24.140	Locks.
49.24.150	Explosives and detonators.
49.24.160	Air plant—Feed water.
49.24.170	Electric power requirements.
49.24.180	Inspection.
49.24.190	Cars, cages, buckets—Employees riding or walking.
49.24.200	Speed of vehicles.
49.24.210	Oil supply restricted.
49.24.220	Explosives, use of—Blasting.
49.24.230	Firing switch—Warning by blaster.
49.24.240	Inspection after blast.
49.24.250	Code of signals.
49.24.260	Requirements as to caissons.
49.24.270	Shields to be provided.
49.24.280	Caissons to be braced.
49.24.290	Cages—Hoisting apparatus.
49.24.300	Buckets in vertical shafts.
49.24.310	Telephone system for tunnels.
49.24.320	Location of lights.
49.24.330	Generators, transformers, etc., to be grounded.
49.24.340	Electrical voltage.
49.24.350	Lamps to be held in reserve.
49.24.360	Insulators required.
49.24.370	Director to make rules and regulations.
49.24.380	Penalty.

Coal mining code: Title 78 RCW.

Protection of employees: State Constitution Art. 2 § 35.

Supervisor of safety: RCW 43.22.040.

49.24.010 Pressure defined. The term "pressure" means gauge air pressure in pounds per square inch. [1937 c 131 § 1; RRS § 7666-1.]

49.24.020 Compressed air safety requirements. Every employer of persons for work in compressed air shall:

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(1) Connect at least two air pipes with the working chamber and keep such pipes in perfect working condition;

(2) Attach to the working chamber in accessible positions all instruments necessary to show its pressure and keep such instruments in charge of competent persons, with a period of duty for each such person not exceeding six hours in any twenty-four;

(3) Place in each shaft a safe ladder extending its entire length;

(4) Light properly and keep clear such passageway;

(5) Provide independent lighting systems for the working chamber and shaft leading to it, when electricity is used for lighting;

(6) Guard lights other than electric lights;

(7) Protect workmen by a shield erected in the working chamber when such chamber is less than ten feet long and is suspended with more than nine feet space between its deck and the bottom of the excavation;

(8) Provide for and keep accessible to employees working in compressed air a dressing room heated, lighted and ventilated properly and supplied with benches, lockers, sanitary waterclosets, bathing facilities and hot and cold water;

(9) Establish and maintain a medical lock properly heated, lighted, ventilated and supplied with medicines and surgical implements, when the maximum air pressure exceeds seventeen pounds. [1937 c 131 § 2; RRS § 7666-2.]

49.24.030 Medical and nursing attendants. Every employer of persons for work in compressed air shall:

(1) Keep at the place of work at all necessary times a duly qualified medical officer to care for cases of illness and to administer strictly and enforce RCW 49.24.020 and 49.24.040;

(2) Keep at a medical lock required by RCW 49.24.020(9) a certified nurse selected by the medical officer required by subdivision (1) of this section and qualified to give temporary relief in cases of illness. [1937 c 131 § 3; RRS § 7666-3.]

49.24.040 Examination as to physical fitness. If an employee is a new employee, an absentee for ten or more successive days, an employee who has worked in compressed air continuously for three months or a beginner in compressed air who has worked but a single shaft [shift] as required by *RCW 49.24.050, the officer required by RCW 49.24.030(1) shall examine him and declare him physically fit to work in compressed air before permitting him to enter or reenter the working chamber. Excessive users of intoxicants shall not be permitted to work in compressed air. [1937 c 131 § 4; RRS § 7666-4.]

***Reviser's note:** RCW 49.24.050 was repealed by 1963 c 105 § 1.

49.24.060 Penalty. Violation of or noncompliance with any provision of *this article by any employer, manager, superintendent, foreman or other person having direction or control of such work shall be a gross misdemeanor punishable by a fine of not less than two hundred and fifty dollars or by imprisonment for not more than one year or by both such fine and imprisonment. [1937 c 131 § 7; RRS § 7666-7.]

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***Reviser's note:** "this article" appears in 1937 c 131, an eight section act that was not subdivided by "article" organization. The act is codified as RCW 49.24.010 through 49.24.070.

49.24.070 Enforcement. The director of labor and industries shall have the power and it shall be the director's duty to enforce the provisions of RCW 49.24.010 through 49.24.070. Any authorized inspector or agent of the department may issue and serve upon the employer or person in charge of such work, an order requiring compliance with a special provision or specific provisions of RCW 49.24.010 through 49.24.070 and directing the discontinuance of any employment of persons in compressed air in connection with such work until such specific provision or provisions have been complied with by such employer to the satisfaction of the department. [1994 c 164 § 23; 1973 1st ex.s. c 52 § 7; 1937 c 131 § 8; RRS § 7666-8.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

49.24.080 Requirements for underground labor. Every person, firm or corporation constructing, building or operating a tunnel, quarry, caisson or subway, excepting in connection with mines, with or without compressed air, shall in the employment of any labor comply with the following safety provisions:

(1) A safety miner shall be selected by the crew on each shift who shall check the conditions necessary to make the working place safe; such as loose rock, faulty timbers, poor rails, lights, ladders, scaffolds, fan pipes and firing lines.

(2) Ventilating fans shall be installed from twenty-five to one hundred feet outside the portal.

(3) No employee shall be allowed to "bar down" without the assistance of another employee.

(4) No employee shall be permitted to return to the heading until at least thirty minutes after blasting.

(5) Whenever persons are employed in wet places, the employer shall furnish such persons with rubbers, boots, coats and hats. All boots if worn previously by an employee shall be sterilized before being furnished to another: PROVIDED, That RCW 49.24.080 through 49.24.380 shall not apply to the operation of a railroad except that new construction of tunnels, caissons or subways in connection therewith shall be subject to the provisions of RCW 49.24.080 through 49.24.380: PROVIDED, FURTHER, That in the event of repair work being done in a railroad tunnel, no person shall be compelled to perform labor until the air has been cleared of smoke, gas and fumes. [1973 1st ex.s. c 154 § 89; 1965 c 144 § 1; 1941 c 194 § 1; Rem. Supp. 1941 § 7666-9.]

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

49.24.100 Lighting appliances. (1) All lighting in compressed air chambers shall be by electricity only. Whenever practicable there shall be two independent lighting systems with independent sources of supply.

(2) The exterior of all lamp sockets shall be entirely non-metallic.

(3) All portable incandescent lamps used shall be guarded by a wire cage large enough to enclose both lamp and socket.

(4) All incandescent lamps shall be so placed that they cannot come in contact with any combustible material.

(5) Only heavy insulated or armored wire shall be used for light or power. [1941 c 194 § 3; Rem. Supp. 1941 § 7666-11.]

49.24.110 Exhaust valves. Exhaust valves shall be provided, having risers extending to the upper part of chamber, if necessary, and shall be operated at such times as may be required and especially after a blast, and persons shall not be required to resume work after a blast until the gas and smoke have cleared, for at least thirty minutes. [1973 1st ex.s. c 154 § 90; 1941 c 194 § 4; Rem. Supp. 1941 § 7666-12.]

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

49.24.120 Fire prevention. All reasonable precaution shall be taken against fire, and provisions shall be made so that water lines shall be available for use at all times. Fire hose connections with hose connected shall be installed in all power plants and work houses. There shall be fire hose connections within reasonable distance of all caissons. Fire hose shall be connected at either side of a tunnel bulkhead, with at least fifty feet of hose with nozzle connection. Water lines shall extend into each tunnel with hose connections every two hundred feet and shall be kept ready for use at all times. [1941 c 194 § 5; Rem. Supp. 1941 § 7666-13.]

49.24.130 Air chambers—Hanging walks. (1) Whenever the air pressure in a tunnel heading exceeds twenty-one pounds per square inch above atmospheric pressure, two air chambers shall always be in use, except for such time as may be necessary when headings are being started from shafts; and whenever practicable the pressure in the outer chamber shall not exceed one-half the pressure in the heading;

(2) In all tunnels sixteen feet in diameter or over, hanging walks shall be provided from working face to nearest lock. An overhead clearance of six feet shall be maintained and suitable ramps provided under all safety screens. [1941 c 194 § 6; Rem. Supp. 1941 § 7666-14.]

49.24.140 Locks. (1) Each bulkhead in tunnels of twelve feet or more in diameter or equivalent area, shall have at least two locks in perfect working condition, one of which shall be used as a man lock. An additional lock for use in case of emergency shall be held in reserve.

(2) The man lock shall be large enough so that those using it are not compelled to be in a cramped position, and shall not be less than five feet in height. Emergency locks shall be large enough to hold an entire heading shift.

(3) All locks used for decompression shall be lighted by electricity and shall contain a pressure gauge, a time piece, a glass "bull's eye" in each door or in each end, and shall also have facilities for heating.

(4) Valves shall be so arranged that the locks can be operated both from within and from without. [1941 c 194 § 7; Rem. Supp. 1941 § 7666-15.]

49.24.150 Explosives and detonators. When locking explosives and detonators into the air chamber, they shall be kept at opposite ends of the lock. While explosives and deto-

nators are being taken through, no men other than the lock tender and the carriers shall be permitted in the lock. [1941 c 194 § 8; Rem. Supp. 1941 § 7666-16.]

49.24.160 Air plant—Feed water. (1) A good and sufficient air plant for the compression of air shall be provided to meet not only ordinary conditions, but emergencies, and to provide margin for repairs at all times. Provision must be made for storing in tanks at each boiler house enough feed water for twelve hours' supply unless connection can be made with two independent and separately sufficient sources of supply.

(2) The plant shall be capable of furnishing to each working chamber a sufficient air supply for all pressure to enable work to be done. [1941 c 194 § 9; Rem. Supp. 1941 § 7666-17.]

49.24.170 Electric power requirements. When electric power is used for running compressors supplying air for compressed air tunnel work and such power is purchased from a local central station or power company—

(1) There shall be two or more sources of power from the power company's stations to the compressor plant. Such power feeders shall each have a capacity large enough to carry the entire compressor plant load and normal overload. The feeders shall preferably run from separate generating plants or substations and be carried to the compressor plant over separate routes and not through the same duct lines and manholes so that the breakdown of one feeder shall not cause an interruption on the other feeder.

(2) There shall be duplicate feeder bus-bars, and feeder connections to the bus-bars shall be such that either feeder can feed to each separate bus-bar set, individually, or simultaneously to both sets.

(3) There shall be at least two compressors so connected to the bus-bars that they can be operated from either set of busses. The compressors shall be fed from different bus-bar sets, in such a way that a breakdown of a feeder or bus-bar would interrupt the operation of only part of the compressor plant.

(4) Duplicate air feed pipes shall be provided from the compressor plant to a point beyond the lock. [1941 c 194 § 10; Rem. Supp. 1941 § 7666-18.]

49.24.180 Inspection. While work is in progress, the employer shall employ a competent person who shall make a regular inspection at least once every working day of all engines, boilers, steam pipes, drills, air pipes, air gauges, air locks, dynamos, electric wiring, signaling apparatus, brakes, cages, buckets, hoists, cables, ropes, timbers, supports, and all other apparatus and appliances; and he shall immediately upon discovery of any defect, report same in writing to the employer, or his agent in charge. [1941 c 194 § 11; Rem. Supp. 1941 § 7666-19.]

49.24.190 Cars, cages, buckets—Employees riding or walking. No employee shall ride on any loaded car, cage or bucket, nor walk up or down any incline or shaft while any car, cage or bucket is above him. [1941 c 194 § 12; Rem. Supp. 1941 § 7666-20.]

49.24.200 Speed of vehicles. No vehicle shall be operated underground at a speed greater than five miles an hour, while construction work is going on. [1941 c 194 § 13; Rem. Supp. 1941 § 7666-21.]

49.24.210 Oil supply restricted. Oil for illumination or power shall not be taken into the underground workings of any tunnel or kept therein in greater quantities than one day's supply. [1941 c 194 § 14; Rem. Supp. 1941 § 7666-22.]

49.24.220 Explosives, use of—Blasting. (1) No greater quantity of explosives than that which is required for immediate use shall be taken into the working chamber.

(2) Explosives shall be conveyed in a suitable covered wooden box.

(3) Detonators shall be conveyed in a separate covered wooden box.

(4) Explosives and detonators shall be taken separately into the caissons.

(5) After blasting is completed, all explosives and detonators shall be returned at once to the magazine.

(6) No naked light shall be used in the vicinity of open chests or magazines containing explosives, nor near where a charge is being primed.

(7) No tools or other articles shall be carried with the explosives or with the detonators.

(8) All power lines and electric light wires shall be disconnected at a point outside the blasting switch before the loading of holes. No current by grounding of power or bonded rails shall be allowed beyond blasting switch after explosives are taken in preparatory to blasting, and under no circumstances shall grounded current be used for exploding blasts.

(9) Before drilling is commenced on any shift, all remaining holes shall be examined with a wooden stick for unexploded charges or cartridges, and if any are found, same shall be refired before work proceeds.

(10) No person shall be allowed to deepen holes that have previously contained explosives.

(11) All wires in broken rock shall be carefully traced and search made for unexploded cartridges.

(12) Whenever blasting is being done in a tunnel, at points liable to break through to where other men are at work, the foreman or person in charge shall, before any holes are loaded, give warning of danger to all persons that may be working where the blasts may break through, and he shall not allow any holes to be charged until warning is acknowledged and men are removed.

(13) Blasters when testing circuit through charged holes shall use sufficient leading wires to be at a safe distance and shall use only approved types of galvanometers. No tests of circuits in charged holes shall be made until men are removed to safe distance.

(14) No blasts shall be fired with fuse, except electrically ignited fuse, in vertical or steep shafts.

(15) In shaft sinking where the electric current is used for firing, a separate switch not controlling any electric lights must be used for blasting and proper safeguard similar to those in tunnels must be followed in order to insure against premature firing. [1941 c 194 § 15; Rem. Supp. 1941 § 7666-23.]

Explosives: Chapter 70.74 RCW.

49.24.230 Firing switch—Warning by blaster. When firing by electricity from power or lighting wires, a proper switch shall be furnished with lever down when "off".

The switch shall be fixed in a locked box to which no person shall have access except the blaster. There shall be provided flexible leads or connecting wires not less than five feet in length with one end attached to the incoming lines and the other end provided with plugs that can be connected to an effective ground. After blasting, the switch lever shall be pulled out, the wires disconnected and the box locked before any person shall be allowed to return, and shall remain so locked until again ready to blast.

In the working chamber all electric light wires shall be provided with a disconnecting switch, which must be thrown to disconnect all current from the wires in the working chamber before electric light wires are removed or the charge exploded.

Before blasting the blaster shall cause a sufficient warning to be sounded and shall compel all persons to retreat to a safe shelter, before he sets off the blast, and shall permit no one to return until conditions are safe. [1941 c 194 § 16; Rem. Supp. 1941 § 7666-24.]

49.24.240 Inspection after blast. (1) After a blast is fired, loosened pieces of rock shall be scaled from the sides of the excavation and after the blasting is completed, the entire working chamber shall be thoroughly scaled.

(2) The person in charge shall inspect the working chamber and have all loose rock or ground removed and the chamber made safe before proceeding with the work.

(3) Drilling must not be started until all remaining butts of old holes are examined for unexploded charges. [1941 c 194 § 17; Rem. Supp. 1941 § 7666-25.]

49.24.250 Code of signals. Any code of signals used shall be printed and copies thereof, in such languages as may be necessary to be understood by all persons affected thereby, shall be kept posted in a conspicuous place near entrances to work places and in such other places as may be necessary to bring them to the attention of all persons affected thereby.

Effective and reliable signaling devices shall be maintained at all times to give instant communication between the bottom and top of the shaft. [1941 c 194 § 18; Rem. Supp. 1941 § 7666-26.]

49.24.260 Requirements as to caissons. All shafting used in pneumatic caissons shall be provided with ladders, which are to be kept clear and in good condition at all times. The distance between the centers of the rungs of a ladder shall not exceed fourteen inches and shall not vary more than one inch in any one piece of shafting. The length of the ladder rungs shall not be less than nine inches. The rungs of the ladder shall in no case be less than three inches from the wall or other obstruction in the shafting or opening in which the ladder shall be used. Under no circumstances shall a ladder inclining backward from the vertical be installed. A suitable ladder shall be provided from the top of all locks to the surface.

All man shafts shall be lighted at a distance of every ten feet with a guarded incandescent lamp.

All outside caisson air locks shall be provided with a platform not less than forty-two inches wide, and provided with a guard rail forty-two inches high.

All caissons in which fifteen or more men are employed shall have two locks, one of which shall be used as a man lock. Man locks and man shafts shall be in charge of a man whose duty it shall be to operate said lock and shaft. All caissons more than ten feet in diameter shall be provided with a separate man shaft, which shall be kept clear and in operating order at all times.

Locks shall be so located that the distance between the bottom door and water level shall be not less than three feet. [1941 c 194 § 19; Rem. Supp. 1941 § 7666-27.]

49.24.270 Shields to be provided. Wherever, in the prosecution of caisson work in which compressed air is employed, the working chamber is less than twelve feet in length, and when such caissons are at any time suspended or hung while work is in progress, so that the bottom of the excavation is more than nine feet below the deck of the working chamber, a shield shall be erected therein for the protection of the workers. [1989 c 12 § 15; 1941 c 194 § 20; Rem. Supp. 1941 § 7666-28.]

49.24.280 Caissons to be braced. All caissons shall be properly and adequately braced before loading with concrete or other weight. [1941 c 194 § 21; Rem. Supp. 1941 § 7666-29.]

49.24.290 Cages—Hoisting apparatus. In all shafts where men are hoisted or lowered, an iron-bonneted cage shall be used for the conveyance of men, but this provision shall not apply to shafts in the process of sinking or during the dismantling of the shaft after work in the tunnel is substantially completed.

Cages shall be provided with bonnets consisting of two steel plates not less than three-sixteenths of an inch in thickness, sloping toward each side and so arranged that they may be readily pushed upward to afford egress to persons therein, and such bonnet shall cover the top of the cage in such manner as to protect persons in the cage from falling objects.

Cages shall be entirely enclosed on two sides with solid partition or wire mesh not less than No. 8 U.S. Standard gauge, no opening in which shall exceed two inches.

Cages shall be provided with hanging chains or other similar devices for hand holds.

Every cage shall be provided with an approved safety catch of sufficient strength to hold the cage with its maximum load at any point in the shaft.

All parts of the hoisting apparatus, cables, brakes, guides and fastenings shall be of the most substantial design and shall be arranged for convenient inspection. The efficiency of all safety devices shall be established by satisfactory tests before the cages are put into service and at least once every three months thereafter and a record thereof kept.

The test of the safety catch shall consist of releasing the cage suddenly in such manner that the safety catches shall

have opportunity to grip the guides. [1941 c 194 § 22; Rem. Supp. 1941 § 7666-30.]

49.24.300 Buckets in vertical shafts. In all vertical shafts in which hoisting is done by means of a bucket, suitable guides shall be provided when the depth exceeds ten times the diameter or width of the shaft, but in no case shall the maximum depth without guides exceed one hundred and fifty feet. In connection with the bucket, there shall be a crosshead traveling between these guides. The height of the crosshead shall be at least two-thirds of its width, but the height in no case shall be less than thirty inches. [1941 c 194 § 23; Rem. Supp. 1941 § 7666-31.]

49.24.310 Telephone system for tunnels. Where tunnels are driven from shafts more than two hundred and fifty feet deep, a telephone system shall be established and maintained, communicating with the surface at each such shaft, and with a station or stations readily and quickly accessible to the men at the working level. [1941 c 194 § 24; Rem. Supp. 1941 § 7666-32.]

49.24.320 Location of lights. (1) While work is in progress, tunnels, stairways, ladderways and all places on the surface where work is being conducted, shall be properly lighted. In shafts more than one hundred feet deep, the shaft below that point shall be lighted.

(2) All places where hoisting, pumping or other machinery is erected and in the proximity of which persons are working or moving about, shall be so lighted when the machine is in operation that the moving parts of such machine can be clearly distinguished. [1941 c 194 § 25; Rem. Supp. 1941 § 7666-33.]

49.24.330 Generators, transformers, etc., to be grounded. The frames and bed plates of generators, transformers, compensators, rheostats and motors installed underground shall be effectively grounded. All metallic coverings, armoring of cables, other than trailing cables, and the neutral wire of three-wire systems shall also be so grounded. [1941 c 194 § 26; Rem. Supp. 1941 § 7666-34.]

49.24.340 Electrical voltage. In electrical systems installed, no higher voltage than low voltage shall be used underground, except for transmission or other application to transformers, motors, generators or other apparatus in which the whole of the medium or high voltage apparatus is stationary. [1941 c 194 § 27; Rem. Supp. 1941 § 7666-35.]

49.24.350 Lamps to be held in reserve. Lamps or other proper lights shall be kept ready for use in all underground stations where a failure of electric light is likely to cause danger. [1941 c 194 § 28; Rem. Supp. 1941 § 7666-36.]

49.24.360 Insulators required. (1) All underground cables and wires, unless provided with grounded metallic covering, shall be supported by efficient insulators. The conductors connecting lamps to the power supply shall in all cases be insulated.

(2) Cables and wires unprovided with metallic coverings shall not be fixed to walls or timbers by means of uninsulated fastenings. [1941 c 194 § 29; Rem. Supp. 1941 § 7666-37.]

49.24.370 Director to make rules and regulations. The director of labor and industries shall establish such rules and regulations as he deems primarily necessary for the safety of the employees employed in tunnels, quarries, caissons and subways and shall be guided by the most modern published studies and researches made by persons or institutions into the correction of the evils chargeable to improper safeguards and inspection of the tools, machinery, equipment and places of work obtaining in the industries covered by RCW 49.24.080 through 49.24.380. [1941 c 194 § 32; Rem. Supp. 1941 § 7666-39.]

49.24.380 Penalty. Every person violating any of the provisions of RCW 49.24.080 through 49.24.380 shall be guilty of a misdemeanor. [1941 c 194 § 31; Rem. Supp. 1941 § 7666-38.]

Chapter 49.26 RCW

HEALTH AND SAFETY—ASBESTOS

Sections

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49.26.010 Legislative declaration. Air-borne asbestos dust and particles, such as those from sprayed asbestos slurry, asbestos-coated ventilating ducts, and certain other applications of asbestos are known to produce irreversible lung damage and bronchogenic carcinoma. One American of every four dying in urban areas of the United States has asbestos particles or dust in his lungs. The nature of this problem is such as to constitute a hazard to the public health and safety, and should be brought under appropriate regulation. [1973 c 30 § 1.]

49.26.013 Inspection of construction projects required. (1) Any owner or owner's agent who allows or authorizes any construction, renovation, remodeling, maintenance, repair, or demolition project which has a reasonable possibility, as defined by the department, of disturbing or releasing asbestos into the air, shall perform or cause to be performed, using practices approved by the department, a good faith inspection to determine whether the proposed project will disturb or release any material containing asbestos into the air.

Such inspections shall be conducted by persons meeting the accreditation requirements of the federal toxics substances control act, section 206(a) (1) and (3) (15 U.S.C. 2646(a) (1) and (3)).

An inspection under this section is not required if the owner or owner's agent is reasonably certain that asbestos will not be disturbed or assumes that asbestos will be disturbed by a project which involves construction, renovation, remodeling, maintenance, repair, or demolition and takes the maximum precautions as specified by all applicable federal and state requirements.

(2) Except as provided in RCW 49.26.125, the owner or owner's agent shall prepare and maintain a written report describing each inspection, or a statement of assumption of the presence or reasonable certainty of the absence of asbestos, and shall provide a copy of the written report or statement to all contractors before they apply or bid on work. In addition, upon written or oral request, the owner or owner's agent shall make a copy of the written report available to: (1) The department of labor and industries; (2) contractors; and (3) the collective bargaining representatives or employee representatives, if any, of employees who may be exposed to any asbestos or material containing asbestos. A copy shall be posted as prescribed by the department in a place that is easily accessible to such employees. [1995 c 218 § 1; 1989 c 154 § 2. Prior: 1988 c 271 § 7.]

Purpose—1989 c 154: "The purpose of chapter 154, Laws of 1989 is to make corrections to chapter 271, Laws of 1988, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1989 c 154 § 1.]

Severability—1989 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 154 § 14.]

49.26.016 Inspection of construction projects—Penalties. (1) Any owner or owner's agent who allows the start of any construction, renovation, remodeling, maintenance, repair, or demolition without first (a) conducting the inspection and preparing and maintaining the report of the inspection, or preparing and maintaining a statement of assumption of the presence or reasonable certainty of the absence of asbestos, as required under RCW 49.26.013; and (b) preparing and maintaining the additional written description of the project as required under RCW 49.26.120 shall be subject to a mandatory fine of not less than two hundred fifty dollars for each violation. Each day the violation continues shall be considered a separate violation. In addition, any construction, renovation, remodeling, maintenance, repair, or demolition which was started without meeting the requirements of RCW 49.26.013 and 49.26.120 shall be halted immediately and cannot be resumed before meeting such requirements.

(2) No contractor may commence any construction, renovation, remodeling, maintenance, repair or demolition project without receiving the copy of the written report or statement from the owner or the owner's agent. Any contractor who begins any project without the copy of the written report or statement shall be subject to a mandatory fine of not less than two hundred and fifty dollars per day. Each day the violation continues shall be considered a separate violation.

(3) The certificate of any asbestos contractor who knowingly violates any provision of this chapter or any rule

adopted under this chapter shall be revoked for a period of not less than six months.

(4) The penalties imposed in this section are in addition to any penalties under RCW 49.26.140. [1995 c 218 § 2; 1989 c 154 § 3. Prior: 1988 c 271 § 8.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.020 Asbestos use standards. Standards regulating the use of asbestos in construction or manufacturing shall be established by the director of the department of labor and industries, with the advice of the state health officer and the department of ecology. Standards to be adopted shall describe the types of asbestos that may be used in construction and manufacturing, the methods and procedures for their use, and such other requirements as may be needed to protect the public health and safety with respect to air-borne asbestos particles and asbestos dust. [1973 c 30 § 2.]

49.26.030 Containers for asbestos products. Products containing asbestos shall be stored in containers of types approved by the director of the department of labor and industries, with the advice of the state health officer and the department of ecology. Containers of asbestos shall be plainly marked "Asbestos—do not inhale" or other words to the same effect. [1973 c 30 § 3.]

49.26.040 Regulations—Enforcement. The asbestos use standards required under RCW 49.26.020 and the list of approved container types required under RCW 49.26.030 shall be adopted as regulations of the department of labor and industries. The department shall have the power to implement and enforce such regulations. [1973 c 30 § 4.]

49.26.100 Asbestos projects—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Asbestos abatement project" means an asbestos project involving three square feet or three linear feet, or more, of asbestos-containing material.

(2) "Asbestos project" means the construction, demolition, repair, maintenance, remodeling, or renovation of any public or private building or mechanical piping equipment or systems involving the demolition, removal, encapsulation, salvage, or disposal of material, or outdoor activity, releasing or likely to release asbestos fibers into the air.

(3) "Department" means the department of labor and industries.

(4) "Director" means the director of the department of labor and industries or the director's designee.

(5) "Person" means any individual, partnership, firm, association, corporation, sole proprietorship, or the state of Washington or its political subdivisions.

(6) "Certified asbestos supervisor" means an individual who is certified by the department to supervise an asbestos project. A certified asbestos supervisor is not required for projects involving less than three square feet or three linear feet of asbestos-containing material.

(7) "Certified asbestos worker" means an individual who is certified by the department to work on an asbestos project.

(8) "Certified asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship registered under chapter 18.27 RCW that submits a bid or contracts to remove or encapsulate asbestos for another and is certified by the department to remove or encapsulate asbestos.

(9) "Owner" means the owner of any public or private building, structure, facility or mechanical system, or the agent of such owner, but does not include individuals who work on asbestos projects on their own single-family residences no part of which is used for any commercial purpose. [1995 c 218 § 3; 1989 c 154 § 4. Prior: 1988 c 271 § 6; 1985 c 387 § 1.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.110 Asbestos projects—Worker's and supervisor's certificates. (1) No employee or other individual is eligible to do work governed by this chapter unless issued a certificate by the department.

(2) To qualify for a certificate:

(a) Certified asbestos workers must have successfully completed a four-day training course. Certified asbestos supervisors must have completed a five-day training course. Training courses shall be provided or approved by the department; shall cover such topics as the health and safety aspects of the removal and encapsulation of asbestos, including but not limited to the federal and state standards regarding protective clothing, respirator use, disposal, air monitoring, cleaning, and decontamination; and shall meet such additional qualifications as may be established by the department by rule for the type of certification sought. The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor. However, the authority of the director to adopt rules implementing this section is limited to rules that are specifically required, and only to the extent specifically required, for the standards to be as stringent as the applicable federal laws governing work subject to this chapter; and

(b) All applicants for certification as asbestos workers or supervisors must pass an examination in the type of certification sought which shall be provided or approved by the department.

These requirements are intended to represent the minimum requirements for certification and shall not preclude contractors or employers from providing additional education or training.

(3) The department shall provide for the reciprocal certification of any individual trained to engage in asbestos projects in another state when the prior training is shown to be substantially similar to the training required by the department. Nothing shall prevent the department from requiring such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate, as provided under RCW 49.26.140, for failure of the holder to comply with any requirement of this chapter or chapter 49.17 RCW, or any rule adopted under those chapters, or applicable health and safety standards and regulations. In addition to any penalty imposed under RCW

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49.26.016, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

(a) The certificate was obtained through error or fraud; or

(b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

Before any certificate may be denied, suspended, or revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against such holder, and shall give him or her the opportunity to request a hearing before the department. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony.

(5) A denial, suspension, or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the denial, suspension, or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(6) Each person certified under this chapter shall display, upon the request of an authorized representative of the department, valid identification issued by the department. [1995 c 218 § 4; 1989 c 154 § 5. Prior: 1988 c 271 § 10; 1985 c 387 § 2.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.115 Asbestos abatement projects—Contractor's certificate required. Before working on an asbestos abatement project, a contractor shall obtain an asbestos contractor's certificate from the department and shall have in its employ at least one certified asbestos supervisor who is responsible for supervising all asbestos abatement projects undertaken by the contractor and for assuring compliance with all state laws and regulations regarding asbestos. The contractor shall apply for certification renewal every year. The department shall ensure that the expiration of the contractor's registration and the expiration of his or her asbestos contractor's certificate coincide. [1995 c 218 § 5; 1989 c 154 § 6. Prior: 1988 c 271 § 11.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.120 Asbestos projects—Qualified asbestos workers and supervisor—Prenotification to department—Fire personnel. (1) No person may assign any employee, contract with, or permit any individual or person to remove or encapsulate asbestos in any facility unless performed by a certified asbestos worker and under the direct, on-site supervision of a certified asbestos supervisor. In cases in which an employer conducts an asbestos abatement project in its own facility and by its own employees, supervision can be performed in the regular course of a certified asbestos supervisor's duties. Asbestos workers must have access to

certified asbestos supervisors throughout the duration of the project.

(2) The department shall require persons undertaking asbestos projects to provide written notice to the department before the commencement of the project except as provided in RCW 49.26.125. The notice shall include a written description containing such information as the department requires by rule. The department may by rule allow a person to report multiple projects at one site in one report. The department shall by rule establish the procedure and criteria by which a person will be considered to have attempted to meet the prenotification requirement.

(3) The department shall consult with the state fire protection policy board, and may establish any additional policies and procedures for municipal fire department and fire district personnel who clean up sites after fires which have rendered it likely that asbestos has been or will be disturbed or released into the air. [1995 c 218 § 6; 1989 c 154 § 7. Prior: 1988 c 271 § 12; 1985 c 387 § 4.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.125 Prenotification to department—Exemptions. Prenotification to the department under RCW 49.26.120 shall not be required for:

(1)(a) Any asbestos project involving less than forty-eight square feet of surface area, or less than ten linear feet of pipe unless the surface area of the pipe is greater than forty-eight square feet. The person undertaking such a project shall keep the reports, or statements, and written descriptions required under RCW 49.26.013 and 49.26.120 which shall be available upon request of the department. Employees and employee representatives may request such reports under RCW 49.26.013(2).

(b) The director may waive the prenotification requirement upon written request of an owner for large-scale, ongoing projects. In granting such a waiver, the director shall require the owner to provide prenotification if significant changes in personnel, methodologies, equipment, work site, or work procedures occur or are likely to occur. The director shall further require annual resubmittal of such notification.

(c) The director, upon review of an owner's reports, work practices, or other data available as a result of inspections, audits, or other authorized activities, may reduce the size threshold for prenotification required by this section. Such a change shall be based on the director's determination that significant problems in personnel, methodologies, equipment, work site, or work procedures are creating the potential for violations of this chapter or asbestos requirements under chapter 49.17 RCW. The new prenotification requirements shall be given in writing to the owner and shall remain in effect until modified or withdrawn in writing by the director.

(2) Emergency projects.

(a) As used in this section, "emergency project" means a project that was not planned and results from a sudden, unexpected event, and does not include operations that are necessitated by nonroutine failure of equipment or systems.

(b) Emergency projects which disturb or release any material containing asbestos into the air shall be reported to the department within three working days after the commencement of the project in the manner otherwise required

under this chapter. A notice shall be clearly posted adjacent to the work site describing the nature of the emergency project. The employees' collective bargaining representatives, or employee representatives, or designated representatives, if any, shall be notified of the emergency as soon as possible by the person undertaking the emergency project.

Incremental phasing in the conduct or design of asbestos projects or otherwise designing or conducting asbestos projects of a size less than forty-eight square feet, or other threshold for exemption as provided under this section, with the intent of avoiding prenotification requirements is a violation of this chapter. [1989 c 154 § 8. Prior: 1988 c 271 § 13.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.130 Asbestos projects—Rules—Fees—Asbestos account. (1) The department shall administer this chapter.

(2) The director of the department shall adopt, in accordance with chapters 34.05 and 49.17 RCW, rules necessary to carry out this chapter.

(3) The department shall prescribe fees for the issuance and renewal of certificates, including recertification, and the administration of examinations, and for the review of training courses.

(4) The asbestos account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in the account. Moneys in the account shall be spent after appropriation only for costs incurred by the department in the administration and enforcement of this chapter. Disbursements from the account shall be on authorization of the director of the department or the director's designee.

(5) During the 2003-2005 fiscal biennium, the legislature may transfer from the asbestos account to the state general fund such amounts as reflect the excess fund balance in the account. [2003 1st sp.s. c 25 § 924; 1989 c 154 § 9. Prior: 1988 c 271 § 15; 1987 c 219 § 1; 1985 c 387 § 3.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.140 Asbestos projects—Enforcement—Penalties. (1) Unless specifically provided otherwise by statute, this chapter shall be implemented and enforced, including penalties, violations, citations, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW.

(2) A person or individual who previously has been assessed a civil penalty under this section, and who knowingly violates a provision of RCW 49.26.110 through 49.26.130 or a rule adopted pursuant to RCW 49.26.110 through 49.26.130 is guilty of a misdemeanor. [1987 c 219 § 2; 1985 c 387 § 5.]

49.26.150 Discrimination against employee filing complaint prohibited. Any employee who notifies the department of any activity the employee reasonably believes to be a violation of this chapter or any rule adopted under this chapter or who participates in any proceeding related thereto

shall have the same rights and protections against discharge or discrimination as employees are afforded under chapter 49.17 RCW. [1989 c 154 § 10. Prior: 1988 c 271 § 16.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.900 Severability—1973 c 30. If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 30 § 5.]

49.26.901 Effective dates—1988 c 271 §§ 6-18. Sections 15, as reenacted and amended in 1989, and 18, chapter 271, Laws of 1988, are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect as of March 24, 1988. Sections 6 through 8, 10 through 13, and 16, chapter 271, Laws of 1988, as reenacted or amended and reenacted in 1989, shall take effect as of January 1, 1989. [1989 c 154 § 11. Prior: 1988 c 271 § 19.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

Chapter 49.28 RCW HOURS OF LABOR

Sections

49.28.010	Eight hour day, 1899 act—Public works contracts—Emergency overtime—Penalty.
49.28.040	Eight hour day, 1903 act—Policy enunciated.
49.28.050	Eight hour day, 1903 act—Contracts, cancellation of, for violations.
49.28.060	Eight hour day, 1903 act—Stipulation in contracts—Duty of officers.
49.28.065	Public works employees—Agreements to work ten hour day.
49.28.080	Hours of domestic employees—Exception—Penalty.
49.28.100	Hours of operators of power equipment in waterfront operations—Penalty.
49.28.120	Employer's duty to provide time to vote.
49.28.130	Hours of health care facility employees—Definitions.
49.28.140	Hours of health care facility employees—Mandatory overtime prohibited—Exceptions.
49.28.150	Hours of health care facility employees—Penalties.

Child labor: RCW 26.28.060, 26.28.070.

Hours of labor for public institutions personnel: RCW 72.01.042, 72.01.043.

Prevailing wages must be paid on public works: RCW 39.12.020.

49.28.010 Eight hour day, 1899 act—Public works contracts—Emergency overtime—Penalty. (1) Hereafter eight hours in any calendar day shall constitute a day's work on any work done for the state or any county or municipality within the state, subject to conditions hereinafter provided.

(2) All work done by contract or subcontract on any building or improvements or works on roads, bridges, streets, alleys, or buildings for the state or any county or municipality within the state, shall be done under the provisions of this section. In cases of extraordinary emergency such as danger to life or property, the hours for work may be extended, but in such case the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half times the rate of pay allowed for the same amount of time during eight hours' service. And for this purpose this section is made

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a part of all contracts, subcontracts, or agreements for work done for the state or any county or municipality within the state.

(3) Any contractor, subcontractor, or agent of contractor or subcontractor, foreman, or employer who violates this section is guilty of a misdemeanor and shall be fined a sum not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail for a period of not less than ten days nor more than ninety days, or both such fine and imprisonment, at the discretion of the court. [2003 c 53 § 274; 1899 c 101 § 1; RRS § 7642.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

49.28.040 Eight hour day, 1903 act—Policy enunciated. That it is a part of the public policy of the state of Washington that all work "by contract or day labor done" for it, or any political subdivision created by its laws, shall be performed in work days of not more than eight hours each, except in cases of extraordinary emergency. No case of extraordinary emergency shall be construed to exist in any case where other labor can be found to take the place of labor which has already been employed for eight hours in any calendar day. [1903 c 44 § 1; RRS § 7645.]

49.28.050 Eight hour day, 1903 act—Contracts, cancellation of, for violations. All contracts for work for the state of Washington, or any political subdivision created by its laws, shall provide that they may be canceled by the officers or agents authorized to contract for or supervise the execution of such work, in case such work is not performed in accordance with the policy of the state relating to such work. [1903 c 44 § 2; RRS § 7646.]

49.28.060 Eight hour day, 1903 act—Stipulation in contracts—Duty of officers. It is made the duty of all officers or agents authorized to contract for work to be done in behalf of the state of Washington, or any political subdivision created under its laws, to stipulate in all contracts as provided for in RCW 49.28.040 through 49.28.060, and all such officers and agents, and all officers and agents entrusted with the supervision of work performed under such contracts, are authorized, and it is made their duty, to declare any contract canceled, the execution of which is not in accordance with the public policy of this state as herein declared. [1903 c 44 § 3; RRS § 7647.]

49.28.065 Public works employees—Agreements to work ten hour day. Notwithstanding the provisions of RCW 49.28.010 through 49.28.060, a contractor or subcontractor in any public works contract subject to those provisions may enter into an agreement with his or her employees in which the employees work up to ten hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of *RCW 49.28.020 shall not apply to the hours, up to forty hours per week, worked pursuant to agreements entered into under this section. [1988 c 121 § 1.]

***Reviser's note:** RCW 49.28.020 was repealed by 2003 c 53 § 421, effective July 1, 2003.

49.28.080 Hours of domestic employees—Exception—Penalty. (1) No male or female household or domestic employee shall be employed by any person for a longer period than sixty hours in any one week. Employed time shall include minutes or hours when the employee has to remain subject to the call of the employer and when the employee is not free to follow his or her inclinations.

(2) In cases of emergency such employee may be employed for a longer period than sixty hours.

(3) Any employer violating this section is guilty of a misdemeanor. [2003 c 53 § 275; 1937 c 129 § 1; RRS § 7651-1. FORMER PARTS OF SECTION: (i) 1937 c 129 § 2; RRS § 7651-2, now codified as RCW 49.28.082. (ii) 1937 c 129 § 4; RRS § 7651-4, now codified as RCW 49.28.084.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—1937 c 129: "In the event any part of this act is held invalid such invalidity shall not affect the validity of the remainder of this act." [1937 c 129 § 3.] This applies to RCW 49.28.080 through 49.28.084.

49.28.100 Hours of operators of power equipment in waterfront operations—Penalty. (1) It shall be unlawful for any employer to permit any of his or her employees to operate on docks, in warehouses and/or in or on other waterfront properties any power driven mechanical equipment for the purpose of loading cargo on, or unloading cargo from, ships, barges, or other watercraft, or of assisting in such loading or unloading operations, for a period in excess of twelve and one-half hours at any one time without giving such person an interval of eight hours' rest: PROVIDED, HOWEVER, The provisions of this section shall not be applicable in cases of emergency, including fire, violent storms, leaking or sinking ships or services required by the armed forces of the United States.

(2) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 276; 1953 c 271 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

49.28.120 Employer's duty to provide time to vote. (1) Except as provided in subsection (2) of this section, every employer shall arrange employees' working hours on the day of a primary or election, general or special, so that each employee will have a reasonable time up to two hours available for voting during the hours the polls are open as provided by *RCW 29.13.080.

If an employee's work schedule does not give the employee two free hours during the time the polls are open, not including meal or rest breaks, the employer shall permit the employee to take a reasonable time up to two hours from the employee's work schedule for voting purposes. In such a case, the employer shall add this time to the time for which the employee is paid.

(2) The provisions of this section apply only if, during the period between the time an employee is informed of his or her work schedule for a primary or election day and the date of the primary or election, there is insufficient time for an absentee ballot to be secured for that primary or election. [1987 c 296 § 1.]

***Reviser's note:** RCW 29.13.080 was recodified as RCW 29A.44.070 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

49.28.130 Hours of health care facility employees—Definitions. The definitions in this section apply throughout this section and RCW 49.28.140 and 49.28.150 unless the context clearly requires otherwise.

(1) "Employee" means a licensed practical nurse or a registered nurse licensed under chapter 18.79 RCW employed by a health care facility who is involved in direct patient care activities or clinical services and receives an hourly wage.

(2) "Employer" means an individual, partnership, association, corporation, state institution, political subdivision of the state, or person or group of persons, acting directly or indirectly in the interest of a health care facility.

(3) "Health care facility" means the following facilities, or any part of the facility, that operates on a twenty-four hours per day, seven days per week basis: Hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, and psychiatric hospitals licensed under chapter 71.12 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state. If a nursing home regulated under chapter 18.51 RCW or a home health agency regulated under chapter 70.127 RCW is operating under the license of a health care facility, the nursing home or home health agency is considered part of the health care facility for the purposes of this subsection.

(4) "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift within a twenty-four hour period not to exceed twelve hours in a twenty-four hour period or eighty hours in a consecutive fourteen-day period.

(5) "On-call time" means time spent by an employee who is not working on the premises of the place of employment but who is compensated for availability or who, as a condition of employment, has agreed to be available to return to the premises of the place of employment on short notice if the need arises.

(6) "Reasonable efforts" means that the employer, to the extent reasonably possible, does all of the following but is unable to obtain staffing coverage:

(a) Seeks individuals to volunteer to work extra time from all available qualified staff who are working;

(b) Contacts qualified employees who have made themselves available to work extra time;

(c) Seeks the use of per diem staff; and

(d) Seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

(7) "Unforeseeable emergent circumstance" means (a) any unforeseen declared national, state, or municipal emergency; (b) when a health care facility disaster plan is activated; or (c) any unforeseen disaster or other catastrophic event which substantially affects or increases the need for health care services. [2002 c 112 § 2.]

Finding—2002 c 112: "Washington state is experiencing a critical shortage of qualified, competent health care workers. To safeguard the health, efficiency, and general well-being of health care workers and promote patient safety and quality of care, the legislature finds, as a matter of public policy, that required overtime work should be limited with reasonable safeguards in order to ensure that the public will continue to receive safe, quality care." [2002 c 112 § 1.]

49.28.140 Hours of health care facility employees—Mandatory overtime prohibited—Exceptions. (1) No employee of a health care facility may be required to work overtime. Attempts to compel or force employees to work overtime are contrary to public policy, and any such requirement contained in a contract, agreement, or understanding is void.

(2) The acceptance by any employee of overtime is strictly voluntary, and the refusal of an employee to accept such overtime work is not grounds for discrimination, dismissal, discharge, or any other penalty, threat of reports for discipline, or employment decision adverse to the employee.

(3) This section does not apply to overtime work that occurs:

- (a) Because of any unforeseeable emergent circumstance;
- (b) Because of prescheduled on-call time;
- (c) When the employer documents that the employer has used reasonable efforts to obtain staffing. An employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic staff shortages; or
- (d) When an employee is required to work overtime to complete a patient care procedure already in progress where the absence of the employee could have an adverse effect on the patient. [2002 c 112 § 3.]

Finding—2002 c 112: See note following RCW 49.28.130.

49.28.150 Hours of health care facility employees—Penalties. The department of labor and industries shall investigate complaints of violations of RCW 49.28.140. A violation of RCW 49.28.140 is a class 1 civil infraction in accordance with chapter 7.80 RCW, except that the maximum penalty is one thousand dollars for each infraction up to three infractions. If there are four or more violations of RCW 49.28.140 for a health care facility, the employer is subject to a fine of two thousand five hundred dollars for the fourth violation, and five thousand dollars for each subsequent violation. The department of labor and industries is authorized to issue and enforce civil infractions according to chapter 7.80 RCW. [2002 c 112 § 4.]

Finding—2002 c 112: See note following RCW 49.28.130.

**Chapter 49.30 RCW
AGRICULTURAL LABOR**

Sections

49.30.005	Intent—Duties of department.
49.30.010	Definitions.
49.30.020	Hours and pay, recordkeeping.
49.30.040	Violation of chapter—Civil infraction.
49.30.900	Severability—1989 c 380.
49.30.901	Conflict with federal requirements—1989 c 380.

49.30.005 Intent—Duties of department. It is the intent of the legislature that the department assist agricultural employers in mitigating the costs of the state's unemployment insurance program. The department shall work with members of the agricultural community to: Improve understanding of the program's operation; increase compliance with work-search requirements; provide prompt notification of potential claims against an employer's experience rating; inform employers of their rights; inform employers of the actions

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necessary to appeal a claim and to protect their rights; and reduce claimant and employer fraud. These efforts shall include:

- (1) Conducting employer workshops and community seminars;
- (2) Developing new educational materials; and
- (3) Developing forms that use lay language. [1998 c 245 § 99; 1991 c 31 § 1; 1990 c 245 § 10; 1989 c 380 § 82.]

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

49.30.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Agricultural employment" or "employment" means employment in agricultural labor as defined in RCW 50.04.150.
- (2) "Department" means the department of labor and industries.
- (3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that engages in any agricultural activity in this state and employs one or more employees.
- (4) "Employee" means a person employed in agricultural employment, and includes a person who is working under an independent contract the essence of which is personal labor in agricultural employment whether by way of manual labor or otherwise. However, "employee" shall not include immediate family members of the officers of any corporation, partnership, sole proprietorship, or other business entity, or officers of any closely held corporation engaged in agricultural production of crops or livestock.
- (5) "Minor" means an employee who is under the age of eighteen years. [1989 c 380 § 83.]

49.30.020 Hours and pay, recordkeeping. (1) Each employer required to keep employment records under RCW 49.46.070, shall retain such records for three years.

(2) Each employer shall furnish to each employee at the time the employee's wages are paid an itemized statement showing the pay basis in hours or days worked, the rate or rates of pay, the gross pay, and all deductions from the pay for the respective pay period. [1989 c 380 § 84.]

49.30.040 Violation of chapter—Civil infraction. Any violation of the provisions of this chapter or rules adopted hereunder shall be a class I civil infraction. The director shall have the authority to issue and enforce civil infractions according to chapter 7.80 RCW. [1989 c 380 § 86.]

49.30.900 Severability—1989 c 380. See RCW 15.58.942.

49.30.901 Conflict with federal requirements—1989 c 380. See note following RCW 50.04.150.

Chapter 49.32 RCW

INJUNCTIONS IN LABOR DISPUTES

Sections

49.32.011	Injunctions in labor disputes.
49.32.020	Policy enunciated.
49.32.030	Undertakings and promises unenforceable.
49.32.050	Jurisdiction of courts.
49.32.060	Concert of action immaterial.
49.32.070	Responsibility of associations.
49.32.072	Injunctions—Hearings and findings—Temporary orders—Security.
49.32.073	Injunctions—Complaints, conditions precedent.
49.32.074	Injunctions—Findings and order essential.
49.32.080	Appellate review.
49.32.090	Contempt—Speedy jury trial.
49.32.100	Contempt—Retirement of judge.
49.32.110	Definitions.
49.32.900	Severability—1933 ex.s. c 7.
49.32.910	General repealer.

Labor unions—Injunctions in labor disputes—1919 act: Chapter 49.36 RCW.

49.32.011 Injunctions in labor disputes. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter. [1933 ex.s. c 7 § 1; RRS § 7612-1. Cf. 1919 c 185 § 2. Formerly RCW 49.32.040.]

Injunctions in labor disputes: RCW 49.36.015.

49.32.020 Policy enunciated. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the state of Washington, as such jurisdiction and authority are herein defined and limited, the public policy of the state of Washington is hereby declared as follows:

WHEREAS, Under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protections; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the state of Washington are hereby enacted. [1933 ex.s. c 7 § 2; RRS § 7612-2.]

49.32.030 Undertakings and promises unenforceable. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in RCW 49.32.020, is hereby declared to be contrary to the public policy of the state of

Washington, shall not be enforceable in any court of the state of Washington, and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation and any employee or prospective employee of the same, whereby—

(1) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(2) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization. [1933 ex.s. c 7 § 3; RRS § 7612-3.]

49.32.050 Jurisdiction of courts. No court of the state of Washington shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute or prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(1) Ceasing or refusing to perform any work or to remain in any relation of employment;

(2) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in RCW 49.32.030;

(3) Paying or giving to, or withholding from, any person participating or interested in such labor dispute any strike or unemployment benefits or insurance or other moneys or things of value;

(4) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state;

(5) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(6) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(7) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(8) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(9) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in RCW 49.32.030. [1933 ex.s. c 7 § 4; RRS § 7612-4.]

49.32.060 Concert of action immaterial. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are

engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in RCW 49.32.050. [1933 ex.s. c 7 § 5; RRS § 7612-5.]

49.32.070 Responsibility of associations. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the state of Washington for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. [1933 ex.s. c 7 § 6; RRS § 7612-6.]

49.32.072 Injunctions—Hearings and findings—Temporary orders—Security. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(1) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(2) That substantial and irreparable injury to complainant's property will follow;

(3) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(4) That complainant has no adequate remedy at law; and

(5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: PROVIDED, HOWEVER, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for

any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. [1933 ex.s. c 7 § 7; RRS § 7612-7.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936).

49.32.073 Injunctions—Complaints, conditions precedent. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. [1933 ex.s. c 7 § 8; RRS § 7612-8.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936).

49.32.074 Injunctions—Findings and order essential. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute, shall include only a prohibition of such specific act or acts as may be expressly complained of in the complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein. [1933 ex.s. c 7 § 9; RRS § 7612-9.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936).

49.32.080 Appellate review. Whenever any court of the state of Washington shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on his filing the usual bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the supreme court or the court of appeals for its review. Upon the filing of such record in the supreme court or the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older

matters of the same character. [1971 c 81 § 116; 1933 ex.s. c 7 § 10; RRS § 7612-10.]

Rules of court: *Appeal procedure superseded by RAP 2.1, 2.2, 18.22.*

49.32.090 Contempt—Speedy jury trial. In all cases arising under this chapter in which a person shall be charged with contempt in a court of the state of Washington, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county wherein the contempt shall have been committed: PROVIDED, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders, or process of the court. [1933 ex.s. c 7 § 11; RRS § 7612-11.]

49.32.100 Contempt—Retirement of judge. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as provided by law. The demand shall be filed prior to the hearing of the contempt proceeding. [1933 ex.s. c 7 § 12; RRS § 7612-12.]

Civil procedure—Prejudice of judge—Change of venue: RCW 4.12.040.

49.32.110 Definitions. When used in this chapter, and for the purpose of this chapter—

(1) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (a) between one or more employers or associations of employers and one or more employees or associations of employees; (b) between one or more employers or associations of employers and one or more employers or association of employers; or (c) between one or more employees or association of employees and one or more employees or association of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which dispute occurs, or has a direct or indirect interest therein or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(3) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiat-

ing, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee. [1933 ex.s. c 7 § 13; RRS § 7612-13. Formerly RCW 49.32.010.]

49.32.900 Severability—1933 ex.s. c 7. If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional, or otherwise invalid, the remaining provisions of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby. [1933 ex.s. c 7 § 14; RRS § 7612-14.]

49.32.910 General repealer. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed. [1933 ex.s. c 7 § 15; RRS § 7612-15.]

Chapter 49.36 RCW LABOR UNIONS

Sections

49.36.010	Unions legalized.
49.36.015	Injunctions in labor disputes.
49.36.020	Employment contracts—Remedy for violation.
49.36.030	Prosecutions prohibited.

Collective bargaining with employees of city owned utilities: RCW 35.22.350.

Discrimination—Unfair practices: RCW 49.60.180 through 49.60.215, 49.60.220.

Prohibited practices: Chapter 49.44 RCW.

Supervisor of industrial relations: RCW 43.22.260.

49.36.010 Unions legalized. It shall be lawful for working men and women to organize themselves into, or carry on labor unions for the purpose of lessening the hours of labor or increasing the wages or bettering the conditions of the members of such organizations; or carry out their legitimate purposes by any lawful means. [1919 c 185 § 1; RRS § 7611.]

49.36.015 Injunctions in labor disputes. No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employee or between employer and employees or between employees or between persons employed and persons seeking employment involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable damage to property or to a personal right or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such petition must be in writing describing such damage or injury feared by the applicant, and sworn to by the applicant or his agent or attorney. No such restraining order or injunction shall prohibit any such person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor; or from paying or giving to, or withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this section be

considered or held to be illegal or unlawful in any court of the state. [1919 c 185 § 2; RRS § 7612.]

Labor disputes: Chapter 49.32 RCW.

49.36.020 Employment contracts—Remedy for violation. The labor of a human being is not a commodity or article of commerce, and the right to enter into the relation of employer and employee or to change that relation except in violation of contract is a legal right. In all cases involving the violation of the contract of employment, either by the employee or employer where no irreparable damage is about to be done to the property, personal rights or property rights of either, no injunction shall be granted, but the parties shall be left to their remedy at law. [1919 c 185 § 3; RRS § 7613.]

Injunctions in labor disputes: RCW 49.32.011.

49.36.030 Prosecutions prohibited. No person shall be indicted, prosecuted, or tried in any court of this state for entering into or carrying on any lawful arrangement, agreement, or combination between themselves made with a view of lessening the number of hours of labor or increasing wages or bettering the conditions of working men and women, or for any lawful act done in pursuance thereof. [1919 c 185 § 4; RRS § 7614.]

Chapter 49.38 RCW

THEATRICAL ENTERPRISES

Sections

49.38.010	Definitions.
49.38.020	Payment of wages—Cash deposit or bond required.
49.38.030	Action to require cash deposit or bond.
49.38.040	Payment of wages—Action against cash deposit or bond—Limitations.
49.38.050	Recovery of attorney's fees and costs.
49.38.060	Penalty.
49.38.070	Department to adopt rules.
49.38.900	Severability—1984 c 89.

49.38.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) Department means the department of labor and industries.

(2) Theatrical enterprise means the production of any circus, vaudeville, carnival, revue, variety show, musical comedy, operetta, opera, drama, endurance contest, marathon, walkathon, or any other entertainment event where persons are a part of the enterprise's presentation. Theatrical enterprise does not include a program of a radio or television station operating pursuant to a license issued by the federal communications commission or any event produced by a non-profit cultural or artistic organization that has been located in a community for at least two years. [1984 c 89 § 1.]

49.38.020 Payment of wages—Cash deposit or bond required. (1) Any person engaged in the business of promoting a theatrical enterprise in this state shall deposit with the department the cash or a bond issued by a surety company authorized to do business in this state in an amount determined sufficient by the department to pay the wages of every person involved in the production of the theatrical enterprise

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for the period for which a single payment of wages is made, but not to exceed one week.

(2) The deposit required under subsection (1) of this section shall be on file with the department seven calendar days before the commencement of the theatrical enterprise. [1984 c 89 § 2.]

49.38.030 Action to require cash deposit or bond. If a person engaged in the business of promoting a theatrical enterprise fails to deposit cash or the bond required under RCW 49.38.020, the department may bring an action in the superior court to compel such person to deposit the cash or bond or cease doing business until he or she has done so. [1984 c 89 § 3.]

49.38.040 Payment of wages—Action against cash deposit or bond—Limitations. Any person having a claim for wages against a person engaged in the business of promoting a theatrical enterprise may bring an action against the bond or cash deposit in the district or superior court of the county in which the theatrical enterprise is produced or any county in which the principal on the bond resides or conducts business. An action against the bond may be brought against the named surety without joining the principal named in the bond. The liability of the surety shall not exceed the amount named in the bond. Any action brought under this chapter shall be commenced within one year after the completion of the work for which wages are alleged to be due and owing under this chapter. If a cash deposit has been made in lieu of a surety bond and if judgment is entered against the depositor and deposit, then the department shall upon receipt of a certified copy of a final judgment within one year of the date of entry of such judgment pay the judgment from the deposit. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit. [1984 c 89 § 4.]

49.38.050 Recovery of attorney's fees and costs. In an action brought pursuant to RCW 49.38.040, the prevailing party is entitled to reasonable attorney's fees and costs. [1984 c 89 § 5.]

49.38.060 Penalty. Any person who violates this chapter is guilty of a gross misdemeanor. [1984 c 89 § 6.]

49.38.070 Department to adopt rules. The department may adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter. [1984 c 89 § 7.]

49.38.900 Severability—1984 c 89. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 89 § 8.]

Chapter 49.40 RCW SEASONAL LABOR

Sections

49.40.010	Seasonal labor defined.
49.40.020	Contracts to be in writing—Advances.
49.40.030	Fraud in securing advances—Penalty.
49.40.040	Disputes determined by director of labor and industries.
49.40.050	Hearings.
49.40.060	Findings and award.
49.40.070	Appeal.
49.40.080	Findings and award as evidence.

49.40.010 Seasonal labor defined. For the purpose of this chapter the term "seasonal labor" shall include all work performed by any person employed for a period of time greater than one month and where the wages for such work are not to be paid at any fixed interval of time, but at the termination of such employment, and where such person is hired within this state for work to be performed outside the state and the wages earned during said employment are to be paid in this state at the termination of such employment: PROVIDED, That this chapter shall not apply to wages earned by seamen or other persons where the payment of their wages is regulated by federal statutes. [1919 c 191 § 1; RRS § 7603.]

49.40.020 Contracts to be in writing—Advances. Every contract for seasonal labor shall be in writing and signed by the employer and the employee, and may provide for advances of moneys to be earned under such contract or for the furnishing of supplies to the employee before the wages are earned, and for the payment of money or the furnishing of supplies during the season. [1919 c 191 § 2; RRS § 7604.]

49.40.030 Fraud in securing advances—Penalty. Every employee who with intent to defraud shall have secured advances of money or supplies under a contract for reasonable labor and who with intent to defraud shall wilfully fail to perform sufficient labor to compensate for such advances and supplies made under such contract shall be guilty of a gross misdemeanor. [1919 c 191 § 3; RRS § 7605.]

49.40.040 Disputes determined by director of labor and industries. Upon the written petition of either the employer or the employee setting forth in ordinary and concise language the facts and questions in dispute, the director of labor and industries shall, in person or by his duly authorized deputy, and is hereby authorized to hear and determine all disputes concerning wages earned at seasonal labor, and allow or reject deductions made from such wages for moneys advanced or supplies furnished before the wages are earned for money paid or supplies furnished during the season or for money paid to third persons upon the written order of the employee. [1919 c 191 § 4; RRS § 7606.]

49.40.050 Hearings. Upon the filing of any such petition, the director of labor and industries shall notify the other party to the dispute of the time and place when and where such petition will be heard, and may set said petition for a hearing before a regularly appointed deputy at such place in

the state as he shall determine is most convenient for the parties, and the director or his deputy shall have power and authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers and records at such hearing, and to administer oaths. Obedience to such subpoenas shall be enforced by the courts of the county where such hearing is held. [1919 c 191 § 5; RRS § 7607.]

49.40.060 Findings and award. The director of labor and industries, or his deputy holding the hearing shall, after such hearing, determine the amount due from the employer to the employee, and shall make findings of fact and an award in accordance therewith, which findings and award shall be filed in the office of the director and a copy thereof served upon the employer and upon the employee by registered mail directed to their last known post office address. [1919 c 191 § 6; RRS § 7608.]

49.40.070 Appeal. Any person aggrieved by the finding or award of the director of labor and industries has the right of appeal in the manner provided in chapter 34.05 RCW. [1987 c 202 § 217; 1919 c 191 § 7; RRS § 7609.]

Intent—1987 c 202: See note following RCW 2.04.190.

49.40.080 Findings and award as evidence. In case no appeal is taken from the award of the director of labor and industries and suit shall be brought upon the contract for seasonal labor in any court of competent jurisdiction, the findings and award of the director made in any proceeding under this chapter at a hearing at which both parties to such suit shall have appeared may be introduced in evidence in such suit, for the information of the court in which the suit is pending, and may, in the discretion of the court, be submitted to the jury as a part of the evidence in the case; but such findings and award shall not be conclusive or binding upon the court or the jury in any such case. [1919 c 191 § 8; RRS § 7610.]

Chapter 49.44 RCW VIOLATIONS—PROHIBITED PRACTICES

Sections

49.44.010	Blacklisting—Penalty.
49.44.020	Bribery of labor representative.
49.44.030	Labor representative receiving bribe.
49.44.040	Obtaining employment by false letter or certificate.
49.44.050	Fraud by employment agent.
49.44.060	Corrupt influencing of agent.
49.44.080	Endangering life by refusal to labor.
49.44.090	Unfair practices in employment because of age of employee or applicant—Exceptions.
49.44.100	Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty.
49.44.120	Requiring lie detector tests—Penalty.
49.44.135	Requiring lie detector tests—Civil penalty and damages—Attorneys' fees.
49.44.140	Requiring assignment of employee's rights to inventions—Conditions.
49.44.150	Requiring assignment of employee's rights to inventions—Disclosure of inventions by employee.
49.44.160	Public employers—Intent.
49.44.170	Public employers—Unfair practices—Definitions—Remedies.
49.44.180	Genetic screening.

Blind or handicapped persons, discriminating against in public employment: RCW 70.84.080.

Discrimination—Unfair practices: RCW 49.60.180 through 49.60.200.

49.44.010 Blacklisting—Penalty. Every person in this state who shall wilfully and maliciously, send or deliver, or make or cause to be made, for the purpose of being delivered or sent or part with the possession of any paper, letter or writing, with or without name signed thereto, or signed with a fictitious name, or with any letter, mark or other designation, or publish or cause to be published any statement for the purpose of preventing any other person from obtaining employment in this state or elsewhere, and every person who shall wilfully and maliciously "blacklist" or cause to be "blacklisted" any person or persons, by writing, printing or publishing, or causing the same to be done, the name, or mark, or designation representing the name of any person in any paper, pamphlet, circular or book, together with any statement concerning persons so named, or publish or cause to be published that any person is a member of any secret organization, for the purpose of preventing such person from securing employment, or who shall wilfully and maliciously make or issue any statement or paper that will tend to influence or prejudice the mind of any employer against the person of such person seeking employment, or any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, individual or individuals, shall, on conviction thereof, be adjudged guilty of misdemeanor and punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than one year, or by both such fine and imprisonment. [1899 c 23 § 1; RRS § 7599.]

Interference with or discharge from employment of member of organized militia: RCW 38.40.040, 38.40.050.

Libel and slander: Chapter 9.58 RCW.

49.44.020 Bribery of labor representative. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any duly constituted representative of a labor organization, with intent to influence him in respect to any of his acts, decisions or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, shall be guilty of a gross misdemeanor. [1909 c 249 § 424; RRS § 2676.]

49.44.030 Labor representative receiving bribe. Every person who, being the duly constituted representative of a labor organization, shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that any of his acts, decisions or other duties as such representative, or any act to prevent or cause a strike of the employees of any person or corporation shall be influenced thereby, shall be guilty of a gross misdemeanor. [1909 c 249 § 425; RRS § 2677.]

49.44.040 Obtaining employment by false letter or certificate. Every person who shall obtain employment or appointment to any office or place of trust, by color or aid of any false or forged letter or certificate of recommendation, shall be guilty of a misdemeanor. [1909 c 249 § 371; RRS § 2623.]

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49.44.050 Fraud by employment agent. Every employment agent or broker who, with intent to influence the action of any person thereby, shall misstate or misrepresent verbally, or in any writing or advertisement, any material matter relating to the demand for labor, the conditions under which any labor or service is to be performed, the duration thereof or the wages to be paid therefor, shall be guilty of a misdemeanor. [1909 c 249 § 372; RRS § 2624.]

Discrimination—Unfair practices of employment agencies: RCW 49.60.200.

False advertising: RCW 9.04.010.

49.44.060 Corrupt influencing of agent. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any agent, employee or servant of any person or corporation, with intent to influence his action in relation to his principal's, employer's or master's business, shall be guilty of a gross misdemeanor. [1909 c 249 § 426; RRS § 2678.]

49.44.080 Endangering life by refusal to labor. Every person who shall wilfully and maliciously, either alone or in combination with others, break a contract of service or employment, knowing or having reasonable cause to believe that the consequence of his so doing will be to endanger human life or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, shall be guilty of a misdemeanor. [1909 c 249 § 281; RRS § 2533.]

Injunctions in labor disputes: Chapter 49.32 RCW.

Labor unions—Injunctions in labor disputes: RCW 49.36.015.

49.44.090 Unfair practices in employment because of age of employee or applicant—Exceptions. It shall be an unfair practice:

(1) For an employer or licensing agency, because an individual is forty years of age or older, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment: PROVIDED, That employers or licensing agencies may establish reasonable minimum and/or maximum age limits with respect to candidates for positions of employment, which positions are of such a nature as to require extraordinary physical effort, endurance, condition or training, subject to the approval of the executive director of the Washington state human rights commission or the director of labor and industries through the division of industrial relations.

(2) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination respecting individuals forty years of age or older: PROVIDED, That nothing herein shall forbid a requirement of disclosure of birth date upon any form of application for employment or by the production of a birth certificate or other sufficient evidence of the applicant's true age after an employee is hired.

Nothing contained in this section or in RCW 49.60.180 as to age shall be construed to prevent the termination of the employment of any person who is physically unable to perform his or her duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section; nor shall anything in this section or in RCW 49.60.180 be deemed to preclude the varying of insurance coverages according to an employee's age; nor shall this section be construed as applying to any state, county, or city law enforcement agencies, or as superseding any law fixing or authorizing the establishment of reasonable minimum or maximum age limits with respect to candidates for certain positions in public employment which are of such a nature as to require extraordinary physical effort, or which for other reasons warrant consideration of age factors. [1993 c 510 § 24; 1985 c 185 § 30; 1983 c 293 § 2; 1961 c 100 § 5.]

Severability—1993 c 510: See note following RCW 49.60.010.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Unfair practices, discrimination because of age: RCW 49.60.180 through 49.60.205.

49.44.100 Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty. (1) It shall be unlawful for any person, firm or corporation not directly involved in a labor strike or lockout to recruit and bring into this state from outside this state any person or persons for employment, or to secure or offer to secure for such person or persons any employment, when the purpose of such recruiting, securing or offering to secure employment is to have such persons take the place in employment of employees in a business owned by a person, firm or corporation involved in a labor strike or lockout, or to have such persons act as pickets of a business owned by a person, firm or corporation where a labor strike or lockout exists: PROVIDED, That this section shall not apply to activities and services offered by or through the Washington employment security department.

(2) Any person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 277; 1961 c 180 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

49.44.120 Requiring lie detector tests—Penalty. (1) It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require, directly or indirectly, that any employee or prospective employee take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: PROVIDED, That this section shall not apply to persons making initial application for employment with any law enforcement agency: PROVIDED FURTHER, That this section shall not apply to either the initial application for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security.

(2) Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83.010.

(3) Any person violating this section is guilty of a misdemeanor.

(4) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(5) Nothing in this section may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under this section for purposes of any civil action or injunctive relief. [2003 c 53 § 278; 1985 c 426 § 1; 1973 c 145 § 1; 1965 c 152 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

49.44.135 Requiring lie detector tests—Civil penalty and damages—Attorneys' fees. In a civil action alleging a violation of RCW 49.44.120, the court may:

(1) Award a penalty in the amount of five hundred dollars to a prevailing employee or prospective employee in addition to any award of actual damages;

(2) Award reasonable attorneys' fees and costs to the prevailing employee or prospective employee; and

(3) Pursuant to RCW 4.84.185, award any prevailing party against whom an action has been brought for a violation of RCW 49.44.120 reasonable expenses and attorneys' fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause. [1985 c 426 § 3.]

49.44.140 Requiring assignment of employee's rights to inventions—Conditions. (1) A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this state and is to that extent void and unenforceable.

(2) An employer shall not require a provision made void and unenforceable by subsection (1) of this section as a condition of employment or continuing employment.

(3) If an employment agreement entered into after September 1, 1979, contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed [performed] by the employee for the employer. [1979 ex.s. c 177 § 2.]

49.44.150 Requiring assignment of employee's rights to inventions—Disclosure of inventions by employee. Even though the employee meets the burden of proving the conditions specified in RCW 49.44.140, the employee shall, at the time of employment or thereafter, disclose all inventions being developed by the employee, for the purpose of determining employer or employee rights. The employer or the employee may disclose such inventions to the department of employment security, and the department shall maintain a record of such disclosures for a minimum period of five years. [1979 ex.s. c 177 § 3.]

49.44.160 Public employers—Intent. The legislature intends that public employers be prohibited from misclassifying employees, or taking other action to avoid providing or continuing to provide employment-based benefits to which employees are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification.

Chapter 155, Laws of 2002 does not mandate that any public employer provide benefits to actual temporary, seasonal, or part-time employees beyond the benefits to which they are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification. Public employers may determine eligibility rules for their own benefit plans and may exclude categories of workers such as "temporary" or "seasonal," so long as the definitions and eligibility rules are objective and applied on a consistent basis. Objective standards, such as control over the work and the length of the employment relationship, should determine whether a person is an employee who is entitled to employee benefits, rather than the arbitrary application of labels, such as "temporary" or "contractor." Common law standards should be used to determine whether a person is performing services as an employee, as a contractor, or as part of an agency relationship.

Chapter 155, Laws of 2002 does not modify any statute or policy regarding the employment of: Public employee retirees who are hired for postretirement employment as provided for in chapter 41.26, 41.32, 41.35, or 41.40 RCW or who work as contractors; or enrolled students who receive employment as student employees or as part of their education or financial aid. [2002 c 155 § 1.]

Construction—2002 c 155: "This act shall be construed liberally for the accomplishment of its purposes." [2002 c 155 § 3.]

Severability—2002 c 155: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 155 § 4.]

49.44.170 Public employers—Unfair practices—Definitions—Remedies. (1) It is an unfair practice for any public employer to:

(a) Misclassify any employee to avoid providing or continuing to provide employment-based benefits; or

(b) Include any other language in a contract with an employee that requires the employee to forgo employment-based benefits.

(2) The definitions in this subsection apply throughout chapter 155, Laws of 2002 unless the context clearly requires otherwise.

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(a) "Employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. This definition shall be interpreted consistent with common law.

(b) "Employment-based benefits" means any benefits to which employees are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification.

(c) "Public employer" means: (i) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; and (ii) the state, state institutions, and state agencies. This definition shall be interpreted consistent with common law.

(d) "Misclassify" and "misclassification" means to incorrectly classify or label a long-term public employee as "temporary," "leased," "contract," "seasonal," "intermittent," or "part-time," or to use a similar label that does not objectively describe the employee's actual work circumstances.

(3) An employee deeming himself or herself harmed in violation of subsection (1) of this section may bring a civil action in a court of competent jurisdiction. [2002 c 155 § 2.]

Construction—Severability—2002 c 155: See notes following RCW 49.44.160.

49.44.180 Genetic screening. It shall be unlawful for any person, firm, corporation, or the state of Washington, its political subdivisions, or municipal corporations to require, directly or indirectly, that any employee or prospective employee submit genetic information or submit to screening for genetic information as a condition of employment or continued employment.

"Genetic information" for purposes of this chapter, is information about inherited characteristics that can be derived from a DNA-based or other laboratory test, family history, or medical examination. "Genetic information" for purposes of this chapter, does not include: (1) Routine physical measurements, including chemical, blood, and urine analysis, unless conducted purposefully to diagnose genetic or inherited characteristics; and (2) results from tests for abuse of alcohol or drugs, or for the presence of HIV. [2004 c 12 § 1.]

**Chapter 49.46 RCW
MINIMUM WAGE ACT**

Sections

49.46.005	Declaration of necessity and police power.
49.46.010	Definitions.
49.46.020	Minimum hourly wage.
49.46.040	Investigation—Services of federal agencies—Employer's records—Industrial homework.
49.46.060	Exceptions for learners, apprentices, messengers, disabled.
49.46.065	Individual volunteering labor to state or local governmental agency—Amount reimbursed for expenses or received as nominal compensation not deemed salary for rendering services or affecting public retirement rights.
49.46.070	Records of employer—Contents—Inspection—Sworn statement.
49.46.080	New or modified regulations—Judicial review—Stay.
49.46.090	Payment of wages less than chapter requirements—Employer's liability—Assignment of wage claim.
49.46.100	Prohibited acts of employer—Penalty.
49.46.110	Collective bargaining not impaired.

- 49.46.120 Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected.
- 49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions.
- 49.46.140 Notification of employers.
- 49.46.900 Severability—1959 c 294.
- 49.46.910 Short title.
- 49.46.920 Effective date—1975 1st ex.s. c 289.

Enforcement of wage claims: RCW 49.48.040.

49.46.005 Declaration of necessity and police power.

Whereas the establishment of a minimum wage for employees is a subject of vital and imminent concern to the people of this state and requires appropriate action by the legislature to establish minimum standards of employment within the state of Washington, therefore the legislature declares that in its considered judgment the health, safety and the general welfare of the citizens of this state require the enactment of this measure, and exercising its police power, the legislature endeavors by this chapter to establish a minimum wage for employees of this state to encourage employment opportunities within the state. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health, safety and welfare of the people of this state. [1961 ex.s. c 18 § 1.]

49.46.010 Definitions. As used in this chapter:

- (1) "Director" means the director of labor and industries;
- (2) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director;
- (3) "Employ" includes to permit to work;
- (4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;
- (5) "Employee" includes any individual employed by an employer but shall not include:
 - (a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;
 - (b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;
 - (c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the director of personnel pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;
 - (d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the

individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(7) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry. [2002 c 354 § 231; 1997 c 203 § 3; 1993 c 281 § 56; 1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); 1984 c 7 § 364; 1977 ex.s. c 69 § 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Construction—1997 c 203: See note following RCW 49.46.130.

Effective date—1993 c 281: See note following RCW 41.06.022.

Effective date—1989 c 1 (Initiative Measure No. 518, approved November 8, 1988): "This act shall take effect January 1, 1989." [1989 c 1 § 5.]

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

Effect of offset of military pay on status of bona fide executive, administrative, and professional employees: RCW 73.16.080.

49.46.020 Minimum hourly wage. (1) Until January 1, 1999, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than four dollars and ninety cents per hour.

(2) Beginning January 1, 1999, and until January 1, 2000, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than five dollars and seventy cents per hour.

(3) Beginning January 1, 2000, and until January 1, 2001, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than six dollars and fifty cents per hour.

(4)(a) Beginning on January 1, 2001, and each following January 1st as set forth under (b) of this subsection, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than the amount established under (b) of this subsection.

(b) On September 30, 2000, and on each following September 30th, the department of labor and industries shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation. The adjusted minimum wage rate shall be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States department of labor. Each adjusted minimum wage rate calculated under this subsection (4)(b) takes effect on the following January 1st.

(5) The director shall by regulation establish the minimum wage for employees under the age of eighteen years. [1999 c 1 § 1 (Initiative Measure No. 688, approved November 3, 1998); 1993 c 309 § 1; 1989 c 1 § 2 (Initiative Measure No. 518, approved November 8, 1988); 1975 1st ex.s. c 289 § 2; 1973 2nd ex.s. c 9 § 1; 1967 ex.s. c 80 § 1; 1961 ex.s. c 18 § 3; 1959 c 294 § 2.]

Effective date—1993 c 309: "This act shall take effect January 1, 1994." [1993 c 309 § 2.]

Effective date—1989 c 1 (Initiative Measure No. 518): See note following RCW 49.46.010.

Notification of employers: RCW 49.46.140.

49.46.040 Investigation—Services of federal agencies—Employer's records—Industrial homework. (1) The director or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

(2) With the consent and cooperation of federal agencies charged with the administration of federal labor laws, the director may, for the purpose of carrying out his functions and duties under this chapter, utilize the services of federal agencies and their employees and, notwithstanding any other provision of law, may reimburse such federal agencies and their employees for services rendered for such purposes.

(3) Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make reports therefrom to the director as he shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations thereunder.

(4) The director is authorized to make such regulations regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations of the director relating to industrial homework are hereby continued in full force and effect. [1959 c 294 § 4.]

49.46.060 Exceptions for learners, apprentices, messengers, disabled. The director, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for (1) the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the director, at such wages lower than the minimum wage applicable under RCW 49.46.020 and subject to such limitations as to time, number, proportion, and length of service as the director shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the minimum wage applicable under RCW 49.46.020 and for such period as shall be fixed in such certificates. [1959 c 294 § 6.]

49.46.065 Individual volunteering labor to state or local governmental agency—Amount reimbursed for expenses or received as nominal compensation not deemed salary for rendering services or affecting public retirement rights. When an individual volunteers his or her labor to a state or local governmental body or agency and receives pursuant to a statute or policy or an ordinance or resolution adopted by or applicable to the state or local governmental body or agency reimbursement in lieu of compensation at a nominal rate for normally incurred expenses or receives a nominal amount of compensation per unit of voluntary service rendered such reimbursement or compensation shall not be deemed a salary for the rendering of services or for purposes of granting, affecting or adding to any qualification, entitlement or benefit rights under any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW. [1977 ex.s. c 69 § 2.]

49.46.070 Records of employer—Contents—Inspection—Sworn statement. Every employer subject to any provision of this chapter or of any regulation issued under this chapter shall make, and keep in or about the premises wherein any employee is employed, a record of the name, address, and occupation of each of his employees, the rate of pay, and the amount paid each pay period to each such employee, the hours worked each day and each work week by such employee, and such other information as the director shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or of the regulations thereunder. Such records shall be open for inspection or transcription by the director or his authorized representative at any reasonable time. Every such employer shall furnish to the director or to his authorized representative on demand a sworn statement of such records and information upon forms prescribed or approved by the director. [1959 c 294 § 7.]

49.46.080 New or modified regulations—Judicial review—Stay. (1) As new regulations or changes or modification of previously established regulations are proposed, the director shall call a public hearing for the purpose of the consideration and establishment of such regulations following the procedures used in the promulgation of standards of safety under chapter 49.17 RCW.

(2) Any interested party may obtain a review of the director's findings and order in the superior court of county of petitioners' residence by filing in such court within sixty days after the date of publication of such regulation a written petition praying that the regulation be modified or set aside. A copy of such petition shall be served upon the director. The finding of facts, if supported by evidence, shall be conclusive upon the court. The court shall determine whether the regulation is in accordance with law. If the court determines that such regulation is not in accordance with law, it shall remand the case to the director with directions to modify or revoke such regulation. If application is made to the court for leave to adduce additional evidence by any aggrieved party, such party shall show to the satisfaction of the court that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence before the director. If the court finds that such evidence is material and that reasonable grounds exist for failure of the aggrieved party to adduce such evidence in prior proceedings, the court may remand the case to the director with directions that such additional evidence be taken before the director. The director may modify the findings and conclusions, in whole or in part, by reason of such additional evidence.

(3) The judgment and decree of the court shall be final except that it shall be subject to review by the supreme court or the court of appeals as in other civil cases.

(4) The proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of an administrative regulation issued under the provisions of this chapter. The court shall not grant any stay of an administrative regulation unless the person complaining of such regulation shall file in the court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the regulation, in the event such regulation is affirmed, of the amount by which the compensation

such employees are entitled to receive under the regulation exceeds the compensation they actually receive while such stay is in effect. [1983 c 3 § 157; 1971 c 81 § 117; 1959 c 294 § 8.]

49.46.090 Payment of wages less than chapter requirements—Employer's liability—Assignment of wage claim. (1) Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer to work for less than such wage rate shall be no defense to such action.

(2) At the written request of any employee paid less than the wages to which he is entitled under or by virtue of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. [1959 c 294 § 9.]

49.46.100 Prohibited acts of employer—Penalty. (1) Any employer who hinders or delays the director or his authorized representatives in the performance of his duties in the enforcement of this chapter, or refuses to admit the director or his authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the director, or his authorized representatives that he has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor. [1959 c 294 § 10.]

49.46.110 Collective bargaining not impaired. Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of

their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter. [1959 c 294 § 11.]

49.46.120 Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected. This chapter establishes a minimum standard for wages and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law. [1961 ex.s. c 18 § 4; 1959 c 294 § 12.]

49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions. (1) Except as otherwise provided in this section, no employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) This section does not apply to:

(a) Any person exempted pursuant to RCW 49.46.010(5). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(5)(c);

(b) Employees who request compensating time off in lieu of overtime pay;

(c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or

horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259));

(i) Any hours worked by an employee of a carrier by air subject to the provisions of subchapter II of the Railway Labor Act (45 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by the employee pursuant to a shift-trading practice under which the employee has the opportunity in the same or in other work weeks to reduce hours worked by voluntarily offering a shift for trade or reassignment.

(3) No employer shall be deemed to have violated subsection (1) of this section by employing any employee of a retail or service establishment for a work week in excess of the applicable work week specified in subsection (1) of this section if:

(a) The regular rate of pay of the employee is in excess of one and one-half times the minimum hourly rate required under RCW 49.46.020; and

(b) More than half of the employee's compensation for a representative period, of not less than one month, represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate is to be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(4) No employer of commissioned salespeople primarily engaged in the business of selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, manufactured housing, or farm implements to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of

one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(5) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed. [1998 c 239 § 2. Prior: 1997 c 311 § 1; 1997 c 203 § 2; 1995 c 5 § 1; 1993 c 191 § 1; 1992 c 94 § 1; 1989 c 104 § 1; prior: 1977 ex.s. c 4 § 1; 1977 ex.s. c 74 § 1; 1975 1st ex.s. c 289 § 3.]

Findings—Intent—1998 c 239: "The legislature finds that employees in the airline industry have a long-standing practice and tradition of trading shifts voluntarily among themselves. The legislature also finds that federal law exempts airline employees from the provisions of federal overtime regulations. This act is intended to specify that airline industry employers are not required to pay overtime compensation to an employee agreeing to work additional hours for a coemployee." [1998 c 239 § 1.]

Intent—Collective bargaining agreements—1998 c 239: "This act does not alter the terms, conditions, or practices contained in any collective bargaining agreement." [1998 c 239 § 3.]

Retroactive application—1998 c 239: "This act is remedial in nature and applies retroactively." [1998 c 239 § 4.]

Severability—1998 c 239: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 239 § 5.]

Construction—1997 c 203: "Nothing in this act shall be construed to alter the terms, conditions, or practices contained in any collective bargaining agreement in effect at the time of the effective date of this act [July 27, 1997] until the expiration date of such agreement." [1997 c 203 § 4.]

Intent—Application—1995 c 5: "This act is intended to clarify the original intent of RCW 49.46.010(5)(c). This act applies to all administrative and judicial actions commenced on or after February 1, 1995, and pending on March 30, 1995, and such actions commenced on or after March 30, 1995." [1995 c 5 § 2.]

Effective date—1995 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1995]." [1995 c 5 § 3.]

49.46.140 Notification of employers. The director of the department of labor and industries and the commissioner of employment security shall each notify employers of the requirements of chapter 289, Laws of 1975 1st ex. sess. through their regular quarterly notices to employers. [1975 1st ex.s. c 289 § 4.]

49.46.900 Severability—1959 c 294. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter and the application thereof to other persons or circumstances shall not be affected thereby. [1959 c 294 § 13.]

49.46.910 Short title. This chapter may be known and cited as the "Washington Minimum Wage Act." [1961 ex.s. c 18 § 6; 1959 c 294 § 14.]

49.46.920 Effective date—1975 1st ex.s. c 289. This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect September 1, 1975. [1975 1st ex.s. c 289 § 5.]

Chapter 49.48 RCW

WAGES—PAYMENT—COLLECTION

Sections

49.48.010	Payment of wages due to employee ceasing work to be at end of pay period—Exceptions—Authorized deductions or withholdings.
49.48.020	Penalty for noncompliance with RCW 49.48.010 through 49.48.030 and 49.48.060.
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Chattel liens: Chapter 60.08 RCW.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

49.48.010 Payment of wages due to employee ceasing work to be at end of pay period—Exceptions—Authorized deductions or withholdings. When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period: PROVIDED, HOWEVER, That this paragraph shall not apply when workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers or some of them cooperate to establish a plan for the weekly payment of wages at a central place or places and in accordance with a unified schedule of payday providing for at least one payday each week; but this subsection shall not apply to any such plan until ten days after notice of their intention to set up such a plan shall have been given to the director of labor and industries by the employers who cooperate to establish the plan; and having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the director of labor and industries by the employers intending to abandon the plan: PROVIDED FURTHER, That the duty to

pay an employee forthwith shall not apply if the labor-management agreement under which the employee has been employed provides otherwise.

It shall be unlawful for any employer to withhold or divert any portion of an employee's wages unless the deduction is:

- (1) Required by state or federal law; or
- (2) Specifically agreed upon orally or in writing by the employee and employer; or
- (3) For medical, surgical or hospital care or service, pursuant to any rule or regulation: PROVIDED, HOWEVER, That the deduction is openly, clearly and in due course recorded in the employer's books and records.

Paragraph *three of this section shall not be construed to affect the right of any employer or former employer to sue upon or collect any debt owed to said employer or former employer by his employees or former employees. [1971 ex.s. c 55 § 1; 1947 c 181 § 1; 1905 c 112 § 1; 1888 c 128 § 1; Rem. Supp. 1947 § 7594.]

***Reviser's note:** The reference to paragraph three of this section appears to be erroneous. An amendment to Engrossed Senate Bill No. 137 [1971 ex.s. c 55] deleted the first paragraph of the section without making a corresponding change in the reference to "paragraph three." It was apparently intended that the phrase "paragraph three of this section" refer to the paragraph beginning "It shall be unlawful . . .," which now appears as the second paragraph of the section.

Saving—1888 c 128: "This act is not to be construed as affecting any bona fide contract heretofore entered into contrary to its provisions and existing at the date of the passage hereof, and continuing by reason of limitation of said contract being still in force." [1888 c 128 § 4; no RRS.]

Effective date—1888 c 128: "This act is to take effect on and after its approval." [1888 c 128 § 5; no RRS.]

General repealer—1888 c 128: "All laws or parts of laws in conflict with this act be and the same are hereby repealed." [1888 c 128 § 6; no RRS.]

The foregoing annotations apply to RCW 49.48.010 through 49.48.030.

49.48.020 Penalty for noncompliance with RCW 49.48.010 through 49.48.030 and 49.48.060. Any person, firm, or corporation which violates any of the provisions of RCW 49.48.010 through 49.48.030 and 49.48.060 shall be guilty of a misdemeanor. [1971 ex.s. c 55 § 2; 1933 ex.s. c 20 § 1; 1888 c 128 § 2; RRS § 7595.]

Wages—Deductions—Rebates, authorized withholding: RCW 49.52.060.

49.48.030 Attorney's fee in action on wages—Exception. In any action in which any person is successful in recovering judgment for wages or salary owed to him, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer or former employer: PROVIDED, HOWEVER, That this section shall not apply if the amount of recovery is less than or equal to the amount admitted by the employer to be owing for said wages or salary. [1971 ex.s. c 55 § 3; 1888 c 128 § 3; RRS § 7596.]

49.48.040 Enforcement of wage claims—Issuance of subpoenas—Compliance. (1) The department of labor and industries may:

- (a) Upon obtaining information indicating an employer may be committing a violation under chapters 39.12, 49.46, and 49.48 RCW, conduct investigations to ensure compliance with chapters 39.12, 49.46, and 49.48 RCW;

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- (b) Order the payment of all wages owed the workers and institute actions necessary for the collection of the sums determined owed; and

- (c) Take assignments of wage claims and prosecute actions for the collection of wages of persons who are financially unable to employ counsel when in the judgment of the director of the department the claims are valid and enforceable in the courts.

- (2) The director of the department or any authorized representative may, for the purpose of carrying out RCW 49.48.040 through 49.48.080: (a) Issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, or records; (b) administer oaths and examine witnesses under oath; (c) take the verification of proof of instruments of writing; and (d) take depositions and affidavits. If assignments for wage claims are taken, court costs shall not be payable by the department for prosecuting such suits.

- (3) The director shall have a seal inscribed "Department of Labor and Industries—State of Washington" and all courts shall take judicial notice of such seal. Obedience to subpoenas issued by the director or authorized representative shall be enforced by the courts in any county.

- (4) The director or authorized representative shall have free access to all places and works of labor. Any employer or any agent or employee of such employer who refuses the director or authorized representative admission therein, or who, when requested by the director or authorized representative, wilfully neglects or refuses to furnish the director or authorized representative any statistics or information pertaining to his or her lawful duties, which statistics or information may be in his or her possession or under the control of the employer or agent, shall be guilty of a misdemeanor. [1987 c 172 § 1; 1935 c 96 § 1; RRS § 7596-1.]

49.48.050 Remedy cumulative. Nothing herein contained shall be construed to limit the authority of the prosecuting attorney of any county to prosecute actions, both civil and criminal, for such violations of RCW 49.48.040 through 49.48.080 as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the director of labor and industries. [1935 c 96 § 2; RRS § 7596-2.]

49.48.060 Director may require bond after assignment of wage claims—Court action—Penalty for failure to pay wage claim. (1) If upon investigation by the director, after taking assignments of any wage claim under RCW 49.48.040, it appears to the director that the employer is representing to his employees that he is able to pay wages for their services and that the employees are not being paid for their services, the director may require the employer to give a bond in such sum as the director deems reasonable and adequate in the circumstances, with sufficient surety, conditioned that the employer will for a definite future period not exceeding six months conduct his business and pay his employees in accordance with the laws of the state of Washington.

- (2) If within ten days after demand for such bond the employer fails to provide the same, the director may com-

mence a suit against the employer in the superior court of appropriate jurisdiction to compel him to furnish such bond or cease doing business until he has done so. The employer shall have the burden of proving the amount thereof to be excessive.

(3) If the court finds that there is just cause for requiring such bond and that the same is reasonable, necessary or appropriate to secure the prompt payment of the wages of the employees of such employer and his compliance with RCW 49.48.010 through 49.48.080, the court shall enjoin such employer from doing business in this state until the requirement is met, or shall make other, and may make further, orders appropriate to compel compliance with the requirement.

Upon being informed of a wage claim against an employer or former employer, the director shall, if such claim appears to be just, immediately notify the employer or former employer, of such claim by mail. If the employer or former employer fails to pay the claim or make satisfactory explanation to the director of his failure to do so, within thirty days thereafter, the employer or former employer shall be liable to a penalty of ten percent of that portion of the claim found to be justly due. The director shall have a cause of action against the employer or former employer for the recovery of such penalty, and the same may be included in any subsequent action by the director on said wage claim, or may be exercised separately after adjustment of such wage claim without court action. [1971 ex.s. c 55 § 4; 1935 c 96 § 3; RRS § 7596-3.]

49.48.070 Enforcement. It shall be the duty of the director of labor and industries to inquire diligently for any violations of RCW 49.48.040 through 49.48.080, and to institute the actions for penalties herein provided, and to enforce generally the provisions of RCW 49.48.040 through 49.48.080. [1935 c 96 § 4; RRS § 7596-4.]

49.48.075 Reciprocal enforcement agreements with other states. (1) The director of labor and industries, or the director's designee, may enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of such department or agency, for the collection in such other states of claims or judgments for wages and other demands based upon claims assigned to the director.

(2) The director, or the director's designee, may, to the extent provided for by any reciprocal agreement entered into by law or with an agency of another state as herein provided, maintain actions in the courts of such other state for the collection of claims for wages, judgments, and other demands and may assign such claims, judgments, and demands to the labor department or agency of such other state for collection to the extent that such an assignment may be permitted or provided for by the law of such state or reciprocal agreement.

(3) The director, or the director's designee, may, upon the written consent of the labor department or corresponding agency of any other state or of the person, board, officer, or commission of such state authorized to act on behalf of such labor department or corresponding agency, maintain actions

in the courts of Washington upon assigned claims for wages, judgments, and demands arising in such other state in the same manner and to the same extent that such actions by the director are authorized when arising in Washington. Such actions may be maintained only in cases where such other state by law or reciprocal agreement extends a like comity to cases arising in Washington. [1985 c 48 § 1.]

49.48.080 Public employees excluded. Nothing in RCW 49.48.040 through 49.48.080 shall apply to the payment of wages or compensation of employees directly employed by any county, incorporated city or town, or other municipal corporation. Nor shall anything herein apply to employees, directly employed by the state, any department, bureau, office, board, commission or institution hereof. [1935 c 96 § 5; RRS § 7596-5.]

49.48.090 Assignment of wages—Requisites to validity. No assignment of, or order for, wages to be earned in the future to secure a loan of less than three hundred dollars, shall be valid against an employer of the person making said assignment or order unless said assignment or order is accepted in writing by the employer, and said assignment or order, and the acceptance of the same, have been filed and recorded with the county auditor of the county where the party making said assignment or order resides, if a resident of the state, or in which he is employed, if not a resident of the state. [1909 c 32 § 1; RRS § 7597.]

49.48.100 Written consent of spouse required. No assignment of, or order for, wages to be earned in the future shall be valid, when made by a married person, unless the written consent of the other spouse to the making of such assignment or order is attached thereto. [1972 ex.s. c 108 § 7; 1909 c 32 § 2; RRS § 7598.]

49.48.115 Employer defined. For the purposes of RCW 49.48.120 the word "employer" shall include every person, firm, partnership, corporation, the state of Washington, and all municipal corporations. [1939 c 139 § 1; RRS § 1464-1. Formerly RCW 49.48.120, part.]

49.48.120 Payment on employee's death. (1) If at the time of the death of any person, his or her employer is indebted to him or her for work, labor, and services performed, and no executor or administrator of his or her estate has been appointed, the employer shall upon the request of the surviving spouse pay the indebtedness in an amount as may be due not exceeding the sum of two thousand five hundred dollars, to the surviving spouse, or if the decedent leaves no surviving spouse, then to the decedent's child or children, or if no children, then to the decedent's father or mother.

(2) In the event the decedent's employer is the state of Washington, then the amount of the indebtedness that can be paid under subsection (1) of this section shall not exceed ten thousand dollars. At the beginning of each biennium, the director of financial management may by administrative policy adjust the amount of indebtedness that can be paid under this subsection to levels not to exceed the percentage increase in the consumer price index for all urban consumers, CPI-U,

for Seattle, or a successor index, for the previous biennium as calculated by the United States department of labor. Adjusted dollar amounts of indebtedness shall be rounded to the nearest five hundred dollar increment.

(3) If the decedent and the surviving spouse have entered into a community property agreement that meets the requirements of RCW 26.16.120, and the right to the indebtedness became the sole property of the surviving spouse upon the death of the decedent, the employer shall pay to the surviving spouse the total of the indebtedness, or that portion which is governed by the community property agreement, upon presentation of the agreement accompanied by an affidavit or declaration of the surviving spouse stating that the agreement was executed in good faith between the parties and had not been rescinded by the parties before the decedent's death.

(4) In all cases, the employer shall require proof of the claimant's relationship to the decedent by affidavit or declaration, and shall require the claimant to acknowledge receipt of the payment in writing.

(5) Any payments made by an employer pursuant to the provisions of RCW 49.48.115 and 49.48.120 shall operate as a full and complete discharge of the employer's indebtedness to the extent of the payment, and no employer shall thereafter be liable to the decedent's estate, or the decedent's executor or administrator thereafter appointed.

(6) The employer may also pay the indebtedness upon presentation of an affidavit as provided in RCW 11.62.010. [2003 c 122 § 1; 1981 c 333 § 2; 1974 ex.s. c 117 § 42; 1967 c 210 § 1; 1939 c 139 § 2; RRS § 1464-2. FORMER PART OF SECTION: 1939 c 139 § 1; RRS § 1464-1 now codified as RCW 49.48.115.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

49.48.150 Sales representatives—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 49.48.160 through 49.48.190.

(1) "Commission" means compensation paid a sales representative by a principal in an amount based on a percentage of the dollar amount of certain orders for or sales of the principal's product.

(2) "Principal" means a person, whether or not the person has a permanent or fixed place of business in this state, who:

(a) Manufactures, produces, imports, or distributes a product for sale to customers who purchase the product for resale;

(b) Uses a sales representative to solicit orders for the product; and

(c) Compensates the sales representative in whole or in part by commission.

(3) "Sales representative" means a person who solicits, on behalf of a principal, orders for the purchase at wholesale of the principal's product, but does not include a person who places orders for his own account for resale, or purchases for his own account for resale, or sells or takes orders for the direct sale of products to the ultimate consumer. [1992 c 177 § 1.]

Severability—1992 c 177: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 177 § 7.]

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49.48.160 Sales representatives—Contract—Agreement. (1) A contract between a principal and a sales representative under which the sales representative is to solicit wholesale orders within this state must be in writing and must set forth the method by which the sales representative's commission is to be computed and paid. The principal shall provide the sales representative with a copy of the contract. A provision in the contract establishing venue for an action arising under the contract in a state other than this state is void.

(2) When no written contract has been entered into, any agreement between a sales representative and a principal is deemed to incorporate the provisions of RCW 49.48.150 through 49.48.190.

(3) During the course of the contract, a sales representative shall be paid the earned commission and all other moneys earned or payable in accordance with the agreed terms of the contract, but no later than thirty days after receipt of payment by the principal for products or goods sold on behalf of the principal by the sales representative.

Upon termination of a contract, whether or not the agreement is in writing, all earned commissions due to the sales representative shall be paid within thirty days after receipt of payment by the principal for products or goods sold on behalf of the principal by the sales representative, including earned commissions not due when the contract is terminated. [1992 c 177 § 2.]

Severability—1992 c 177: See note following RCW 49.48.150.

49.48.170 Sales representatives—Payment. A principal shall pay wages and commissions at the usual place of payment unless the sales representative requests that the wages and commissions be sent through registered mail. If, in accordance with a request by the sales representative, the sales representative's wages and commissions are sent through the mail, the wages and commissions are deemed to have been paid as of the date of their registered postmark. [1992 c 177 § 3.]

Severability—1992 c 177: See note following RCW 49.48.150.

49.48.180 Sales representatives—Principal considered doing business in this state. A principal who is not a resident of this state and who enters into a contract subject to RCW 49.48.150 through 49.48.190 is considered to be doing business in this state for purposes of the exercise of personal jurisdiction over the principal. [1992 c 177 § 4.]

Severability—1992 c 177: See note following RCW 49.48.150.

49.48.190 Sales representatives—Rights and remedies not exclusive—Waiver void. (1) RCW 49.48.150 through 49.48.190 supplement but do not supplant any other rights and remedies enjoyed by sales representatives.

(2) A provision of RCW 49.48.150 through 49.48.190 may not be waived, whether by express waiver or by attempt to make a contract or agreement subject to the laws of another state. A waiver of a provision of RCW 49.48.150 through 49.48.190 is void. [1992 c 177 § 5.]

Severability—1992 c 177: See note following RCW 49.48.150.

49.48.200 Overpayment of wages—Government employees. (1) Debts due the state or a county or city for the

overpayment of wages to their respective employees may be recovered by the employer by deductions from subsequent wage payments as provided in RCW 49.48.210, or by civil action. If the overpayment is recovered by deduction from the employee's subsequent wages, each deduction shall not exceed: (a) Five percent of the employee's disposable earnings in a pay period other than the final pay period; or (b) the amount still outstanding from the employee's disposable earnings in the final pay period. The deductions from wages shall continue until the overpayment is fully recouped.

(2) Nothing in this section or RCW 49.48.210 or 49.48.220 prevents: (a) An employee from making payments in excess of the amount specified in subsection (1)(a) of this section to an employer; or (b) an employer and employee from agreeing to a different overpayment amount than that specified in the notice in RCW 49.48.210(1) or to a method other than a deduction from wages for repayment of the overpayment amount. [2004 c 7 § 1; 2003 c 77 § 1.]

Severability—2004 c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 7 § 3.]

49.48.210 Overpayment of wages—Notice—Review—Appeal. (1) Except as provided in subsection (10) of this section, when an employer determines that an employee was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, a demand for payment within twenty calendar days of the date on which the employee received the notice, and the rights of the employee under this section.

(2) The notice may be served upon the employee in the manner prescribed for the service of a summons in a civil action, or be mailed by certified mail, return receipt requested, to the employee at his or her last known address.

(3) Within twenty calendar days after receiving the notice from the employer that an overpayment has occurred, the employee may request, in writing, that the employer review its finding that an overpayment has occurred. The employee may choose to have the review conducted through written submission of information challenging the overpayment or through a face-to-face meeting with the employer. If the request is not made within the twenty-day period as provided in this subsection, the employee may not further challenge the overpayment and has no right to further agency review, an adjudicative proceeding, or judicial review.

(4) Upon receipt of an employee's written request for review of the overpayment, the employer shall review the employee's challenge to the overpayment. Upon completion of the review, the employer shall notify the employee in writing of the employer's decision regarding the employee's challenge. The notification must be sent by certified mail, return receipt requested, to the employee at his or her last known address.

(5) If the employee is dissatisfied with the employer's decision regarding the employee's challenge to the overpayment, the employee may request an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW or, in the case of a county or city employee, an adjudicative proceeding provided pursuant to ordinance or resolu-

tion of the county or city. The employee's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the employer's notice of overpayment. The application must be served on and received by the employer within twenty-eight calendar days of the employee's receipt of the employer's decision following review of the employee's challenge. Notwithstanding RCW 34.05.413(3), agencies may not vary the requirements of this subsection (5) by rule or otherwise. The employee must serve the employer by certified mail, return receipt requested.

(6) If the employee does not request an adjudicative proceeding within the twenty-eight-day period, the amount of the overpayment provided in the notice shall be deemed final and the employer may proceed to recoup the overpayment as provided in this section and RCW 49.48.200.

(7) Where an adjudicative proceeding has been requested, the presiding or reviewing officer shall determine the amount, if any, of the overpayment received by the employee.

(8) If the employee fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice sent to the employee after the employer's review of the employee's challenge to the overpayment to be assessed against the employee and subject to collection action by the employer as provided in RCW 49.48.200.

(9) Failure to make an application for a review by the employer as provided in subsections (3) and (4) of this section or an adjudicative proceeding within twenty-eight calendar days of the date of receiving notice of the employer's decision after review of the overpayment shall result in the establishment of a final debt against the employee in the amount asserted by the employer, which debt shall be collected as provided in RCW 49.48.200.

(10) When an employer determines that an employee covered by a collective bargaining agreement was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, and the rights of the employee under the collective bargaining agreement. Any dispute relating to the occurrence or amount of the overpayment shall be resolved using the grievance procedures contained in the collective bargaining agreement.

(11) As used in this section or RCW 49.48.210 [49.48.200] and 49.48.220:

(a) "City" means city or town;

(b) "Employer" means the state of Washington or a county or city, and any of its agencies, institutions, boards, or commissions; and

(c) "Overpayment" means a payment of wages for a pay period that is greater than the amount earned for a pay period. [2004 c 7 § 2; 2003 c 77 § 2.]

Severability—2004 c 7: See note following RCW 49.48.200.

49.48.220 Rules. The office of financial management shall adopt the rules necessary to implement chapter 77, Laws of 2003. [2003 c 77 § 3.]

Chapter 49.52 RCW
WAGES—DEDUCTIONS—
CONTRIBUTIONS—REBATES

Sections

49.52.010	Employees' benefit deductions and employer contributions are trust funds—Enforcement.
49.52.020	Lien of party rendering service.
49.52.030	Deductions in extrahazardous employment—Medical aid fund deductions excluded.
49.52.040	Actions to recover for service—Lien—Priority.
49.52.050	Rebates of wages—False records—Penalty.
49.52.060	Authorized withholding.
49.52.070	Civil liability for double damages.
49.52.080	Presumption as to intent.
49.52.090	Rebates of wages on public works—Penalty.

Chattel liens: Chapter 60.08 RCW.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

Mutual savings bank employees, pension, retirement, or health insurance benefits: RCW 32.04.082.

Public employees, payroll deductions: RCW 41.04.020, 41.04.030, 41.04.035, and 41.04.036.

49.52.010 Employees' benefit deductions and employer contributions are trust funds—Enforcement.

All moneys collected by any employer from his or its employees and all money to be paid by any employer as his contribution for furnishing, either directly, or through contract, or arrangement with a hospital association, corporation, firm or individual, of medicine, medical or surgical treatment, nursing, hospital service, ambulance service, dental service, burial service, or any or all of the above enumerated services, or any other necessary service, contingent upon sickness, accident or death, are hereby declared to be a trust fund for the purposes for which the same are collected. The trustees (or their administrator, representative, or agent under direction of the trustees) of such fund are authorized to take such action as is deemed necessary to ensure that the employer contributions are made including, but not limited to filing actions at law, and filing liens against moneys due to the employer from the performance of labor or furnishing of materials to which the employees contributed their services. Such trust fund is subject to the provisions of *chapter 48.52 RCW. [1975 c 34 § 1; 1927 c 307 § 1; RRS § 7614-1.]

*Reviser's note: Chapter 48.52 RCW was repealed by 1979 ex.s. c 34 § 1.

49.52.020 Lien of party rendering service. In case any employer collecting moneys from his employees or making contributions to any type of benefit plan for any or all of the purposes specified in RCW 49.52.010, shall enter into a contract or arrangement with any hospital association, corporation, firm or individual, to furnish any such service to its employees, the association, corporation, firm or individual contracting to furnish such services, shall have a lien upon such trust fund prior to all other liens except taxes. The lien hereby created shall attach from the date of the arrangement or contract to furnish such services and may be foreclosed in the manner provided by law for the foreclosure of other liens on personal property. [1975 c 34 § 2; 1927 c 307 § 2; RRS § 7614-2.]

49.52.030 Deductions in extrahazardous employment—Medical aid fund deductions excluded. All mon-

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neys realized by any employer from the employer's employees either by collection or by deduction from the wages or pay of employees intended or to be used for the furnishing to workers engaged in extrahazardous work, their families or dependents, of medical, surgical or hospital care and treatment, or for nursing, ambulance service, burial or any or all of the above enumerated services, or any service incidental to or furnished or rendered because of sickness, disease, accident or death, and all moneys owing by any employer therefor, shall be and remain a fund for the purposes for which such moneys are intended to be used, and shall not constitute or become any part of the assets of the employer making such collections or deductions: PROVIDED, HOWEVER, That RCW 49.52.030 and 49.52.040 shall not apply to moneys collected or deducted as aforesaid for, or owing by employers to the state medical aid fund. Such moneys shall be paid over promptly to the physician or surgeon or hospital association or other parties to which such moneys are due and for the purposes for which such collections or deductions were made. [1989 c 12 § 16; 1929 c 136 § 1; RRS § 7713-1.]

49.52.040 Actions to recover for service—Lien—Priority.

If any such employer shall default in any such payment to any physician, surgeon, hospital, hospital association or any other parties to whom any such payment is due, the sum so due may be collected by an action at law in the name of the physician, surgeon, hospital, hospital association or any other party to whom such payment is owing, or their assigns and against such defaulting employer, and in addition to such action, such claims shall have the same priority and lien rights as granted to the state for claims due the accident and medical aid funds by section 7682 of Remington's Compiled Statutes of Washington, 1922 [RCW 51.16.150 through 51.16.170], and acts amendatory thereto, which priority and lien rights shall be enforced in the same manner and under the same conditions as provided in said section 7682 [RCW 51.16.150 through 51.16.170]: PROVIDED, HOWEVER, That the said claims for physicians, surgeons, hospitals and hospital associations and others shall be secondary and inferior to any claims of the state and to any claims for labor. Such right of action shall be in addition to any other right of action or remedy. [1929 c 136 § 2; RRS § 7713-2.]

49.52.050 Rebates of wages—False records—Penalty. Any employer or officer, vice principal or agent of any employer, whether said employer be in private business or an elected public official, who

(1) Shall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee; or

(2) Wilfully and with intent to deprive the employee of any part of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract; or

(3) Shall wilfully make or cause another to make any false entry in any employer's books or records purporting to show the payment of more wages to an employee than such employee received; or

(4) Being an employer or a person charged with the duty of keeping any employer's books or records shall wilfully fail

or cause another to fail to show openly and clearly in due course in such employer's books and records any rebate of or deduction from any employee's wages; or

(5) Shall wilfully receive or accept from any employee any false receipt for wages;

Shall be guilty of a misdemeanor. [1941 c 72 § 1; 1939 c 195 § 1; Rem. Supp. 1941 § 7612-21.]

Severability—1939 c 195: "If any section, subsection, sentence or clause of this act shall be adjudged unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, subsection, sentence or clause thereof not adjudged unconstitutional." [1939 c 195 § 5; RRS § 7612-25.] This applies to RCW 49.52.050 through 49.52.080.

49.52.060 Authorized withholding. The provisions of RCW 49.52.050 shall not make it unlawful for an employer to withhold or divert any portion of an employee's wages when required or empowered so to do by state or federal law or when a deduction has been expressly authorized in writing in advance by the employee for a lawful purpose accruing to the benefit of such employee nor shall the provisions of RCW 49.52.050 make it unlawful for an employer to withhold deductions for medical, surgical, or hospital care or service, pursuant to any rule or regulation: PROVIDED, That the employer derives no financial benefit from such deduction and the same is openly, clearly and in due course recorded in the employer's books. [1939 c 195 § 2; RRS § 7612-22.]

Penalty for coercion as to purchase of goods, meals, etc.: RCW 49.48.020.

Public employment, payroll deductions: RCW 41.04.020, 41.04.030, 41.04.035, and 41.04.036.

Wages to be paid in lawful money or negotiable order, penalty: RCW 49.48.010.

49.52.070 Civil liability for double damages. Any employer and any officer, vice principal or agent of any employer who shall violate any of the provisions of subdivisions (1) and (2) of RCW 49.52.050 shall be liable in a civil action by the aggrieved employee or his assignee to judgment for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees: PROVIDED, HOWEVER, That the benefits of this section shall not be available to any employee who has knowingly submitted to such violations. [1939 c 195 § 3; RRS § 7612-23.]

49.52.080 Presumption as to intent. The violations by an employer or any officer, vice principal, or agent of any employer of any of the provisions of subdivisions (3), (4), and (5) of RCW 49.52.050 shall raise a presumption that any deduction from or underpayment of any employee's wages connected with such violation was wilful. [1939 c 195 § 4; RRS § 7612-24.]

49.52.090 Rebates of wages on public works—Penalty. Every person, whether as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes or receives, or conspires with another to take or receive, for his own use or the use of any other person acting with him any part or portion of the wages paid to any laborer, workman or mechanic, including a piece worker and working subcontractor, in connection with services rendered upon any public

work within this state, whether such work is done directly for the state, or public body or officer thereof, or county, city and county, city, town, township, district or other political subdivision of the said state or for any contractor or subcontractor engaged in such public work for such an awarding or public body or officer, shall be guilty of a gross misdemeanor. [1935 c 29 § 1; RRS § 10320-1.]

Prevailing wages must be paid on public works: RCW 39.12.020.

Chapter 49.56 RCW

WAGES—PRIORITIES—PREFERENCES

Sections

- 49.56.010 Priority of wages in insolvency.
- 49.56.020 Preference on death of employer.
- 49.56.030 Priority in executions, attachments, etc.
- 49.56.040 Labor claims paramount to claims by state agencies.

Chattel liens: Chapter 60.08 RCW.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

49.56.010 Priority of wages in insolvency. In all assignments of property made by any person to trustees or assignees on account of the inability of the person at the time of the assignment to pay his debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks or laborers employed by such persons to the amount of one hundred dollars, each, and for services rendered within sixty days previously, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of the assignor. [Code 1881 § 1972; 1877 p 223 § 34; RRS § 1204.]

Construction—1877 p 224: "In construing the provisions of this act, words used in the masculine gender include the feminine and neuter, the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person, and the word writing includes printing." [1877 p 224 § 37.]

Construction—1877 p 224: "This act establishes the law of this territory respecting the subject to which it relates and its provisions and all proceedings under it are to be liberally construed with a view to effect its object." [1877 p 224 § 39.]

Repeal and saving—1877 p 224: "All acts relating to any kind or class of liens provided for in this act are hereby repealed, but no action or proceeding commenced before this act takes effect, and no right accrued is affected by such repeal but the proceedings therein must conform to the requirements of this act as far as applicable." [1877 p 224 § 38.]

Effective date—1877 p 224: "This act shall take effect and be in force from and after its passage and the approval thereof by the governor." (Approved, November 8th, 1877.) [1877 p 224 § 40.]

49.56.020 Preference on death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant and laborer for services rendered within sixty days next preceding the death of the employer, not exceeding one hundred dollars, rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person. [Code 1881 § 1973; 1877 p 223 § 35; RRS § 1205.]

49.56.030 Priority in executions, attachments, etc. In cases of executions, attachments and writs of similar nature issued against any person, except for claims for labor done,

any miners, mechanics, salesmen, servants, clerks and laborers who have claims against the defendant for labor done, may give notice of their claims and the amount thereof, sworn to by the person making the claim to the creditor and the officer executing either of such writs at any time before the actual sale of property levied on, and unless such claim is disputed by the debtor or a creditor, such officer must pay to such person out of the proceeds of the sale, the amount each is entitled to receive for services rendered within sixty days next preceding the levy of the writ, not exceeding one hundred dollars. If any or all the claims so presented and claiming preference under this chapter, are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days from the recovery thereof, and must prosecute his action with due diligence, or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim, until the determination of such action; and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim. [Code 1881 § 1974; 1877 p 223 § 36; RRS § 1206.]

49.56.040 Labor claims paramount to claims by state agencies. In distraint or insolvency proceedings affecting the assets of an employer, claims for labor, salaries or wages not to exceed six hundred dollars to each claimant which have been earned within three months before the date of the distraint or commencement of the proceeding shall be paramount and superior to any claim preferred or presented by an agency of the state: PROVIDED, That this section shall not apply to any compensation payable to an employer or to an officer, director, or stockholder of a corporate employer. [1967 ex.s. c 86 § 1.]

**Chapter 49.60 RCW
DISCRIMINATION—HUMAN
RIGHTS COMMISSION**

Sections

- 49.60.010 Purpose of chapter.
- 49.60.020 Construction of chapter—Election of other remedies.
- 49.60.030 Freedom from discrimination—Declaration of civil rights.
- 49.60.040 Definitions.
- 49.60.050 Commission created.
- 49.60.051 Board name changed to Washington State Human Rights Commission.
- 49.60.060 Membership of commission.
- 49.60.070 Compensation and reimbursement for travel expenses of commission members.
- 49.60.080 Official seal.
- 49.60.090 Offices of commission.
- 49.60.100 Reports of commission.
- 49.60.110 Commission to formulate policies.
- 49.60.120 Certain powers and duties of commission.
- 49.60.130 May create advisory agencies and conciliation councils.
- 49.60.140 Commission may hold hearings and subpoena witnesses.
- 49.60.150 Witnesses compelled to testify.
- 49.60.160 Refusals may be punished as contempt of court.
- 49.60.170 Witness fees—Deposition fees.
- 49.60.172 Unfair practices with respect to HIV or hepatitis C infection.
- 49.60.174 Evaluation of claim of discrimination—Actual or perceived HIV or hepatitis C infection.
- 49.60.175 Unfair practices of financial institutions.
- 49.60.176 Unfair practices with respect to credit transactions.
- 49.60.178 Unfair practices with respect to insurance transactions.
- 49.60.180 Unfair practices of employers.

- 49.60.190 Unfair practices of labor unions.
- 49.60.200 Unfair practices of employment agencies.
- 49.60.205 Age discrimination—Limitation.
- 49.60.210 Unfair practices—Discrimination against person opposing unfair practice—Retaliation against whistleblower.
- 49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement.
- 49.60.220 Unfair practice to aid violation.
- 49.60.222 Unfair practices with respect to real estate transactions, facilities, or services.
- 49.60.223 Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, disability, etc.
- 49.60.2235 Unfair practice to coerce, intimidate, threaten, or interfere regarding secured real estate transaction rights.
- 49.60.224 Real property contract provisions restricting conveyance, encumbrance, occupancy, or use to persons of particular race, disability, etc., void—Unfair practice.
- 49.60.225 Relief for unfair practice in real estate transaction—Damages—Penalty.
- 49.60.226 Cooperative agreements between units of government for processing complaints.
- 49.60.227 Declaratory judgment action to strike discriminatory provision of real property contract.
- 49.60.230 Complaint may be filed with commission.
- 49.60.240 Complaint investigated—Conference, conciliation—Agreement, findings—Rules.
- 49.60.250 Hearing of complaint by administrative law judge—Limitation of relief—Penalties—Order.
- 49.60.260 Enforcement of orders of administrative law judge—Appellate review of court order.
- 49.60.270 Appeal from orders of administrative law judge.
- 49.60.280 Court shall expeditiously hear and determine.
- 49.60.310 Misdemeanor to interfere with or resist commission.
- 49.60.320 Governor may act on orders against state or political subdivisions.
- 49.60.330 First class cities of over one hundred twenty-five thousand population—Administrative remedies authorized—Superior court jurisdiction.
- 49.60.340 Election for civil action in lieu of hearing—Relief.
- 49.60.350 Temporary or preliminary relief—Superior court jurisdiction—Petition of commission.
- 49.60.360 Refueling services for disabled drivers—Violation—Investigation—Intentional display of plate or placard invalid or not legally issued prohibited—Fine—Notice to disabled persons.
- 49.60.370 Liability for killing or injuring dog guide or service animal—Penalty in addition to other remedies or penalties—Recovery of attorneys' fees and costs—No duty to investigate.
- 49.60.380 License waiver for dog guide and service animals.
- 49.60.390 Rule-making authority—Deadline—1997 c 271.
- 49.60.400 Discrimination, preferential treatment prohibited.
- 49.60.401 Short title—1999 c 3.

Annual report on programs to reduce racial disproportionality: RCW 13.06.050.

Application forms—Licenses—Mention of race or religion prohibited—Penalty: RCW 43.01.100.

Denial of civil rights: RCW 9.91.010.

Dog guide or service animal, interfering with: RCW 9.91.170.

Handicapped persons, discrimination in public employment prohibited: RCW 70.84.080.

Gender equality in higher education: Chapter 28B.110 RCW.

Interscholastic athletic and other extracurricular activities for students, discrimination prohibited: RCW 28A.600.200.

Malicious harassment because of a person's race, color, religion, ancestry, or national origin—Criminal penalty—Civil cause of action: RCW 9A.36.080.

Militia, organized, discrimination prohibited: RCW 38.40.110.

Sexual equality: State Constitution Art. 31 §§ 1, 2 (Amendment 61).

Sexual equality mandated for public schools: Chapter 28A.640 RCW.

Unfit buildings, discrimination prohibited: RCW 35.80.040.

49.60.010 Purpose of chapter. This chapter shall be known as the "law against discrimination". It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in

fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person; and the commission established hereunder is hereby given general jurisdiction and power for such purposes. [1997 c 271 § 1; 1995 c 259 § 1; 1993 c 510 § 1; 1985 c 185 § 1; 1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614-20.]

Effective date—1995 c 259: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 259 § 7.]

Severability—1993 c 510: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 510 § 26.]

Severability—1969 ex.s. c 167: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 167 § 10.]

Severability—1957 c 37: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1957 c 37 § 27.]

Severability—1949 c 183: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1949 c 183 § 13.]

Community renewal law—Discrimination prohibited: RCW 35.81.170.

49.60.020 Construction of chapter—Election of other remedies. The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical disability, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his or her civil rights. [1993 c 510 § 2; 1973 1st ex.s. c 214 § 2; 1973 c 141 § 2; 1957 c 37 § 2; 1949 c 183 § 12; Rem. Supp. 1949 § 7614-30.]

Severability—1993 c 510: See note following RCW 49.60.010.

49.60.030 Freedom from discrimination—Declaration of civil rights. (1) The right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph; and

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not

reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce. [1997 c 271 § 2; 1995 c 135 § 3. Prior: 1993 c 510 § 3; 1993 c 69 § 1; 1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 69 § 17.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.040 Definitions. As used in this chapter:

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

(2) "Commission" means the Washington state human rights commission;

(3) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit;

(4) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person;

(5) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

(6) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

(7) "Marital status" means the legal status of being married, single, separated, divorced, or widowed;

(8) "National origin" includes "ancestry";

(9) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person, to be treated as not welcome, accepted, desired, or solicited;

(10) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service,

occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

(11) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

(12) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services;

(13) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof;

(14) "Sex" means gender;

(15) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur;

(16) "Complainant" means the person who files a complaint in a real estate transaction;

(17) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction;

(18) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks,

savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred;

(19) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;

(20) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units;

(21) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building;

(22) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons;

(23) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a disabled person's sensory, mental, or physical disability. [1997 c 271 § 3; 1995 c 259 § 2. Prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Construction—1961 c 103: "Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act." [1961 c 103 § 4.]

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.050 Commission created. There is created the "Washington state human rights commission," which shall be composed of five members to be appointed by the governor with the advice and consent of the senate, one of whom shall be designated as chairperson by the governor. [1985 c 185 § 3; 1981 c 338 § 9; 1957 c 37 § 5; 1955 c 270 § 2. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

49.60.051 Board name changed to Washington State Human Rights Commission. From and after August 9, 1971 the "Washington State Board Against Discrimination" shall be known and designated as the "Washington State Human Rights Commission". [1971 ex.s. c 52 § 2.]

49.60.060 Membership of commission. One of the original members of the commission shall be appointed for a

term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom the individual succeeds.

A member shall be eligible for reappointment.

A vacancy in the commission shall be filled within thirty days, the remaining members to exercise all powers of the commission.

Any member of the commission may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon. [1985 c 185 § 4; 1955 c 270 § 3. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

49.60.070 Compensation and reimbursement for travel expenses of commission members. Each member of the commission shall be compensated in accordance with RCW 43.03.250 and, while in session or on official business, shall receive reimbursement for travel expenses incurred during such time in accordance with RCW 43.03.050 and 43.03.060. [1985 c 185 § 5; 1984 c 287 § 98; 1975-'76 2nd ex.s. c 34 § 145; 1955 c 270 § 4. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

49.60.080 Official seal. The commission shall adopt an official seal, which shall be judicially noticed. [1985 c 185 § 6; 1955 c 270 § 5. Prior: (i) 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part. (ii) 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.090 Offices of commission. The principal office of the commission shall be in the city of Olympia, but it may meet and exercise any or all of its powers at any other place in the state, and may establish such district offices as it deems necessary. [1985 c 185 § 7; 1957 c 37 § 6; 1955 c 270 § 6. Prior: (i) 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part. (ii) 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.100 Reports of commission. Subject to RCW 40.07.040, the commission, each biennium, shall report to the governor, describing the investigations, proceedings, and hearings it has conducted and their outcome, the decisions it has rendered, the recommendations it has issued, and the other work performed by it, and shall make such recommendations for further legislation as may appear desirable. The commission may present its reports to the legislature; the commission's reports shall be made available upon request. [1987 c 505 § 55; 1985 c 185 § 8; 1977 c 75 § 74; 1955 c 270 § 7. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

49.60.110 Commission to formulate policies. The commission shall formulate policies to effectuate the purposes of this chapter and may make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes. [1985 c 185 § 9; 1949 c 183 § 5; Rem. Supp. 1949 § 7614-24.]

49.60.120 Certain powers and duties of commission. The commission shall have the functions, powers and duties:

(1) To appoint an executive director and chief examiner, and such investigators, examiners, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this chapter, and the policies and practices of the commission in connection therewith.

(4) To receive, impartially investigate, and pass upon complaints alleging unfair practices as defined in this chapter.

(5) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of sex, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies.

(7) To cooperate and act jointly or by division of labor with the United States or other states, with other Washington state agencies, commissions, and other government entities, and with political subdivisions of the state of Washington and their respective human rights agencies to carry out the purposes of this chapter. However, the powers which may be exercised by the commission under this subsection permit investigations and complaint dispositions only if the investigations are designed to reveal, or the complaint deals only with, allegations which, if proven, would constitute unfair practices under this chapter. The commission may perform such services for these agencies and be reimbursed therefor.

(8) To foster good relations between minority and majority population groups of the state through seminars, conferences, educational programs, and other intergroup relations activities. [1997 c 271 § 4. Prior: 1993 c 510 § 6; 1993 c 69 § 4; 1985 c 185 § 10; 1973 1st ex.s. c 214 § 4; 1973 c 141 § 7; 1971 ex.s. c 81 § 1; 1957 c 37 § 7; 1955 c 270 § 8; prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Effective date—1971 ex.s. c 81: "The effective date of this act shall be July 1, 1971." [1971 ex.s. c 81 § 6.]

Human rights commission to investigate unlawful use of refueling services for disabled: RCW 49.60.360.

49.60.130 May create advisory agencies and conciliation councils. The commission has power to create such

advisory agencies and conciliation councils, local, regional, or statewide, as in its judgment will aid in effectuating the purposes of this chapter. The commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of sex, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person; to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations to the commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the commission may recommend to the appropriate state agency.

Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and the commission may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance. The commission may use organizations specifically experienced in dealing with questions of discrimination. [1997 c 271 § 5; 1993 c 510 § 7; 1985 c 185 § 11; 1975-'76 2nd ex.s. c 34 § 146; 1973 1st ex.s. c 214 § 5; 1973 c 141 § 8; 1971 ex.s. c 81 § 2; 1955 c 270 § 9. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

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

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

49.60.140 Commission may hold hearings and subpoena witnesses. The commission has power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual members, as to service of complaints, decisions, orders, recommendations and other process or papers of the commission, its member, agent, or agency, either personally or by registered mail, return receipt requested, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The return post office receipt, when service is by registered mail, shall be proof of service of the same. [1985 c 185 § 12; 1955 c 270 § 10. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.150 Witnesses compelled to testify. No person shall be excused from attending and testifying or from producing records, correspondence, documents or other evidence in obedience to the subpoena of the commission or of any individual member, on the ground that the testimony or evidence required of the person may tend to incriminate or subject the person to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture

for or on account of any transaction, matter or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons so compelled to testify. [1985 c 185 § 13; 1955 c 270 § 11. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.160 Refusals may be punished as contempt of court. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court of any county within the jurisdiction of which the investigation, proceeding, or hearing is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. [1985 c 185 § 14; 1955 c 270 § 12. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.170 Witness fees—Deposition fees. Witnesses before the commission, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of this state. Witnesses whose depositions are taken and the person taking the same shall be entitled to same fees as are paid for like services in the courts of the state. [1985 c 185 § 15; 1955 c 270 § 13. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Courts of record—Witnesses: Chapter 2.40 RCW.

Discovery and depositions: Title 5 RCW; see also Rules of Court, CR 26 through 37.

49.60.172 Unfair practices with respect to HIV or hepatitis C infection. (1) No person may require an individual to take an HIV test, as defined in chapter 70.24 RCW, or hepatitis C test, as a condition of hiring, promotion, or continued employment unless the absence of HIV or hepatitis C infection is a bona fide occupational qualification for the job in question.

(2) No person may discharge or fail or refuse to hire any individual, or segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the results of an HIV test or hepatitis C test unless the absence of HIV or hepatitis C infection is a bona fide occupational qualification of the job in question.

(3) The absence of HIV or hepatitis C infection as a bona fide occupational qualification exists when performance of a particular job can be shown to present a significant risk, as defined by the board of health by rule, of transmitting HIV or

hepatitis C infection to other persons, and there exists no means of eliminating the risk by restructuring the job.

(4) For the purpose of this chapter, any person who is actually infected with HIV or hepatitis C, but is not disabled as a result of the infection, shall not be eligible for any benefits under the affirmative action provisions of chapter 49.74 RCW solely on the basis of such infection.

(5) Employers are immune from civil action for damages arising out of transmission of HIV or hepatitis C to employees or to members of the public unless such transmission occurs as a result of the employer's gross negligence. [2003 c 273 § 2; 1988 c 206 § 903.]

Severability—1988 c 206: See RCW 70.24.900.

49.60.174 Evaluation of claim of discrimination—Actual or perceived HIV or hepatitis C infection. (1) For the purposes of determining whether an unfair practice under this chapter has occurred, claims of discrimination based on actual or perceived HIV or hepatitis C infection shall be evaluated in the same manner as other claims of discrimination based on sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a disabled person.

(2) Subsection (1) of this section shall not apply to transactions with insurance entities, health service contractors, or health maintenance organizations subject to RCW 49.60.030(1)(e) or 49.60.178 to prohibit fair discrimination on the basis of actual HIV or actual hepatitis C infection status when bona fide statistical differences in risk or exposure have been substantiated.

(3) For the purposes of this chapter:

(a) "HIV" means the human immunodeficiency virus, and includes all HIV and HIV-related viruses which damage the cellular branch of the human immune system and leave the infected person immunodeficient; and

(b) "Hepatitis C" means the hepatitis C virus of any genotype. [2003 c 273 § 3; 1997 c 271 § 6; 1993 c 510 § 8; 1988 c 206 § 902.]

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1988 c 206: See RCW 70.24.900.

49.60.175 Unfair practices of financial institutions. It shall be an unfair practice to use the sex, race, creed, color, national origin, marital status, or the presence of any sensory, mental, or physical disability of any person, or the use of a trained dog guide or service animal by a disabled person, concerning an application for credit in any credit transaction to determine the credit worthiness of an applicant. [1997 c 271 § 7; 1993 c 510 § 9; 1979 c 127 § 4; 1977 ex.s. c 301 § 14; 1973 c 141 § 9; 1959 c 68 § 1.]

Severability—1993 c 510: See note following RCW 49.60.010.

Fairness in lending act: RCW 30.04.500 through 30.04.515.

49.60.176 Unfair practices with respect to credit transactions. (1) It is an unfair practice for any person whether acting for himself, herself, or another in connection with any credit transaction because of race, creed, color, national origin, sex, marital status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person:

(a) To deny credit to any person;

(b) To increase the charges or fees for or collateral required to secure any credit extended to any person;

(c) To restrict the amount or use of credit extended or to impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;

(d) To attempt to do any of the unfair practices defined in this section.

(2) Nothing in this section shall prohibit any party to a credit transaction from considering the credit history of any individual applicant.

(3) Further, nothing in this section shall prohibit any party to a credit transaction from considering the application of the community property law to the individual case or from taking reasonable action thereon. [1997 c 271 § 8; 1993 c 510 § 10; 1979 c 127 § 5; 1973 c 141 § 5.]

Severability—1993 c 510: See note following RCW 49.60.010.

49.60.178 Unfair practices with respect to insurance transactions. It is an unfair practice for any person whether acting for himself, herself, or another in connection with an insurance transaction or transaction with a health maintenance organization to cancel or fail or refuse to issue or renew insurance or a health maintenance agreement to any person because of sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this section. For the purposes of this section, "insurance transaction" is defined in RCW 48.01.060, health maintenance agreement is defined in RCW 48.46.020, and "health maintenance organization" is defined in RCW 48.46.020.

The fact that such unfair practice may also be a violation of chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to an action brought under this section.

The insurance commissioner, under RCW 48.30.300, and the human rights commission, under chapter 49.60 RCW, shall have concurrent jurisdiction under this section and shall enter into a working agreement as to procedure to be followed in complaints under this section. [1997 c 271 § 9; 1993 c 510 § 11; 1984 c 32 § 1; 1979 c 127 § 6; 1974 ex.s. c 32 § 2; 1973 c 141 § 6.]

Severability—1993 c 510: See note following RCW 49.60.010.

49.60.180 Unfair practices of employers. It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved.

(2) To discharge or bar any person from employment because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical

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disability or the use of a trained dog guide or service animal by a disabled person.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language. [1997 c 271 § 10; 1993 c 510 § 12; 1985 c 185 § 16; 1973 1st ex.s. c 214 § 6; 1973 c 141 § 10; 1971 ex.s. c 81 § 3; 1961 c 100 § 1; 1957 c 37 § 9. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Employment rights of persons serving in uniformed services: RCW 73.16.032.

Labor—Prohibited practices: Chapter 49.44 RCW.

Unfair practices in employment because of age of employee or applicant: RCW 49.44.090.

49.60.190 Unfair practices of labor unions. It is an unfair practice for any labor union or labor organization:

(1) To deny membership and full membership rights and privileges to any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(2) To expel from membership any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(3) To discriminate against any member, employer, employee, or other person to whom a duty of representation is owed because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person. [1997 c 271 § 11; 1993 c 510 § 13; 1985 c 185 § 17; 1973 1st ex.s. c 214 § 8; 1973 c 141 § 11; 1971 ex.s. c 81 § 4; 1961 c 100 § 2; 1957 c 37 § 10. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

49.60.200 Unfair practices of employment agencies.

It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, an individual because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age, sex, race, creed, color, or national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language. [1997 c 271 § 12; 1993 c 510 § 14; 1973 1st ex.s. c 214 § 9; 1973 c 141 § 12; 1971 ex.s. c 81 § 5; 1961 c 100 § 3; 1957 c 37 § 11. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Fraud by employment agent: RCW 49.44.050.

49.60.205 Age discrimination—Limitation. No person shall be considered to have committed an unfair practice on the basis of age discrimination unless the practice violates RCW 49.44.090. It is a defense to any complaint of an unfair practice of age discrimination that the practice does not violate RCW 49.44.090. [1993 c 510 § 15; 1985 c 185 § 28.]

Severability—1993 c 510: See note following RCW 49.60.010.

49.60.210 Unfair practices—Discrimination against person opposing unfair practice—Retaliation against whistleblower. (1) It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter.

(2) It is an unfair practice for a government agency or government manager or supervisor to retaliate against a whistleblower as defined in chapter 42.40 RCW. [1992 c 118 § 4; 1985 c 185 § 18; 1957 c 37 § 12. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement. It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding

from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sex, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a disabled person except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice. [1997 c 271 § 13; 1993 c 510 § 16. Prior: 1985 c 203 § 1; 1985 c 90 § 6; 1979 c 127 § 7; 1957 c 37 § 14.]

Severability—1993 c 510: See note following RCW 49.60.010.

Denial of civil rights: RCW 9.91.010.

49.60.220 Unfair practice to aid violation. It is an unfair practice for any person to aid, abet, encourage, or incite the commission of any unfair practice, or to attempt to obstruct or prevent any other person from complying with the provisions of this chapter or any order issued thereunder. [1957 c 37 § 13. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

49.60.222 Unfair practices with respect to real estate transactions, facilities, or services. (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, race, creed, color, national origin, families with children status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person:

(a) To refuse to engage in a real estate transaction with a person;

(b) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(d) To refuse to negotiate for a real estate transaction with a person;

(e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property;

(f) To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person; or to a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or to any person associated with the person buying or renting;

(g) To make, print, circulate, post, or mail, or cause to be so made or published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(h) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

(i) To expel a person from occupancy of real property;

(j) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions; or

(k) To attempt to do any of the unfair practices defined in this section.

(2) For the purposes of this chapter discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the dwelling, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted;

(b) To refuse to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with the presence of any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person equal opportunity to use and enjoy a dwelling; or

(c) To fail to design and construct covered multifamily dwellings and premises in conformance with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable laws or regulations pertaining to access by persons with any sensory, mental, or physical disability or use of a trained dog guide or service animal. Whenever the requirements of applicable laws or regulations differ, the requirements which require greater accessibility for persons with any sensory, mental, or physical disability shall govern.

Nothing in (a) or (b) of this subsection shall apply to: (i) A single-family house rented or leased by the owner if the owner does not own or have an interest in the proceeds of the rental or lease of more than three such single-family houses at one time, the rental or lease occurred without the use of a real estate broker or salesperson, as defined in RCW 18.85.010, and the rental or lease occurred without the publication, posting, or mailing of any advertisement, sign, or statement in violation of subsection (1)(g) of this section; or (ii) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the rooms or units as his or her residence.

(3) Notwithstanding any other provision of this chapter, it shall not be an unfair practice or a denial of civil rights for

any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or families with children status.

(4) Except pursuant to subsection (2)(a) of this section, this section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a disabled person except as otherwise required by law. Nothing in this section affects the rights, responsibilities, and remedies of landlords and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right to post and enforce reasonable rules of conduct and safety for all tenants and their guests, provided that chapters 59.18 and 59.20 RCW are only affected to the extent they are inconsistent with the nondiscrimination requirements of this chapter. Nothing in this section limits the applicability of any reasonable federal, state, or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(5) Notwithstanding any other provision of this chapter, it shall not be an unfair practice for any public establishment providing for accommodations offered for the full enjoyment of transient guests as defined by RCW 9.91.010(1)(c) to make distinctions on the basis of families with children status. Nothing in this section shall limit the effect of RCW 49.60.215 relating to unfair practices in places of public accommodation.

(6) Nothing in this chapter prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this chapter authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. [1997 c 400 § 3; 1997 c 271 § 14; 1995 c 259 § 3. Prior: 1993 c 510 § 17; 1993 c 69 § 5; 1989 c 61 § 1; 1979 c 127 § 8; 1975 1st ex.s. c 145 § 1; 1973 c 141 § 13; 1969 ex.s. c 167 § 4.]

Reviser's note: This section was amended by 1997 c 271 § 14 and by 1997 c 400 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.223 Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, disability, etc. It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, sex, national origin, families with children status, or with any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person. [1997 c

271 § 15. Prior: 1993 c 510 § 18; 1993 c 69 § 6; 1979 c 127 § 9; 1969 ex.s. c 167 § 5.]

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.2235 Unfair practice to coerce, intimidate, threaten, or interfere regarding secured real estate transaction rights. It is an unlawful practice to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, rights regarding real estate transactions secured by RCW 49.60.030, 49.60.040, and 49.60.222 through 49.60.224. [1993 c 69 § 7.]

Severability—1993 c 69: See note following RCW 49.60.030.

49.60.224 Real property contract provisions restricting conveyance, encumbrance, occupancy, or use to persons of particular race, disability, etc., void—Unfair practice. (1) Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, national origin, families with children status, or with any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person, and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin, families with children status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person is void.

(2) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title. [1997 c 271 § 16; 1993 c 69 § 8; 1979 c 127 § 10; 1969 ex.s. c 167 § 6.]

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.225 Relief for unfair practice in real estate transaction—Damages—Penalty. (1) When a reasonable cause determination has been made under RCW 49.60.240 that an unfair practice in a real estate transaction has been committed and a finding has been made that the respondent has engaged in any unfair practice under RCW 49.60.250, the administrative law judge shall promptly issue an order for such relief suffered by the aggrieved person as may be appropriate, which may include actual damages as provided by the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable relief. Such order may, to further the public interest, assess a civil penalty against the respondent:

(a) In an amount up to ten thousand dollars if the respondent has not been determined to have committed any prior unfair practice in a real estate transaction;

(b) In an amount up to twenty-five thousand dollars if the respondent has been determined to have committed one other unfair practice in a real estate transaction during the five-year period ending on the date of the filing of this charge; or

(c) In an amount up to fifty thousand dollars if the respondent has been determined to have committed two or more unfair practices in a real estate transaction during the seven-year period ending on the date of the filing of this charge, for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224, as now or hereafter amended, to be free from discrimination in real property transactions because of sex, marital status, race, creed, color, national origin, families with children status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person. Enforcement of the order and appeal therefrom by the complainant or respondent may be made as provided in RCW 49.60.260 and 49.60.270. If acts constituting the unfair practice in a real estate transaction that is the object of the charge are determined to have been committed by the same natural person who has been previously determined to have committed acts constituting an unfair practice in a real estate transaction, then the civil penalty of up to fifty thousand dollars may be imposed without regard to the period of time within which any subsequent unfair practice in a real estate transaction occurred. All civil penalties assessed under this section shall be paid into the state treasury and credited to the general fund.

(2) Such order shall not affect any contract, sale, conveyance, encumbrance, or lease consummated before the issuance of an order that involves a bona fide purchaser, encumbrancer, or tenant who does not have actual notice of the charge filed under this chapter.

(3) Notwithstanding any other provision of this chapter, persons awarded damages under this section may not receive additional damages pursuant to RCW 49.60.250. [1997 c 271 § 17; 1995 c 259 § 4. Prior: 1993 c 510 § 20; 1993 c 69 § 9; 1985 c 185 § 19; 1979 c 127 § 11; 1973 c 141 § 14; 1969 ex.s. c 167 § 7.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.226 Cooperative agreements between units of government for processing complaints. The commission and units of local government administering ordinances with provisions similar to the real estate provisions of the law against discrimination are authorized and directed to enter into cooperative agreements or arrangements for receiving and processing complaints so that duplication of functions shall be minimized and multiple hearings avoided. No complainant may secure relief from more than one instrumentality of state, or local government, nor shall any relief be granted by any state or local instrumentality if relief has been granted or proceedings are continuing in any federal agency, court, or instrumentality, unless such proceedings have been deferred pending state action. [1985 c 185 § 20; 1969 ex.s. c 167 § 8.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.227 Declaratory judgment action to strike discriminatory provision of real property contract. If a written instrument contains a provision that is void by reason of RCW 49.60.224, the owner, occupant, or tenant of the property which is subject to the provision may cause the provision to be stricken from the public records by bringing an action in the superior court in the county in which the property is located. The action shall be an in rem, declaratory judgment action whose title shall be the description of the property. The necessary party to the action shall be the owner, occupant, or tenant of the property or any portion thereof. The person bringing the action shall pay a fee set under RCW 36.18.012.

If the court finds that any provisions of the written instrument are void under RCW 49.60.224, it shall enter an order striking the void provisions from the public records and eliminating the void provisions from the title or lease of the property described in the complaint. [1995 c 292 § 18; 1993 c 69 § 10; 1987 c 56 § 2.]

Severability—1993 c 69: See note following RCW 49.60.030.

Intent—1987 c 56 § 2: "The legislature finds that some real property deeds and other written instruments contain discriminatory covenants and restrictions that are contrary to public policy and are void. The continued existence of these covenants and restrictions is repugnant to many property owners and diminishes the free enjoyment of their property. It is the intent of RCW 49.60.227 to allow property owners to remove all remnants of discrimination from their deeds." [1987 c 56 § 1.]

49.60.230 Complaint may be filed with commission.

(1) Who may file a complaint:

(a) Any person claiming to be aggrieved by an alleged unfair practice may, personally or by his or her attorney, make, sign, and file with the commission a complaint in writing under oath or by declaration. The complaint shall state the name of the person alleged to have committed the unfair practice and the particulars thereof, and contain such other information as may be required by the commission.

(b) Whenever it has reason to believe that any person has been engaged or is engaging in an unfair practice, the commission may issue a complaint.

(c) Any employer or principal whose employees, or agents, or any of them, refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a written complaint under oath or by declaration asking for assistance by conciliation or other remedial action.

(2) Any complaint filed pursuant to this section must be so filed within six months after the alleged act of discrimination except that complaints alleging an unfair practice in a real estate transaction pursuant to RCW 49.60.222 through 49.60.225 must be so filed within one year after the alleged unfair practice in a real estate transaction has occurred or terminated. [1993 c 510 § 21; 1993 c 69 § 11; 1985 c 185 § 21; 1957 c 37 § 16; 1955 c 270 § 15. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

Reviser's note: This section was amended by 1993 c 69 § 11 and by 1993 c 510 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

49.60.240 Complaint investigated—Conference, conciliation—Agreement, findings—Rules. After the filing of

any complaint, the chairperson of the commission shall refer it to the appropriate section of the commission's staff for prompt investigation and ascertainment of the facts alleged in the complaint. The investigation shall be limited to the alleged facts contained in the complaint. The results of the investigation shall be reduced to written findings of fact, and a finding shall be made that there is or that there is not reasonable cause for believing that an unfair practice has been or is being committed. A copy of said findings shall be provided to the complainant and to the person named in such complaint, hereinafter referred to as the respondent.

If the finding is made that there is reasonable cause for believing that an unfair practice has been or is being committed, the commission's staff shall immediately endeavor to eliminate the unfair practice by conference, conciliation, and persuasion.

If an agreement is reached for the elimination of such unfair practice as a result of such conference, conciliation, and persuasion, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the commission setting forth the terms of said agreement. No order shall be entered by the commission at this stage of the proceedings except upon such written agreement, except that during the period beginning with the filing of complaints alleging an unfair practice with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225, and ending with the filing of a finding of reasonable cause or a dismissal by the commission, the commission staff shall, to the extent feasible, engage in conciliation with respect to such complaint. Any conciliation agreement arising out of conciliation efforts by the commission shall be an agreement between the respondent and the complainant and shall be subject to the approval of the commission. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this chapter.

If no such agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof provided to the complainant and the respondent.

The commission may adopt rules, including procedural time requirements, for processing complaints alleging an unfair practice with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225 and which may be consistent with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), but which in no case shall exceed or be more restrictive than the requirements or standards of such act. [1995 c 259 § 5. Prior: 1993 c 510 § 22; 1993 c 69 § 12; 1985 c 185 § 22; 1981 c 259 § 1; 1957 c 37 § 17; 1955 c 270 § 16; prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

RCW 49.60.240 through 49.60.280 applicable to complaints concerning unlawful use of refueling services for disabled: RCW 49.60.360.

49.60.250 Hearing of complaint by administrative law judge—Limitation of relief—Penalties—Order. (1) In case of failure to reach an agreement for the elimination of

such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairperson of the commission. The chairperson of the commission shall thereupon request the appointment of an administrative law judge under Title 34 RCW to hear the complaint and shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before the administrative law judge, at a time and place to be specified in such notice.

(2) The place of any such hearing may be the office of the commission or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the commission: PROVIDED, That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the commission who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall the member or employee participate in the deliberations of the administrative law judge in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine the complainant.

(4) The administrative law judge conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

(5) If, upon all the evidence, the administrative law judge finds that the respondent has engaged in any unfair practice, the administrative law judge shall state findings of fact and shall issue and file with the commission and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization, or to take such other action as, in the judgment of the administrative law judge, will effectuate the purposes of this chapter, including action that could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed ten thousand dollars, and including a requirement for report of the matter on compliance. Relief available for violations of RCW 49.60.222 through 49.60.224 shall be limited to the relief specified in RCW 49.60.225.

(6) If a determination is made that retaliatory action, as defined in RCW 42.40.050, has been taken against a whistleblower, as defined in RCW 42.40.020, the administrative law judge may, in addition to any other remedy, impose a civil penalty upon the retaliator of up to three thousand dollars and issue an order to the state employer to suspend the retaliator for up to thirty days without pay. At a minimum, the administrative law judge shall require that a letter of reprimand be placed in the retaliator's personnel file. All penalties recov-

ered shall be paid into the state treasury and credited to the general fund.

(7) The final order of the administrative law judge shall include a notice to the parties of the right to obtain judicial review of the order by appeal in accordance with the provisions of RCW 34.05.510 through 34.05.598, and that such appeal must be served and filed within thirty days after the service of the order on the parties.

(8) If, upon all the evidence, the administrative law judge finds that the respondent has not engaged in any alleged unfair practice, the administrative law judge shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(9) An order dismissing a complaint may include an award of reasonable attorneys' fees in favor of the respondent if the administrative law judge concludes that the complaint was frivolous, unreasonable, or groundless.

(10) The commission shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure. [1993 c 510 § 23; 1993 c 69 § 14; 1992 c 118 § 5; 1989 c 175 § 115; 1985 c 185 § 23; 1983 c 293 § 1; 1981 c 259 § 2; 1957 c 37 § 18; 1955 c 270 § 17. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

Reviser's note: This section was amended by 1993 c 69 § 14 and by 1993 c 510 § 23, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1981 c 259: "Sections 2, 3, 4 and 5 of this 1981 act shall take effect upon the enactment of House Bill 101, 1981 Regular Session." [1981 c 259 § 7.] Sections 2, 3, 4, and 5 of 1981 c 259 consist of amendments to RCW 49.60.250, 49.60.260, and 49.60.270 and the enactment of RCW 49.60.330, respectively. House Bill 101 was enacted as chapter 67, Laws of 1981. It was signed by the governor on April 25, 1981. Since chapter 67, Laws of 1981 took effect on July 1, 1982, the apparent intent is for sections 2, 3, 4, and 5 of 1981 c 259 to take effect on that date. For effective date of 1981 c 67, see note following RCW 34.12.010.

Assignment of administrative law judge for human rights commission proceedings: RCW 34.12.037.

49.60.260 Enforcement of orders of administrative law judge—Appellate review of court order. (1) The commission or any person entitled to relief of a final order may petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business for the enforcement of any final order which is not complied with and is issued by the commission or an administrative law judge under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court the final order sought to be enforced. Within five days after filing such petition in court, the commission or any person entitled to relief of a final order shall cause a notice of the petition to be sent by certified mail to all parties or their representatives.

(2) If within sixty days after the date the administrative law judge's order concerning an unfair practice in a real estate transaction is entered, no petition has been filed under subsection (1) of this section and the commission has not sought enforcement of the final order under this section, any person entitled to relief under the final order may petition for a decree enforcing the order in the superior courts of the state

of Washington for the county in which the unfair practice in a real estate transaction under RCW 49.60.222 through 49.60.224 is alleged to have occurred.

(3) From the time the petition is filed, the court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to grant such temporary relief or restraining order as it deems just and suitable.

(4) If the petition shows that there is a final order issued by the commission or administrative law judge under RCW 49.60.240 or 49.60.250 and that the order has not been complied with in whole or in part, the court shall issue an order directing the person who is alleged to have not complied with the administrative order to appear in court at a time designated in the order, not less than ten days from the date thereof, and show cause why the administrative order should not be enforced according to the terms. The commission or any person entitled to relief of any final order shall immediately serve the noncomplying party with a copy of the court order and the petition.

(5) The administrative order shall be enforced by the court if the person does not appear, or if the person appears and the court finds that:

(a) The order is regular on its face;

(b) The order has not been complied with; and

(c) The person's answer discloses no valid reason why the order should not be enforced, or that the reason given in the person's answer could have been raised by review under RCW 34.05.510 through 34.05.598, and the person has given no valid excuse for failing to use that remedy.

(6) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to appellate review by the supreme court or the court of appeals, on appeal, by either party, irrespective of the nature of the decree or judgment. The review shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases. [1995 c 259 § 6; 1993 c 69 § 15; 1989 c 175 § 116; 1988 c 202 § 47; 1985 c 185 § 24; 1981 c 259 § 3; 1971 c 81 § 118; 1957 c 37 § 21. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

Rules of court: Cf. *RAP* 2.2, 18.22.

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Effective date—1989 c 175: See note following RCW 34.05.010.

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

Effective date—1981 c 259: See note following RCW 49.60.250.

49.60.270 Appeal from orders of administrative law judge. Any respondent or complainant, including the commission, aggrieved by a final order of an administrative law judge may obtain judicial review of such order as provided under the administrative procedure act, chapter 34.05 RCW. From the time a petition for review is filed, the court has jurisdiction to grant to any party such temporary relief or restraining order as it deems just and suitable. If the court affirms the order, it shall enter a judgment and decree enforcing the order as affirmed. [1985 c 185 § 25; 1981 c 259 § 4; 1957 c 37 § 22. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

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Effective date—1981 c 259: See note following RCW 49.60.250.

49.60.280 Court shall expeditiously hear and determine. Petitions filed under RCW 49.60.260 and 49.60.270 shall be heard expeditiously and determined upon the transcript filed, without requirement of printing. Hearings in the court under this chapter shall take precedence over all other matters, except matters of the same character. [1957 c 37 § 23. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

49.60.310 Misdemeanor to interfere with or resist commission. Any person who wilfully resists, prevents, impedes, or interferes with the commission or any of its members or representatives in the performance of duty under this chapter, or who wilfully violates an order of the commission, is guilty of a misdemeanor; but procedure for the review of the order shall not be deemed to be such wilful conduct. [1985 c 185 § 26; 1961 c 100 § 4; 1957 c 37 § 26; 1949 c 183 § 10; Rem. Supp. 1949 § 7614-28.]

49.60.320 Governor may act on orders against state or political subdivisions. In any case in which the commission shall issue an order against any political or civil subdivision of the state, or any agency, or instrumentality of the state or of the foregoing, or any officer or employee thereof, the commission shall transmit a copy of such order to the governor of the state. The governor shall take such action to secure compliance with such order as the governor deems necessary. [1985 c 185 § 27; 1949 c 183 § 11; Rem. Supp. 1949 § 7614-29.]

49.60.330 First class cities of over one hundred twenty-five thousand population—Administrative remedies authorized—Superior court jurisdiction. Any county or any city classified as a first class city under RCW 35.01.010 with over one hundred twenty five thousand population may enact resolutions or ordinances consistent with this chapter to provide administrative and/or judicial remedies for any form of discrimination proscribed by this chapter. The imposition of such administrative remedies shall be subject to judicial review. The superior courts shall have jurisdiction to hear all matters relating to violation and enforcement of such resolutions or ordinances, including petitions for preliminary relief, the award of such remedies and civil penalties as are consistent with this chapter, and enforcement of any order of a county or city administrative law judge or hearing examiner pursuant to such resolution or ordinance. Any local resolution or ordinance not inconsistent with this chapter may provide, after a finding of reasonable cause to believe that discrimination has occurred, for the filing of an action in, or the removal of the matter to, the superior court. [1993 c 69 § 16; 1983 c 5 § 2; 1981 c 259 § 5.]

Severability—1993 c 69: See note following RCW 49.60.030.

Effective date—1981 c 259: See note following RCW 49.60.250.

49.60.340 Election for civil action in lieu of hearing—Relief. (1) Any complainant on whose behalf the reasonable cause finding was made, a respondent, or an aggrieved person may, with respect to real estate transactions pursuant to RCW

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49.60.222 through 49.60.225, elect to have the claims on which reasonable cause was found decided in a civil action under RCW 49.60.030(2) in lieu of a hearing under RCW 49.60.250. This election must be made not later than twenty days after the service of the reasonable cause finding. The person making such election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates. Any reasonable cause finding issued by the commission pursuant to the procedures contained in this chapter shall become final twenty days after service of the reasonable cause finding unless a written notice of election is received by the commission within the twenty-day period.

(2) If an election is made under subsection (1) of this section, the commission shall authorize not later than thirty days after the election is made, and the attorney general shall commence, a civil action on behalf of the aggrieved person in a superior court of the state of Washington seeking relief under this section.

(3) Any aggrieved person with respect to the issues to be determined in a civil action under this section may intervene as of right in that civil action.

(4) In a civil action under this section, if the court finds that an unfair practice in a real estate transaction has occurred or is about to occur, the court may grant any relief that a court could grant with respect to such an unfair practice in a real estate transaction in a civil action under RCW 49.60.030(2). If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(5) In any administrative proceeding under this section where the respondent is the prevailing party, a complainant who intervenes by filing a notice of independent appearance may be liable for reasonable attorneys' fees and costs only to the extent that the intervening participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

(6) In any administrative proceeding brought under RCW 49.60.225 or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court in its discretion may allow the prevailing party, other than the commission, reasonable attorneys' fees and costs. [1993 c 69 § 13.]

Severability—1993 c 69: See note following RCW 49.60.030.

49.60.350 Temporary or preliminary relief—Superior court jurisdiction—Petition of commission. (1) The superior courts of the state of Washington shall have jurisdiction upon petition of the commission, through the attorney general, to seek appropriate temporary or preliminary relief to enjoin any unfair practice in violation of RCW 49.60.222 through 49.60.225, from which prompt judicial action is necessary to carry out the purposes of this chapter.

(2) The commencement of a civil action under this section does not preclude the initiation or continuation of administrative proceedings under this chapter. [1993 c 69 § 2.]

Severability—1993 c 69: See note following RCW 49.60.030.

49.60.360 Refueling services for disabled drivers—Violation—Investigation—Intentional display of plate or placard invalid or not legally issued prohibited—Fine—Notice to disabled persons. (1) Every person, firm, partnership, association, trustee, or corporation which operates a gasoline service station, or other facility which offers gasoline or other motor vehicle fuel for sale to the public from such a facility, shall provide, upon request, refueling service to disabled drivers, unaccompanied by passengers capable of safely providing refueling service, of vehicles which display a disabled person's license plate or placard issued by the department of licensing. The price charged for the motor vehicle fuel in such a case shall be no greater than that which the facility otherwise would charge the public generally to purchase motor vehicle fuel without refueling service. This section does not require a facility to provide disabled drivers with services, including but not limited to checking oil or cleaning windshields, other than refueling services.

(2) This section does not apply to:

(a) Exclusive self-service gas stations which have remotely controlled gas pumps and which never provide pump island service; and

(b) Convenience stores which sell gasoline, which have remotely controlled gas pumps and which never provide pump island service.

(3) Any person who, as a responsible managing individual setting service policy of a station or facility or as an employee acting independently against set service policy, acts in violation of this section is guilty of a misdemeanor. This subsection shall be enforced by the prosecuting attorney.

(4) The human rights commission shall, upon the filing of a verified written complaint by any person, investigate the actions of any person, firm, partnership, association, trustee, or corporation alleged to have violated this section. The complaint shall be in the form prescribed by the commission. The commission may, upon its own motion, issue complaints and conduct investigations of alleged violations of this section.

RCW 49.60.240 through 49.60.280 shall apply to complaints under this section.

(5) In addition to those matters referred pursuant to subsection (3) of this section, the prosecuting attorney may investigate and prosecute alleged violations of this section.

(6) Any person who intentionally displays a license plate or placard which is invalid, or which was not lawfully issued to that person, for the purpose of obtaining refueling service under subsection (1) of this section shall be subject to a civil fine of one hundred dollars for each such violation.

(7) A notice setting forth the provisions of this section shall be provided by the department of licensing to every person, firm, partnership, association, trustee, or corporation which operates a gasoline service station, or other facility which offers gasoline or other motor vehicle fuel for sale to the public from such a facility.

(8) A notice setting forth the provisions of this section shall be provided by the department of licensing to every person who is issued a disabled person's license plate or placard.

(9) For the purposes of this section, "refueling service" means the service of pumping motor vehicle fuel into the fuel tank of a motor vehicle.

(10) Nothing in this section limits or restricts the rights or remedies provided under chapter 49.60 RCW. [1994 c 262 § 17; 1985 c 309 § 1. Formerly RCW 70.84.090.]

49.60.370 Liability for killing or injuring dog guide or service animal—Penalty in addition to other remedies or penalties—Recovery of attorneys' fees and costs—No duty to investigate. (1) A person who negligently or maliciously kills or injures a dog guide or service animal is liable for a penalty of one thousand dollars, to be paid to the user of the animal. The penalty shall be in addition to and not in lieu of any other remedies or penalties, civil or criminal, provided by law.

(2) A user or owner of a dog guide or service animal, whose animal is negligently or maliciously injured or killed, is entitled to recover reasonable attorneys' fees and costs incurred in pursuing any civil remedy.

(3) The commission has no duty to investigate any negligent or malicious acts referred to under this section. [1997 c 271 § 23; 1988 c 89 § 1. Formerly RCW 70.84.100.]

49.60.380 License waiver for dog guide and service animals. A county, city, or town shall honor a request by a blind person or hearing impaired person not to be charged a fee to license his or her dog guide, or a request by a physically disabled person not to be charged a fee to license his or her service animal. [1997 c 271 § 24; 1989 c 41 § 1. Formerly RCW 70.84.120.]

49.60.390 Rule-making authority—Deadline—1997 c 271. The Washington state human rights commission shall adopt rules implementing chapter 271, Laws of 1997 no later than March 1, 1998. [1997 c 271 § 25.]

49.60.400 Discrimination, preferential treatment prohibited. (1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(2) This section applies only to action taken after December 3, 1998.

(3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin.

(4) This section does not affect any otherwise lawful classification that:

(a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or

(b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or

(c) Provides for separate athletic teams for each sex.

(5) This section does not invalidate any court order or consent decree that is in force as of December 3, 1998.

(6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

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(7) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state.

(8) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.

(9) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section. [1999 c 3 § 1 (Initiative Measure No. 200, approved November 3, 1998).]

49.60.401 Short title—1999 c 3. RCW 49.60.400 shall be known and cited as the Washington State Civil Rights Act. [1999 c 3 § 2 (Initiative Measure No. 200, approved November 3, 1998).]

Chapter 49.64 RCW EMPLOYEE BENEFIT PLANS

Sections

49.64.010	Duration of trusts for employee benefits.
49.64.020	Trusts exempted from limitation as to duration.
49.64.030	Employee benefit plans—Payment or refund as discharge—Adverse claims.
49.64.040	Dental care assistance plans—Options required.

Health care savings accounts authorized: Chapter 48.68 RCW.

49.64.010 Duration of trusts for employee benefits. Any trust heretofore or hereafter created for the purposes and of the type enumerated in RCW 49.64.020, whether in real or personal property or in real and personal property, may continue for such time as may be necessary to accomplish the purposes of the trust and shall not be invalid as violating any statute or rule of law against perpetuities, or against accumulations of earnings, or concerning the suspension of the power of alienation of the title to property, or otherwise limiting the duration of trusts. [1955 c 158 § 1.]

49.64.020 Trusts exempted from limitation as to duration. Trusts which are entitled to the exemption from limitation as to their duration provided for in RCW 49.64.010 must be:

(1) Created by an employer primarily for the benefit of some or all of the employees of such employer or the families or appointees of such employees, under any pension, profit-sharing, stock bonus, retirement, disability, death benefit or other similar types of employee-benefit plans; and

(2) Contributed to by the employer or employees or both; and

(3) Existing for the purpose of distributing to or for the benefit of some or all of such employees (either before or after their employment ceases), their families or appointees,

the earnings or principal, or earnings and principal, of the trust. [1955 c 158 § 2.]

49.64.030 Employee benefit plans—Payment or refund as discharge—Adverse claims. Notwithstanding the provisions of RCW 26.16.030, whenever payment or refund is made to an employee, former employee, or his beneficiary or estate pursuant to and in full compliance with a written retirement, death or other employee benefit plan or savings plan, such payment or refund shall fully discharge the employer and any trustee or insurance company making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the employer or former employer, where the payment is made by the employer or former employer, has received at its principal place of business within this state, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof, or where a trustee or insurance company is making the payment, such notice has been received by the trustee or insurance company at its home office or its principal place of business within this state, and if none, such notice may be made on the secretary of state: PROVIDED, HOWEVER, That nothing contained in this section shall affect any claim or right to any such payment or refund or part thereof as between all persons other than employer and the trustee or insurance company making such payment or refund. [1953 c 45 § 1. Formerly RCW 49.52.065.]

Employees' benefit deductions are trust funds: RCW 49.52.010.

49.64.040 Dental care assistance plans—Options required. (1) Unless the context clearly requires otherwise, in this section "dental care assistance plan" means any plan of dental insurance offered by an insurer as defined by chapter 48.01 RCW and any agreement for dental care benefits entered into or renewed after January 1, 1989, provided by a health care service contractor as defined by chapter 48.44 RCW.

(2) Each employer, public or private, that offers its employees a dental care assistance plan and each employee benefits fund that offers its members a dental care assistance plan limiting the provider of dental care to designated providers or group of providers, shall make available to and inform its employees or members of the option of enrolling in an alternative dental care assistance plan that permits the employees or members to obtain dental care services from any licensed dental care provider of their choice. The portion of the premium paid by the employer for the limiting plan shall be comparable to, but in no case greater than, the portion of the premium paid by the employer for the other plan. If employees are members of a bona fide bargaining unit covered by a labor-management collective bargaining agreement, the selection of the options required by this section may be specified in the agreement. The provisions of this section are not mandatory if the employees are covered by Taft-Hartley health care trust, except that the labor-management trustees may contract with a dental care assistance plan if a feasibility study determines it is to the advantage of the members: PROVIDED, That this section shall only apply to

employers with greater than twenty-five employees under coverage. [1988 c 259 § 1.]

Chapter 49.66 RCW

HEALTH CARE ACTIVITIES

Sections

49.66.010	Purpose—Policy—Declaration.
49.66.020	Definitions.
49.66.030	Bargaining unit.
49.66.040	Unfair labor practice by health care activity.
49.66.050	Unfair labor practice by employee organization or agent.
49.66.060	Strike and picketing.
49.66.070	Relief from unfair labor practice—Actions—Remedial orders.
49.66.080	Rules and regulations—Procedures.
49.66.090	Board of arbitration—Members—Selection—Chairman.
49.66.100	Board of arbitration—Hearings—Findings.
49.66.110	Board of arbitration—Standards or guidelines.
49.66.120	Arbitrator—Compensation—Expenses.
49.66.900	Severability—1972 ex.s. c 156.

49.66.010 Purpose—Policy—Declaration. It is the public policy of the state to expedite the settlement of labor disputes arising in connection with health care activities, in order that there may be no lessening, however temporary, in the quality of the care given to patients. It is the legislative purpose by this chapter to promote collective bargaining between health care activities and their employees, to protect the right of employees of health care activities to organize and select collective bargaining units of their own choosing.

It is further determined that any agreements involving union security including an all-union agreement or agency agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee must pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise pay dues. The employee shall furnish written proof that this has been done. If the employee and representative of the labor organization do not reach agreement on the matter, the department shall designate such organization. [1973 2nd ex.s. c 3 § 1; 1972 ex.s. c 156 § 1.]

49.66.020 Definitions. As used in this chapter:

(1) "Health care activity" includes any hospital, nursing home, institution, agency or establishment, exclusive of those operated by the state, its municipalities, or political subdivisions, having for one of its principal purposes the preservation of health or the care of sick, aged or infirm persons.

(2) "Bargaining unit" includes any group of employees of a health care activity having substantially common interests with respect to working conditions. The composition of a bargaining unit may be determined by common consent between an employer and its employees, or, in the event either party shall apply to the director of labor and industries for a determination of the composition of a bargaining unit, it shall be determined by the director of labor and industries or his delegated representative. No bargaining unit shall be

found appropriate if it includes guards together with other employees.

(3) "Employee" includes any registered nurse or licensed practical nurse or service personnel performing services for wages for a health care activity. The term shall not apply to a member of a religious order assigned to a health care activity by the order as a part of his obligations to it; nor shall it apply to persons performing services in connection with healing by prayer or spiritual means alone in accordance with the tenets and practices of recognized church or religious denominations by adherents thereof; nor shall it apply to supervisors.

(4) "Employer" includes any person, agency, corporation, company or other organization engaged in the operation of a health care activity, whether for profitable or charitable purposes.

(5) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Supervisor includes registered nurses only if administrative supervision is his or her primary duty and activity.

(6) "Guard" means any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises.

(7) "Director" means the director of the department of labor and industries.

(8) "Department" means the department of labor and industries. [1973 2nd ex.s. c 3 § 2; 1972 ex.s. c 156 § 2.]

49.66.030 Bargaining unit. An employee association shall be deemed the properly designated representative of a bargaining unit when it can show evidence that bargaining rights have been assigned to it by a majority of the employees in the bargaining unit. Should questions arise concerning the representative status of any employee organization claiming to represent a bargaining unit of employees, upon petition by such an organization, it shall be the duty of the director, acting by himself or through a designee to investigate and determine the composition of the organization. Any organization found authorized by not less than thirty percent of the employees of a bargaining unit shall be eligible to apply for an election to determine its rights to represent the unit. If more than one organization shall claim to represent any unit, the director, or his designee, may conduct an election by secret ballot to determine which organization shall be authorized to represent the unit. In order to be certified as a bargaining representative, an employee organization must receive, in a secret ballot election, votes from a majority of the employees who vote in the election, except that nothing in this section shall prohibit the voluntary recognition of a labor organization as a bargaining representative by an employer upon a showing of reasonable proof of majority. In any election held pursuant to this section, there shall be a choice on the ballot for employees to designate that they do not wish to be represented by any bargaining representative. No representation election shall be directed in any bargaining unit or

any subdivision thereof within which, in the preceding twelve-month period, a valid election has been held. Thirty percent of the employees of an employer may file a petition for a secret ballot election to ascertain whether the employee organization which has been certified or is currently recognized by their employer as their bargaining representative is no longer their bargaining representative.

No employee organization shall be certified as the representative of employees in a bargaining unit of guards, if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. The determination shall be based upon a plurality of votes cast in such election, and shall remain in effect for a period of not less than one year. In determining appropriate bargaining units, the director shall limit such units to groups consisting of registered nurses, licensed practical nurses or service personnel: PROVIDED, HOWEVER, That if a majority of each such classification desires inclusion within a single bargaining unit, they may combine into a single unit. [1973 2nd ex.s. c 3 § 3; 1972 ex.s. c 156 § 3.]

49.66.040 Unfair labor practice by health care activity. It shall be deemed an unfair labor practice, and unlawful, for any health care activity to:

(1) Interfere with, restrain or coerce employees in any manner in the exercise of their right of self-organization: PROVIDED, That the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization having bargaining as one of its functions;

(3) Discriminate in regard to hire, terms, or conditions of employment in order to discourage membership in any employee organization having collective bargaining as one of its functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of employees; and it shall be a requirement of good faith bargaining that the parties be willing to reduce to writing, and have their representatives sign, any agreement arrived at through negotiation and discussion. [1972 ex.s. c 156 § 4.]

49.66.050 Unfair labor practice by employee organization or agent. It shall be an unfair labor practice and unlawful, for any employee organization or its agent to:

(1) Restrain or coerce (a) employees in the exercise of their right to refrain from self-organization, or (b) an employer in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances;

(2) Cause or attempt to cause an employer to discriminate against an employee in violation of subsection (3) of RCW 49.66.040 or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to

tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) Refuse to meet and bargain in good faith with an employer, provided it is the duly designated representative of the employer's employees for purposes of collective bargaining;

(4) Require of employees covered by a union security agreement the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the director finds excessive or discriminatory under all the circumstances. In making such a finding, the director shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(5) Cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

(6) Enter into any contract or agreement, express or implied, whereby an employer or other person ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting or otherwise dealing in any of the products or services of any other employer or person, or to cease doing business with any other employer or person, and any such contract or agreement shall be unenforceable and void; or

(7) Engage in, or induce or encourage any individual employed by any employer or to engage in, an activity prohibited by RCW 49.66.060. [1973 2nd ex.s. c 3 § 4; 1972 ex.s. c 156 § 5.]

49.66.060 Strike and picketing. No employee organization, bargaining representative, person or employee shall authorize, sanction, engage in, or participate in a strike (including but not limited to a concerted work stoppage of any kind, concerted slowdown or concerted refusal or failure to report for work or perform work) or picketing against an employer under any circumstances, whether arising out of a recognition dispute, bargaining impasse or otherwise: **PROVIDED**, That nothing in this section shall prohibit picketing or other publicity for the sole purpose of truthfully advising the public of the existence of a dispute with the employer, unless an effect of such picketing or other publicity is (a) to induce any employee of the employer or any other individual, in the course of his employment, not to pick up, deliver or transfer goods, not to enter the employer's premises, or not to perform services; or (b) to induce such an employee or individual to engage in a strike. [1972 ex.s. c 156 § 6.]

49.66.070 Relief from unfair labor practice—Actions—Remedial orders. The director or any employee organization qualified to apply for an election under RCW 49.66.030 as now or hereafter amended or any employer may maintain in its name or in the name of its members legal action in any county in which jurisdiction of the employer or employee organization may be obtained, to seek relief from the commission of an unfair labor practice: **PROVIDED**, That such employer or employee organization exhausts the administrative remedies under rules and regulations promulgated by the department prior to seeking such court action.

The department is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders. Any party aggrieved by any remedial order is entitled to the judicial review thereof in accordance with the provisions of chapter 34.05 RCW. [1973 2nd ex.s. c 3 § 5; 1972 ex.s. c 156 § 7.]

49.66.080 Rules and regulations—Procedures. The director shall have the power to make such rules and regulations not inconsistent with this chapter, including the establishment of procedures for the hearing and determination of charges alleging unfair labor practices, and for a determination on application by either party when an impasse has arisen, and as he shall determine are necessary to effectuate its purpose and to enable him to carry out its provisions. [1973 2nd ex.s. c 3 § 6; 1972 ex.s. c 156 § 8.]

49.66.090 Board of arbitration—Members—Selection—Chairman. In the event that a health care activity and an employees' bargaining unit shall reach an impasse, the matters in dispute shall be submitted to a board of arbitration composed of three arbitrators for final and binding resolution. The board shall be selected in the following manner: Within ten days, the employer shall appoint one arbitrator and the employees shall appoint one arbitrator. The two arbitrators so selected and named shall within ten days agree upon and select the name of a third arbitrator who shall act as chairman. If, upon the expiration of the period allowed therefor the arbitrators are unable to agree on the selection of a third arbitrator, such arbitrator shall be appointed at the request of either party in accordance with the provisions of RCW 7.04.050 and he shall act as chairman of the arbitration board. [1973 2nd ex.s. c 3 § 7; 1972 ex.s. c 156 § 9.]

49.66.100 Board of arbitration—Hearings—Findings. The arbitration board, acting through its chairman, shall call a hearing to be held within ten days after the date of the appointment of the chairman. The board shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings shall be taken. Any oral or documentary evidence and other data deemed relevant by the board may be received in evidence. The board shall have the power to administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as may be deemed by the board material to a just determination of the issues in dispute and to issue subpoenas. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the board may invoke the jurisdiction of any superior court and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. The hearing conducted by the arbitrators shall be concluded within twenty days of the time of commencement and, within ten days after conclusion of the hearings, the arbitrator shall make written findings and a

written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the employees' negotiating agent or its attorney or other designated representative and to the employer or the employer's attorney or designated representative. The determination of the dispute made by the board shall be final and binding upon both parties. [1972 ex.s. c 156 § 10.]

49.66.110 Board of arbitration—Standards or guidelines. In making its determination, the board of arbitrators shall be mindful of the legislative purpose enumerated in RCW 49.66.010 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

(1) Wage rates or other conditions of employment of the health care activity in question as compared with prevailing wage rates or other conditions of employment in the local operating area involved.

(2) Wage rates or other working conditions as compared with wage rates or other working conditions maintained for the same or similar work of workers in the local area.

(3) The overall compensation of employees having regard not only to wages for time actually worked but also for time not actually worked, including vacations, holidays and other excused time and for all fringe benefits received.

(4) Interest and welfare of the public.

(5) Comparison of peculiarities of employment in regard to other comparable trades or professions, specifically:

(a) Physical qualifications.

(b) Educational qualifications.

(c) Job training and skills.

(6) Efficiency of operation of the health care activity.

[1972 ex.s. c 156 § 11.]

49.66.120 Arbitrator—Compensation—Expenses.

The arbitrator so selected by the parties shall be paid at the daily rate or rates not to exceed the usual or customary rates paid to arbitrators in addition to travel expenses at the rates provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Such sums together with all expenses of the hearing shall be borne equally by the parties to the arbitration proceedings. [1975-'76 2nd ex.s. c 34 § 147; 1973 2nd ex.s. c 3 § 8; 1972 ex.s. c 156 § 12.]

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

49.66.900 Severability—1972 ex.s. c 156. If any portion of this chapter, or its application to any particular health care activity or class of health care activity, should be held invalid, the remainder of the chapter, or its application to other health care activities, or other classes thereof, shall not be affected. [1972 ex.s. c 156 § 13.]

Chapter 49.70 RCW

**WORKER AND COMMUNITY
RIGHT TO KNOW ACT**

Sections

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(2004 Ed.)

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49.70.010 Legislative findings. The legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety, and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to monitor adequately and detect any adverse health effects attributable thereto; that individuals themselves are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed action concerning their employment and their living conditions.

The legislature further declares that local health, fire, police, safety, and other government officials require detailed information about the identity, characteristics, and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to plan adequately for, and respond to, emergencies, enforce compliance with applicable laws and regulations concerning these substances, and to compile records of exposures to hazardous substances over a period of time that will facilitate the diagnosis, treatment, and prevention of disease.

The legislature further declares that the extent of the toxic contamination of the air, water, and land in this state has caused a high degree of concern among its residents and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The legislature therefore determines that while these substances have contributed to the high quality of life we enjoy in our state, it is in the public interest to establish a comprehensive program for the disclosure of information about hazardous substances in the workplace and the community, and to provide a procedure whereby residents of this state may gain access to this information. [1984 c 289 § 2.]

49.70.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of labor and industries.

(2) "Employee" means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is personal labor for an employer under this chapter whether by way of manual labor or otherwise. However, for the purposes of this chapter, employee shall not mean immediate family members of the officers of any corporation, partnership, sole proprietorship or other business entity or officers of any closely held corporation engaged in agricultural production of crops or livestock.

(3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that engages in any business, industry, profession, or activity in this state and employs one or more employees or who contract with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations. [1985 c 409 § 1.]

49.70.100 Employee may request workplace survey or material safety data sheet. An employee or employee representative may request, in writing, from the employer, a copy of a workplace survey or a material safety data sheet, filed pursuant to this chapter for the employee's work area. The employer shall supply this material within three working days of the request. This section shall not apply to employees of vessels while the employees are on the water. [1989 c 11 § 22; 1984 c 289 § 15.]

Severability—1989 c 11: See note following RCW 9A.56.220.

49.70.105 Foreign language translation of written materials. (1) The department shall prepare and make available to employers or the public, upon request, a translation in any of the five most common foreign languages used in the workplace, of a written hazard communication program, a material safety data sheet, or written materials prepared by the department to inform employees of their rights relating to hazard communication standards under this chapter and chapter 49.17 RCW.

(2) An employer employing employees who have trouble communicating in English shall make reasonable efforts to post any notices in the employees' native languages as provided by the department. [1985 c 409 § 2.]

49.70.110 Discharge or discipline of employee prohibited—Application of discrimination statutes. No employer may discharge, cause to be discharged, or otherwise discipline, penalize, or discriminate against any employee because the employee or the employee's representative has exercised any right established in this chapter. The discrimination provisions of chapter 49.17 RCW apply to this chapter. [1984 c 289 § 16.]

49.70.115 Agricultural employees—Information and training on hazardous chemicals. (1) An employer shall

provide employees engaged in agricultural production of crops or livestock or agricultural services with information and training on hazardous chemicals in their workplace at the time of their initial assignment, and whenever a new hazard is introduced into their work area, such instruction shall be tailored to the types of hazards to which the employees will be exposed. Seasonal and temporary employees who are not exposed to hazardous chemicals in their work area need not be trained.

(2) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are accessible to agricultural employees upon request.

(3) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced. [1985 c 409 § 3.]

49.70.119 Agricultural employees—Pesticides—Records. (1) An employer who applies pesticides in connection with the production of an agricultural crop, or who causes pesticides to be applied in connection with such production, shall keep records for each application, which shall include the following information:

(a) The location of the land where the pesticide was applied or site where the pesticide was stored;

(b) The year, month, day, and time the pesticide was applied;

(c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide that was applied or stored;

(d) The crop or site to which the pesticide was applied;

(e) The amount of pesticide applied per acre, or other appropriate measure;

(f) The concentration of pesticide that was applied;

(g) The number of acres, or other appropriate measure, to which pesticide was applied;

(h) If applicable, the licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application;

(i) The direction and estimated velocity of the wind at the time the pesticide was applied: PROVIDED, That this subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures; and

(j) Any other reasonable information required by the director.

(2) The records shall be updated on the same day that a pesticide is applied. If the employer has been provided a copy of a pesticide application record under RCW 17.21.100(2)(b), the copy may be used as the record of the pesticide application required under this section. The employer shall maintain and preserve the pesticide application records for no less than seven years from the date of the application of the pesticide to which the records refer.

(3) The pesticide application records shall be readily accessible to the employer's employees and their designated representatives in a central location in the workplace beginning on the day the application is made and for at least thirty days following the application. The employee or representative shall be entitled to view the pesticide application records and make his or her own record from the information con-

tained in the application records. New or newly assigned employees shall be made aware of the accessibility of the application records before working with pesticides or in a work area containing pesticides.

(4)(a) An employer subject to this section who stores pesticides shall at least once in each calendar year perform an inventory of the pesticides stored in any work area. The pesticide inventory records shall include the following information:

- (i) The location of the site where the pesticide is stored;
- (ii) The year, month, day, and time the pesticide was first stored;
- (iii) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide that is stored; and
- (iv) The amount of pesticide in storage at the time of the inventory.

The inventory records shall be maintained and preserved for no less than seven years.

(b) In addition to performing the annual pesticide inventory required under this subsection, an employer shall maintain a record of pesticide purchases made between the annual inventory dates. In lieu of this purchase record, an employer may obtain from distributors from whom pesticides are purchased a statement obligating the distributor to maintain the purchase records on behalf of the employer and in satisfaction of the employer's obligations under this subsection. The director may require the submission of all purchase records from employers or distributors, covering the purchases during a specified period of time or in a specified geographical area.

(5) If activities for which the records are maintained cease, the records shall be filed with the department. If an employer subject to this section is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the records as required by this section but is not liable for violations committed by the former employer under this chapter or rules adopted under this chapter, including violations relating to the retention and preservation of records.

(6)(a) The records required under this section shall be readily accessible to the department for inspection. Copies of the records shall be provided, on request, to: An employee or the employee's designated representative in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, treating health care personnel, the pesticide incident reporting and tracking review panel, or department representative. The designated representative or treating health care personnel are not required to identify the employee represented or treated. The department shall keep the name of any affected employee confidential in accordance with RCW 49.17.080(1). When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided immediately. For all other requests, copies of the records shall be provided within seventy-two hours.

(b) Copies of records provided to any person or entity under this subsection (6) shall, if so requested, be provided or made available on a form adopted under subsection (10) of this section. Information for treating health care personnel

shall be made immediately available by telephone, if requested, with a copy of the records provided within twenty-four hours.

(c) If an employer has reason to suspect that an employee is ill or injured because of an exposure to one or more pesticides, the employer shall immediately provide the employee a copy of the relevant pesticide application records.

(7) If a request for a copy of a record is made under this section and the employer refuses to provide a copy, the requester may notify the department of the request and the employer's refusal. Within seven working days, the department shall request that the employer provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The employer shall provide copies of the records to the department within twenty-four hours after the department's request.

(8) The department shall include inspection of the records required under this section as part of any on-site inspection of a workplace conducted under this chapter or chapter 49.17 RCW. The inspection shall determine whether the records are readily transferable to a form adopted by the department, and readily accessible to employees. However, no employer subject to a department inspection may be inspected under this subsection (8) more than once in any calendar year, unless a previous inspection has found recordkeeping violations. If recordkeeping violations are found, the department may conduct reasonable multiple inspections, pursuant to rules adopted by the department. Nothing in this subsection (8) limits the department's inspection of records pertaining to pesticide-related injuries, illnesses, fatalities, accidents, or complaints.

(9) If an employer has failed to maintain and preserve the records or provide access to or copies of the records as required under this section, the employer shall be subject to penalties authorized under RCW 49.17.180.

(10) The department of labor and industries and the department of agriculture shall jointly adopt, by rule, forms that satisfy the information requirements of this section and RCW 17.21.100. [1992 c 173 § 3; 1989 c 380 § 77.]

Effective dates—1992 c 173: See note following RCW 17.21.100.

Severability—1989 c 380: See RCW 15.58.942.

49.70.140 Educational brochures and public service announcements. The department shall produce educational brochures and public service announcements detailing information available to citizens under this chapter. These educational materials shall be sent to each county health department. As necessary, the department shall provide information needed to update these educational materials. [1984 c 289 § 20.]

49.70.150 Civil action authorized. A person may bring a civil action on his or her own behalf against a manufacturer, supplier, employer, or user to compel compliance with the provisions of this chapter or any rule promulgated under this chapter subject to the provisions of Title 51 RCW. The superior court shall have jurisdiction over these actions. The court may award costs of litigation to the prevailing

party, including reasonable attorney and expert witness fees. [1984 c 289 § 21.]

49.70.160 Request for additional information—Confidentiality. The department may request from an employer submitting surveys to it further information concerning the surveys, and the employer shall provide the additional information upon the request. The employer may require the department to provide reasons why further information is needed and to sign an agreement protecting the confidentiality of any additional information provided under this section. [1984 c 289 § 23.]

49.70.165 Trade secret exemptions. (1) The department shall adopt rules in accordance with chapter 34.05 RCW establishing criteria for evaluating the validity of trade secret claims and procedures for issuing a trade secret exemption. Manufacturers or importers that make a trade secret claim to the department must notify direct purchasers if a trade secret claim has been made on a product being offered for sale.

(2) If a trade secret claim exists, a manufacturer, importer, or employer may require a written statement of need or confidentiality agreement before the specific chemical identity of a hazardous substance is released. However, if a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous substance is necessary for emergency or first aid treatment, the manufacturer, importer, or employer shall immediately disclose the specific chemical identity to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, as defined by rule, as soon as circumstances permit.

(3) Any challenge to the denial of a trade secret claim shall be heard by an administrative law judge in accordance with chapter 34.05 RCW. [1985 c 409 § 4.]

49.70.170 Worker and community right to know fund—Employer assessments—Audits—Appeal of assessment. (1) The worker and community right to know fund is hereby established in the custody of the state treasurer. The department shall deposit all moneys received under this chapter in the fund. Moneys in the fund may be spent only for the purposes of this chapter following legislative appropriation. Disbursements from the fund shall be on authorization of the director or the director's designee. During the 2003-2005 fiscal biennium, moneys in the fund may also be used by the military department for the purpose of assisting the state emergency response commission and coordinating local emergency planning activities. The fund is subject to the allotment procedure provided under chapter 43.88 RCW.

(2) The department shall assess each employer who reported ten thousand four hundred or more worker hours in the prior calendar year an annual fee to provide for the implementation of this chapter. The department shall promulgate rules establishing a fee schedule for all employers who reported ten thousand four hundred or more worker hours in

the prior calendar year and are engaged in business operations having a standard industrial classification, as designated in the standard industrial classification manual prepared by the federal office of management and budget, within major group numbers 01 through 08 (agriculture and forestry industries), numbers 10 through 14 (mining industries), numbers 15 through 17 (construction industries), numbers 20 through 39 (manufacturing industries), numbers 41, 42, and 44 through 49 (transportation, communications, electric, gas, and sanitary services), number 75 (automotive repair, services, and garages), number 76 (miscellaneous repair services), number 80 (health services), and number 82 (educational services). The department shall establish the annual fee for each employer who reported ten thousand four hundred or more worker hours in the prior calendar year in industries identified by this section, provided that fees assessed shall not be more than two dollars and fifty cents per full time equivalent employee. The annual fee shall not exceed fifty thousand dollars. The fees shall be collected solely from employers whose industries have been identified by rule under this chapter. The department shall promulgate rules allowing employers who do not have hazardous substances at their workplace to request an exemption from the assessment and shall establish penalties for fraudulent exemption requests. All fees collected by the department pursuant to this section shall be collected in a cost-efficient manner and shall be deposited in the fund.

(3) Records required by this chapter shall at all times be open to the inspection of the director, or his designee including, the traveling auditors, agents or assistants of the department provided for in RCW 51.16.070 and 51.48.040. The information obtained from employer records under the provisions of this section shall be subject to the same confidentiality requirements as set forth in RCW 51.16.070.

(4) An employer may appeal the assessment of the fee or penalties pursuant to the procedures set forth in Title 51 RCW and accompanying rules except that the employer shall not have the right of appeal to superior court as provided in Title 51 RCW. The employer from whom the fee or penalty is demanded or enforced, may however, within thirty days of the board of industrial insurance appeal's final order, pay the fee or penalty under written protest setting forth all the grounds upon which such fee or penalty is claimed to be unlawful, excessive or otherwise improper and thereafter bring an action in superior court against the department to recover such fee or penalty or any portion of the fee or penalty which was paid under protest.

(5) Repayment shall be made to the general fund of any moneys appropriated by law in order to implement this chapter. [2004 c 276 § 911; 2001 2nd sp.s. c 7 § 913; 1999 c 309 § 917; 1986 c 310 § 1; 1984 c 289 § 24.]

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

49.70.175 Worker and community right to know fund—Expenditure—Disbursements. Funds in the worker and community right to know fund established under RCW

49.70.170 may be spent by the department of ecology to implement RCW 70.102.020 (1) through (3) following legislative appropriation. Disbursements from the fund shall be on authorization of the director of the department of ecology. [1985 c 410 § 5.]

49.70.177 Penalties for late payment of fees—Collection of fees and penalties. If payment of any fee assessed under RCW 49.70.170 is not received by the department by the due date, there shall be assessed a penalty of five percent of the amount of the fee. If the fee is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the fee. If the fee is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the fee. No penalty added may be less than ten dollars. If a warrant is issued by the department for the collection of fees, penalties, and interest, there shall be an additional penalty of five percent of the amount of the fee, but not less than five dollars nor more than one hundred dollars. Warrants shall earn interest at the rate of one percent per month, or fraction thereof, from and after the date of entry of the warrant. The department may utilize the procedures for collection of fees, penalties, and interest set forth in Title 51 RCW. [1986 c 310 § 2.]

49.70.180 Application of enforcement and administrative procedures of Washington industrial safety and health act. Unless reference is specifically made to another chapter, this chapter shall be implemented and enforced including penalties, violations, citations, and other administrative procedures pursuant to chapter 49.17 RCW. [1984 c 289 § 25.]

49.70.190 Compliance with chapter—Notice—Fines—Injunctive relief. If a manufacturer, supplier, employer, or user refuses or fails to provide the department with any data sheets, workplace surveys, or other papers, documents, or information required by this chapter, the department may give written notice to the manufacturer, supplier, employer, or user demanding immediate compliance. If the manufacturer, supplier, employer, or user fails to begin to comply with the terms of the notice within fourteen days of receipt, the department may levy a fine of up to fifty dollars per affected employee per day, not to exceed five thousand dollars per day from the final date for compliance allowed by this section or by the department. In any case where the non-compliance continues for more than fifteen days or where the department determines the failure to comply creates a potential health or safety hazard to employees or hinders the department's performance of its duties under this chapter, the department may, in lieu of levying a fine or further fines, petition the superior court of Thurston county or the county where the manufacturer, supplier, employer, or user is located for an order enjoining the manufacturer, employer, supplier, or user from further noncompliance and granting any other remedies that may be appropriate. The court may award the department costs of litigation, including attorney's fees, if the department is the prevailing party. [1984 c 289 § 26.]

(2004 Ed.)

49.70.200 Adoption of rules. Except as otherwise provided in this chapter, the department, after consultation with the department of agriculture, shall adopt any rules necessary to carry out its responsibilities under this chapter. [1984 c 289 § 27.]

49.70.210 Application of chapter to consumer products. (1) It is the intent of the legislature that this chapter shall not apply to products that are generally made available to the noncommercial consumer: PROVIDED, That such "consumer" products used by employees in the workplace are used in substantially the same manner, form, and concentration as they are used by noncommercial consumers, and that the product exposure is not substantially greater to the employee than to the noncommercial consumer during normal and accepted use of that product.

(2) The department shall adopt rules in accordance with chapter 34.05 RCW to implement this section. This section shall not affect the department's authority to implement and enforce the Washington industrial safety and health act, chapter 49.17 RCW, at least as effectively as the federal occupational safety and health act. [1987 c 365 § 1.]

49.70.900 Short title. This chapter shall be known and may be cited as the "worker and community right to know act." [1984 c 289 § 1.]

49.70.905 Severability—1984 c 289. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 289 § 30.]

Chapter 49.74 RCW AFFIRMATIVE ACTION

Sections

49.74.005	Legislative findings—Purpose.
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49.74.020	Affirmative action rules—Noncompliance—Notification—Hearing.
49.74.030	Noncompliance—Conciliation—Order.
49.74.040	Failure to reach conciliation agreement—Administrative hearing—Appeal.
49.74.050	Superior court—Remedies.

49.74.005 Legislative findings—Purpose. Discrimination because of race, creed, color, national origin, age, sex, marital status, or the presence of any sensory, mental, or physical handicap is contrary to the findings of the legislature and public policy. The legislature finds and declares that racial minorities, women, persons in protected age groups, persons with disabilities, Vietnam-era veterans, and disabled veterans are underrepresented in Washington state government employment.

The purpose of this chapter is to provide for enforcement measures for affirmative action within Washington state government employment and institutions of higher education in order to eliminate such underrepresentation. [1985 c 365 § 7.]

49.74.010 Commission. As used in this chapter, "commission" means the Washington state human rights commission. [1985 c 365 § 8.]

49.74.020 Affirmative action rules—Noncompliance—Notification—Hearing. If the commission reasonably believes that a state agency, an institution of higher education, or the state patrol has failed to comply with an affirmative action rule adopted under RCW 41.06.150 or 43.43.340, the commission shall notify the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol of the noncompliance, as well as the director of personnel. The commission shall give the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol an opportunity to be heard on the failure to comply. [1993 c 281 § 57; 1985 c 365 § 9.]

Effective date—1993 c 281: See note following RCW 41.06.022.

49.74.030 Noncompliance—Conciliation—Order. The commission in conjunction with the department of personnel or the state patrol, whichever is appropriate, shall attempt to resolve the noncompliance through conciliation. If an agreement is reached for the elimination of noncompliance, the agreement shall be reduced to writing and an order shall be issued by the commission setting forth the terms of the agreement. The noncomplying state agency, institution of higher education, or state patrol shall make a good faith effort to conciliate and make a full commitment to correct the noncompliance with any action that may be necessary to achieve compliance, provided such action is not inconsistent with the rules adopted under RCW 41.06.150(6) and 43.43.340(5), whichever is appropriate. [2002 c 354 § 246; 2002 c 354 § 245; 1993 c 281 § 58; 1985 c 365 § 10.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Effective date—1993 c 281: See note following RCW 41.06.022.

49.74.040 Failure to reach conciliation agreement—Administrative hearing—Appeal. If no agreement can be reached under RCW 49.74.030, the commission may refer the matter to the administrative law judge for hearing pursuant to RCW 49.60.250. If the administrative law judge finds that the state agency, institution of higher education, or state patrol has not made a good faith effort to correct the noncompliance, the administrative law judge shall order the state agency, institution of higher education, or state patrol to comply with this chapter. The administrative law judge may order any action that may be necessary to achieve compliance, provided such action is not inconsistent with the rules adopted under RCW 41.06.150(6) and 43.43.340(5), whichever is appropriate.

An order by the administrative law judge may be appealed to superior court. [2002 c 354 § 248; 2002 c 354 § 247; 1985 c 365 § 11.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

49.74.050 Superior court—Remedies. If the superior court finds that the state agency, institution of higher education, or state patrol has not made a good faith effort to correct

the noncompliance, the court, in addition to any other penalties and sanctions prescribed by law, shall order the state agency, institution of higher education, or state patrol to comply with this chapter. The court may require any action deemed appropriate by the court which is consistent with the intent of this chapter. [1985 c 365 § 12.]

Chapter 49.78 RCW FAMILY LEAVE

Sections

49.78.005	Administration and enforcement of this chapter to cease while federal family and medical leave act provides the same or more family leave—Rights under RCW 49.78.070(1)(b) preserved—Enforcement.
49.78.010	Legislative findings.
49.78.020	Definitions.
49.78.030	Requirements—Limitation.
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49.78.070	Employee employment rights—Limitations.
49.78.080	Employee benefits.
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49.78.160	Notice of infraction—Service.
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49.78.190	Penalties.
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49.78.901	Effective date—1989 1st ex.s. c 11.

49.78.005 Administration and enforcement of this chapter to cease while federal family and medical leave act provides the same or more family leave—Rights under RCW 49.78.070(1)(b) preserved—Enforcement.

(1) Except as provided in subsection (2) of this section, the department shall cease to administer and enforce this chapter beginning on July 27, 1997, and until the earlier of the following dates:

(a) The effective date of the repeal of the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6); or

(b) July 1st of the year following the year in which amendments to the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) take effect that provide less family leave than is provided under RCW 49.78.030. In determining whether the federal law provides the same or more leave, the department shall only consider whether (i) the total period of leave allowed under the amended federal law is twelve or more workweeks in a twenty-four month period, and (ii) the types of leave authorized under the amended federal law are similar to the types authorized in this chapter.

(2) An employee's right under RCW 49.78.070(1)(b) to be returned to a workplace within twenty miles of the employee's workplace when leave commenced shall remain in effect. The family leave required by U.S.C. 29.2612(a)(1)(A) and (B) of the federal family and medical

leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) shall be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth. The department shall enforce this subsection under RCW 49.78.140 through 49.78.190, except that an initial notice of infraction shall state that the employer has thirty days in which to take corrective action. No infraction or penalty may be assessed if the employer complies with the requirements of the initial notice of infraction. [1997 c 16 § 1.]

49.78.010 Legislative findings. The legislature finds that the demands of the workplace and of families need to be balanced to promote family stability and economic security. Changes in workplace leave policies are desirable to accommodate changes in the work force such as rising numbers of dual-career couples and working single parents. In addition, given the mobility of American society, many people no longer have available community or family support networks and therefore need additional flexibility in the workplace. The legislature declares it to be in the public interest to provide reasonable family leave upon the birth or adoption of a child and to care for a child under eighteen years old with a terminal health condition. [1989 1st ex.s. c 11 § 1.]

49.78.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Child" means a biological or adopted child, or a stepchild, living with the employee.

(2) "Department" means the department of labor and industries.

(3) "Employee" means a person other than an independent contractor employed by an employer on a continuous basis for the previous fifty-two weeks for at least thirty-five hours per week.

(4) "Employer" means: (a) Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and includes any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision, which (i) employed a daily average of one hundred or more employees during the last calendar quarter at the place where the employee requesting leave reports for work, or (ii) employed a daily average of one hundred or more employees during the last calendar quarter within a twenty mile radius of the place where the employee requesting leave reports for work, where the employer maintains a central hiring location and customarily transfers employees among workplaces; and (b) the state, state institutions, and state agencies.

(5) "Family leave" means leave from employment to care for a newborn or newly adopted child under the age of six or a child under eighteen years old with a terminal health condition, as provided in RCW 49.78.030.

(6) "Health care provider" means a person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW.

(7) "Parent" means a biological or adoptive parent, or a stepparent.

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(8) "Reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours or days per workweek.

(9) "Terminal health condition" means a condition caused by injury, disease, or illness, that, within reasonable medical judgment, is incurable and will produce death within the period of leave to which the employee is entitled. [1996 c 178 § 14; 1989 1st ex.s. c 11 § 2.]

Effective date—1996 c 178: See note following RCW 18.35.110.

49.78.030 Requirements—Limitation. (1) An employee is entitled to twelve workweeks of family leave during any twenty-four month period to: (a) Care for a newborn child or adopted child of the employee who is under the age of six at the time of placement for adoption, or, (b) care for a child under eighteen years old of the employee who has a terminal health condition. Leave under subsection (1)(a) of this section shall be completed within twelve months after the birth or placement for adoption, as applicable. An employee is entitled to leave under subsection (1)(b) of this section only once for any given child.

(2) Family leave may be taken on a reduced leave schedule subject to the approval of the employer.

(3) The leave required by this section may be unpaid. If an employer provides paid family leave for fewer than twelve workweeks, the additional workweeks of leave added to attain the twelve-workweek total may be unpaid. An employer may require an employee to first use up the employee's total accumulation of leave to which the employee is otherwise entitled before going on family leave; however, except as provided in subsection (4) of this section, nothing in this section requires more than twelve total workweeks of leave during any twenty-four month period. An employer is not required to allow an employee to use the employee's other leave in place of the leave provided under this chapter.

(4) The leave required by this section is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(5) An employer may limit or deny family leave to either: (a) Up to ten percent of the employer's workforce in the state designated as key personnel by the employer. Any designation made under this section shall take effect thirty days after it is issued and may be changed no more than once in any twelve-month period. An employer shall not designate key personnel on the basis of age or gender or for the purpose of evading the requirements of this chapter. No employee may be designated as key personnel after giving notice of intent to take leave pursuant to RCW 49.78.040. The designation shall be in writing and shall be displayed in a conspicuous place; or (b) if the employer does not designate key personnel, the highest paid ten percent of the employer's employees in the state. [1989 1st ex.s. c 11 § 3.]

49.78.040 Notice to employer. (1) An employee planning to take family leave under RCW 49.78.030(1)(a) shall provide the employer with written notice at least thirty days in advance of the anticipated date of delivery or placement for adoption, stating the dates during which the employee

intends to take family leave. The employee shall adhere to the dates stated in the notice unless:

- (a) The birth is premature;
- (b) The mother is incapacitated due to birth such that she is unable to care for the child;
- (c) The employee takes physical custody of the newly adopted child at an unanticipated time and is unable to give notice thirty days in advance; or
- (d) The employer and employee agree to alter the dates of family leave stated in the notice.

(2) In cases of premature birth, incapacity, or unanticipated placement for adoption referred to in subsection (1) of this section, the employee must give notice of revised dates of family leave as soon as possible but at least within one working day of the birth or placement for adoption or incapacitation of the mother.

(3) If family leave under RCW 49.78.030(1)(b) is foreseeable, the employee shall provide the employer with written notice at least fourteen days in advance of the expected leave and shall make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the employer. If family leave under RCW 49.78.030(1)(b) is not foreseeable fourteen or more days before the leave is to take place, the employee shall notify the employer of the expected leave as soon as possible, but at least within one working day of the beginning of the leave.

(4) If the employee fails to give the notice required by this section, the employer may reduce or increase the family leave required by this chapter by three weeks. [1989 1st ex.s. c 11 § 4.]

49.78.050 Requirements for confirmation—Second opinion. (1) In the event of any dispute under this chapter regarding premature birth, incapacitation of the mother, maternity disability, or terminal condition of a child, an employer may require confirmation by a health care provider of: (a) The date of the birth; (b) the date on which incapacity because of childbirth or disability because of pregnancy or childbirth commenced or will probably commence, and its probable duration; or (c) for family leave under RCW 49.78.030(1)(b), the fact that the child has a terminal health condition.

(2) An employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider selected by the employer concerning any information required under subsection (1) of this section. If the health care providers disagree on any factor which is determinative of the employee's eligibility for family leave, the two health care providers shall select a third health care provider, whose opinion, obtained at the employer's expense, shall be conclusive. [1989 1st ex.s. c 11 § 5.]

49.78.060 Both parents with same employer. If both parents of a child are employed by the same employer, they shall together be entitled to a total of twelve workweeks of family leave during any twenty-four month period, and leave need be granted to only one parent at a time. [1989 1st ex.s. c 11 § 6.]

49.78.070 Employee employment rights—Limitations. (1) Subject to subsection (2) of this section, an employee who exercises any right provided under RCW 49.78.030 shall be entitled, upon return from leave or during any reduced leave schedule:

- (a) To the same position held by the employee when the leave commenced; or
- (b) To a position with equivalent benefits and pay at a workplace within twenty miles of the employee's workplace when leave commenced; or
- (c) If the employer's circumstances have so changed that the employee cannot be reinstated to the same position, or a position of equivalent pay and benefits, the employee shall be reinstated in any other position which is vacant and for which the employee is qualified.

(2) The entitlement under subsection (1) of this section is subject to bona fide changes in compensation or work duties, and does not apply if:

- (a) The employee's position is eliminated by a bona fide restructuring, or reduction-in-force;
- (b) The employee's workplace is permanently or temporarily shut down for at least thirty days;
- (c) The employee's workplace is moved to a location at least sixty miles from the location of the workplace when leave commenced;
- (d) An employee on family leave takes another job; or
- (e) The employee fails to provide timely notice of family leave as required under RCW 49.78.040, or fails to return on the established ending date of leave. [1989 1st ex.s. c 11 § 7.]

49.78.080 Employee benefits. (1) The taking of leave under this chapter shall not result in the loss of any benefit, including seniority or pension rights, accrued before the date on which the leave commenced.

(2) Nothing in this chapter shall be construed to require the employer to grant benefits, including seniority or pension rights, during any period of leave.

(3) All policies applied during the period of leave to the classification of employees to which the employee on leave belongs shall apply to the employee on leave.

(4) During any period of leave taken under RCW 49.78.030, if the employee is not eligible for any employer contribution to medical or dental benefits under an applicable collective bargaining agreement or employer policy during any period of leave, an employer shall allow the employee to continue, at his or her own expense, medical or dental insurance coverage, including any spouse and dependent coverage, in accordance with state or federal law. The premium to be paid by the employee shall not exceed one hundred two percent of the applicable premium for the leave period. [1989 1st ex.s. c 11 § 8.]

49.78.090 Administration. The department of labor and industries shall administer the provisions of this chapter. [1989 1st ex.s. c 11 § 9.]

49.78.100 Additional rights—Remedies. (1) Except as provided in this chapter, the rights under this chapter are in addition to any other rights provided by law. The remedies under this chapter shall be exclusive.

(2) Nothing in this chapter shall be construed to discourage employers from adopting policies which provide greater leave rights to employees than those required by this chapter. [1989 1st ex.s. c 11 § 10.]

49.78.110 Collective bargaining agreements—Obligations and rights not diminished. (1) Nothing in this chapter shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement or any employment benefit program or plan which provides greater leave rights to employees than the rights provided under this chapter.

(2) The rights provided to employees under this chapter may not be diminished by any collective bargaining agreement or any employment benefit program or plan entered into or renewed after September 1, 1989. [1989 1st ex.s. c 11 § 11.]

49.78.120 Collective bargaining agreements—Application of chapter—Grievance procedures. (1) In the case of employees covered by an unexpired collective bargaining agreement that expires on or after September 1, 1989, or by an employee benefit program or plan with a stated year ending on or after September 1, 1989, the effective date of this chapter shall be the later of: (a) The first day following expiration of the collective bargaining agreement; or (b) the first day of the next plan year.

(2) Notwithstanding the provisions of RCW 49.78.140 through *49.78.210, where this chapter has been incorporated into a collective bargaining agreement, the grievance procedures contained in the respective collective bargaining agreement shall be used to resolve complaints related to this chapter. [1989 1st ex.s. c 11 § 12.]

*Reviser's note: RCW 49.78.210 was repealed by 1993 c 450 § 1.

49.78.130 Discrimination prohibited. No employer, employment agency, labor union, or other person shall discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a complaint, testified, or assisted in any proceeding under this chapter. [1989 1st ex.s. c 11 § 13.]

49.78.140 Complaint—Contents—Notice—Investigation. (1) An employee who believes that his or her employer has violated any provision of this chapter may file a complaint with the department within ninety days of the alleged violation. The complaint shall contain the following:

- (a) The name and address of the employee making the complaint;
- (b) The name, address, and telephone number of the employer against whom the complaint is made;
- (c) A statement of the specific facts which constitute the alleged violation, including the date(s) on which the alleged violation occurred.

(2) Upon receipt of a complaint, the department shall forward written notice of the complaint to the employer.

(3) The department may investigate any complaint filed within the required time frame. If the department determines

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that a violation of this chapter has occurred, it may issue a notice of infraction. [1989 1st ex.s. c 11 § 14.]

49.78.150 Notice of infraction—Contents. The department may issue a notice of infraction to an employer who violates this chapter. The employment standards supervisor shall direct that notices of infraction contain the following when issued:

(1) A statement that the notice represents a determination that the infraction has been committed by the employer named in the notice and that the determination shall be final unless contested;

(2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(3) A statement of the specific violation which necessitated issuance of the infraction;

(4) A statement of the penalty involved if the infraction is established;

(5) A statement informing the employer of the right to a hearing conducted pursuant to chapter 34.05 RCW if requested within twenty days of issuance of the infraction;

(6) A statement that at any hearing to contest the notice of infraction the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed, and that the employer may subpoena witnesses including the agent that issued the notice of infraction;

(7) If a notice of infraction is personally served upon a supervisory or managerial employee of a firm or corporation, the department shall within seventy-two hours of service send a copy of the notice by certified mail to the employer;

(8) Constructive service may be made by certified mail directed to the employer named in the notice of infraction. [1989 1st ex.s. c 11 § 15.]

49.78.160 Notice of infraction—Service. (1) If an employer is a corporation or a partnership, the department need not serve the employer personally. In such a case, if no officer or partner of a violating employer is present, the department may issue a notice of infraction to any managerial employee.

(2) If the department serves a notice of infraction on a managerial employee, and not on an officer, or partner of the employer, the department shall mail by certified mail a copy of the notice of infraction to the employer. The department shall mail a second copy by ordinary mail. [1989 1st ex.s. c 11 § 16.]

49.78.170 Notice of infraction—State agencies. In any case in which the department shall issue an order against any political or civil subdivision of the state, or any agency, or instrumentality of the state or of the foregoing, or any officer or employee thereof, the department shall transmit a copy of such order to the governor of the state. The governor shall take such action to secure compliance with such order as the governor deems necessary. [1989 1st ex.s. c 11 § 17.]

49.78.180 Appeal—Hearings—Decisions—Review—Appeal of final decision. (1) If an employer desires to contest the notice of infraction issued, the employer shall file two

copies of a notice of appeal with the department at the office designated on the notice of infraction, within twenty days of issuance of the infraction.

(2) The department shall conduct a hearing in accordance with chapter 34.05 RCW.

(3) Employers may appear before the administrative law judge through counsel, or may represent themselves. The department shall be represented by the attorney general.

(4) Admission of evidence is subject to RCW 34.05.452 and 34.05.446.

(5) The administrative law judge shall issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate, any legal penalty. The proposed decision shall be served by certified mail or personally on the employer and the department. The employer or department may appeal to the director within thirty days after the date of issuance of the proposed decision. If none of the parties appeals within thirty days, the proposed decision may not be appealed either to the director or the courts.

(6) An appellant must file with the director an original and four copies of its notice of appeal. The notice of appeal must specify which findings and conclusions are erroneous. The appellant must attach to the notice the written arguments supporting its appeal.

The appellant must serve a copy of the notice of appeal and the arguments on the other parties. The respondent parties must file with the director their written arguments within thirty days after the date the notice of appeal and the arguments were served upon them.

(7) The director shall review the proposed decision in accordance with the administrative procedure act, chapter 34.05 RCW. The director may: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision.

(8) The director shall serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to RCW 34.05.570 unless the final decision affirms an unappealed proposed decision. If no party appeals within the period set by RCW 34.05.570, the director's decision is conclusive and binding on all parties. [1989 1st ex.s. c 11 § 18.]

49.78.190 Penalties. An employer found to have committed an infraction under this chapter may be subject to a fine of up to two hundred dollars for the first infraction. An employer that continues to violate the statute may be subject to a fine of up to one thousand dollars for each infraction. An employer found to have failed to reinstate an employee as required under RCW 49.78.070 may also be ordered to reinstate the employee, with or without back pay. [1989 1st ex.s. c 11 § 19.]

49.78.200 Poster required. The department shall develop and furnish to each employer a poster which describes an employer's obligations and an employee's rights under this chapter. The poster must include notice about any state law, rule, or regulation governing maternity disability leave and indicate that federal or local ordinances, laws, rules or regulations may also apply. The poster must also include a telephone number and an address of the department to enable employees to obtain more information regarding this chapter. Each employer must display this poster in a conspicuous place. Nothing in this section shall be construed to create a right to continued employment. [1989 1st ex.s. c 11 § 20.]

49.78.900 Severability—1989 1st ex.s. c 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 1st ex.s. c 11 § 25.]

49.78.901 Effective date—1989 1st ex.s. c 11. This act shall take effect September 1, 1989. [1989 1st ex.s. c 11 § 27.]

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

- 50.01 General provisions.
- 50.04 Definitions.
- 50.06 Temporary total disability.
- 50.08 Establishment of department.
- 50.12 Administration.
- 50.13 Records and information—Privacy and confidentiality.
- 50.16 Funds.
- 50.20 Benefits and claims.
- 50.22 Extended and additional benefits.
- 50.24 Contributions by employers.
- 50.29 Employer experience rating.
- 50.32 Review, hearings, and appeals.
- 50.36 Penalties.
- 50.38 Labor market information and economic analysis.
- 50.40 Miscellaneous provisions.
- 50.44 Special coverage provisions.
- 50.50 Indian tribes.
- 50.60 Shared work compensation plans—Benefits.
- 50.62 Special employment assistance.
- 50.65 Washington service corps.
- 50.70 Programs for dislocated forest products workers.
- 50.72 Youthbuild program.
- 50.98 Construction.

Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty: RCW 49.44.100.

Displaced homemaker act: Chapter 28B.04 RCW.

Industrial insurance: Title 51 RCW.

Job skills training program: RCW 28C.04.400 through 28C.04.420.

Unfair practices of employment agencies: RCW 49.60.200.

Chapter 50.01 RCW GENERAL PROVISIONS

Sections

- 50.01.005 Short title.
- 50.01.010 Preamble.

50.01.005 Short title. This title shall be known and may be cited as the "Employment Security Act." [1953 ex.s. c 8 § 24; 1945 c 35 § 1; Rem. Supp. 1945 § 9998-140.]

50.01.010 Preamble. Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of shar-

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ing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. [2003 2nd sp.s. c 4 § 1; 1945 c 35 § 2; Rem. Supp. 1945 § 9998-141. Prior: 1937 c 162 § 2.]

Conflict with federal requirements—2003 2nd sp.s. c 4: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2003 2nd sp.s. c 4 § 36.]

Severability—2003 2nd sp.s. c 4: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 2nd sp.s. c 4 § 37.]

Effective date—2003 2nd sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 20, 2003]." [2003 2nd sp.s. c 4 § 39.]

Chapter 50.04 RCW DEFINITIONS

Sections

- 50.04.020 Base year—Alternative base year.
- 50.04.030 Benefit year.
- 50.04.040 Benefits.
- 50.04.050 Calendar quarter.
- 50.04.060 Commissioner.
- 50.04.070 Contributions.
- 50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state.
- 50.04.073 Contributions—As including "payments in lieu of contributions"—Scope.
- 50.04.075 Dislocated worker.
- 50.04.080 Employer.
- 50.04.090 Employing unit.
- 50.04.100 Employment.
- 50.04.110 Employment—Situs of service.
- 50.04.115 Employment—Out-of-state service, election.
- 50.04.116 Employment—Out-of-state service, when included—"American employer" defined.
- 50.04.120 Employment—Localized service.
- 50.04.125 Employment—Foreign degree-granting institutions—Employee services localized in country of domicile.
- 50.04.140 Employment—Exception tests.

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- 50.04.145 Employment—Services performed for contractor, when excluded.
- 50.04.148 Employment—Services performed by musician or entertainer.
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- 50.04.155 Service performed in agricultural labor for farm operator or crew leader.
- 50.04.160 Employment—Domestic service.
- 50.04.165 Employment—Corporate officers—Election of coverage.
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- 50.04.223 Employment—Massage practitioner.
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- 50.04.230 Employment—Services of insurance agent, broker, or solicitor, real estate broker or real estate salesman, and investment company agent or solicitor.
- 50.04.232 Employment—Travel services.
- 50.04.235 Employment—Outside salesman paid by commission.
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- 50.04.300 State.
- 50.04.310 Unemployed individual—Individual deemed not "unemployed."
- 50.04.320 Wages, remuneration.
- 50.04.323 Wages, remuneration—Government or private retirement pension plan payments—Effect upon eligibility—Reduction in benefits.
- 50.04.330 Wages, remuneration—Retirement and disability payments excepted.
- 50.04.335 Wages, remuneration—Stock transfers excepted.
- 50.04.340 Wages, remuneration—Death benefits excepted.
- 50.04.350 Wages, remuneration—Excepted payments.
- 50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes.
- 50.04.360 Week.

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

50.04.020 Base year—Alternative base year. "Base year" with respect to each individual, shall mean either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual's benefit year.

For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar quarters as the base year, the department shall use the last four completed calendar quarters as the base year.

Computations using the last four completed calendar quarters shall be based on available wage items processed as of the close of business on the day preceding the date of application. The department shall promptly contact employers to request assistance in obtaining wage information for the last completed calendar quarter if it has not been reported at the time of initial application. [1994 c 3 § 1; 1987 c 278 § 1; 1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998-142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—1994 c 3: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1994 c 3 § 4.]

Severability—1994 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 3 § 5.]

Effective dates—1994 c 3: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 3, 1994.

(2) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1994.

(3) Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [February 26, 1994]." [1994 c 3 § 6.]

Effective date—1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: PROVIDED, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 ex.s. c 2 § 25.]

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: PROVIDED, HOWEVER, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty-three weeks when at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: PROVIDED, HOWEVER, That a benefit year cannot be established if the base year wages include wages earned prior to the establishment of a prior benefit year unless the individual worked and earned wages since the last separation from employment immediately before the application for initial determination in the previous benefit year if the applicant was an unemployed individual at the time of application, or since the initial separation in the previous benefit year if the applicant was not an unemployed individual at the time of fil-

ing an application for initial determination for the previous benefit year, of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If an individual's prior benefit year was based on the last four completed calendar quarters, a new benefit year shall not be established until the new base year does not include any hours used in the establishment of the prior benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1991 c 117 § 1; 1990 c 245 § 1. Prior: 1987 c 278 § 2; 1987 c 256 § 1; 1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998-143; prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—1991 c 117: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1991 c 117 § 5.]

Severability—1991 c 117: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 117 § 6.]

Effective dates—1991 c 117: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and sections 1 and 4 [of this act] shall take effect July 1, 1991, and section 3 [of this act] shall take effect July 7, 1991, for new claims filed on or after July 7, 1991." [1991 c 117 § 7.]

Conflict with federal requirements—1990 c 245: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1990 c 245 § 11.]

Effective dates—1990 c 245: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1990].

(2) Sections 2, 3, and 6 through 9 of this act shall take effect on July 1, 1990." [1990 c 245 § 12.]

Effective dates—Construction—1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty-fifth legislature) of the Washington State Legislature: PROVIDED, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

Effective dates—1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public

peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 8, 1973]. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998-144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998-145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998-146. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.070 Contributions. "Contributions" means the money payments due to the state unemployment compensation fund as provided in RCW 50.24.010, to the federal interest payment fund under RCW 50.16.070, or to the special account in the administrative contingency fund under RCW 50.24.014. [1985 ex.s. c 5 § 4; 1983 1st ex.s. c 13 § 9; 1971 c 3 § 1; 1951 c 215 § 1; 1945 c 35 § 8; Rem. Supp. 1945 § 9998-147. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state. The terms "contributions" and "payments in lieu of contributions" used in this title, whether singular or plural, designate the money payments to be made to the state unemployment compensation fund, to the federal interest payment fund under RCW 50.16.070, or to the special account in the administrative contingency fund under RCW 50.24.014 and are deemed to be taxes due to the state of Washington. [1985 ex.s. c 5 § 5; 1983 1st ex.s. c 13 § 10; 1971 c 3 § 3; 1959 c 266 § 8.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Construction—1959 c 266: "The provisions of section 8 of this amendatory act shall be construed as a restatement and continuation of existing law, and not as a new enactment. It shall not be construed as affecting any existing right acquired under its provisions nor as affecting any proceeding instituted thereunder." [1959 c 266 § 9.]

50.04.073 Contributions—As including "payments in lieu of contributions"—Scope. The term "contributions" as used in this title shall be deemed to include "payments in lieu of contributions" to the extent that such usage is consistent with the purposes of this title. Such construction shall include but not be limited to those portions of this title dealing with assessments, interest, penalties, liens, collection procedures and remedies, administrative and judicial review, and the imposition of administrative, civil and criminal sanctions. [1983 1st ex.s. c 23 § 1; 1971 c 3 § 4.]

Conflict with federal requirements—1983 1st ex.s. c 23: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1983 1st ex.s. c 23 § 26.]

Effective dates—Construction—1983 1st ex.s. c 23: "(1) Sections 6, 8, 17, 18, 19, and 25 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect as follows:

(a) Sections 17, 18, 19, and 25 of this act shall take effect on June 30, 1983;

(b) Sections 6 and 8 of this act shall take effect on July 3, 1983, and shall be effective for benefit years commencing on or after that date.

(2) Sections 4 and 13 of this act shall take effect on October 1, 1983. Sections 7, 11, and 12 of this act shall also take effect on October 1, 1983, and shall be effective for all weeks of benefits paid on or after that date." [1983 1st ex.s. c 23 § 27.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.075 Dislocated worker. "Dislocated worker" means any individual who:

(1) Has been terminated or received a notice of termination from employment;

(2) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and

(3) Is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for their skills in that occupation or industry. [1984 c 181 § 1.]

Dislocated worker's eligibility for benefits: RCW 50.20.043.

50.04.080 Employer. "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title. [1985 c 41 § 1; 1971 c 3 § 5; 1949 c 214 § 2; 1945 c 35 § 9; Rem. Supp. 1949 § 9998-148. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—1985 c 41: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the

state or the granting of federal unemployment tax credits to employers in this state." [1985 c 41 § 2.]

Severability—1985 c 41: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 41 § 3.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.090 Employing unit. "Employing unit" means any individual or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ or in its "employment" one or more individuals performing services within this state. The state and its political subdivisions shall be deemed employing units as to any transactions occurring on or after September 21, 1977 which would render an employing unit liable for contributions, interest, or penalties under RCW 50.24.130. "Employing unit" includes Indian tribes as defined in RCW 50.50.010. [2001 1st sp.s. c 11 § 1; 1983 1st ex.s. c 23 § 2; 1977 ex.s. c 73 § 1; 1947 c 215 § 2; 1945 c 35 § 10; Rem. Supp. 1947 § 9998-149. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—Severability—Effective date—Retroactive application—2001 1st sp.s. c 11: See RCW 50.50.900 through 50.50.903.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.04.100 Employment. "Employment", subject only to the other provisions of this title, means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

Except as provided by RCW 50.04.145, personal services performed for an employing unit by one or more contractors or subcontractors acting individually or as a partnership, which do not meet the provisions of RCW 50.04.140, shall be considered employment of the employing unit: PROVIDED, HOWEVER, That such contractor or subcontractor shall be an employer under the provisions of this title in respect to personal services performed by individuals for such contractor or subcontractor. [1982 1st ex.s. c 18 § 14; 1945 c 35 § 11; Rem. Supp. 1945 § 9998-150. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.110 Employment—Situs of service. The term "employment" shall include an individual's entire service performed within or without or both within and without this state, if

(1) The service is localized in this state; or

(2) The service is not localized in any state, but some of the service is performed in this state, and

(a) the base of operations, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or

(b) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state; or

(3) The service is performed within the United States, the Virgin Islands or Canada, if

(a) such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada, and

(b) the place from which the service is directed or controlled is in this state. [1971 c 3 § 6; 1945 c 35 § 12; Rem. Supp. 1945 § 9998-151. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.115 Employment—Out-of-state service, election. Services not covered under RCW 50.04.110 or 50.04.116 which are performed entirely without this state, with respect to no part of which contributions, interest, or penalties are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this title if the individual performing such services is a resident of this state and the commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this title. [1983 1st ex.s. c 23 § 3; 1971 c 3 § 8; 1945 c 35 § 13; Rem. Supp. 1945 § 9998-152. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1937 c 162 § 19. Formerly RCW 50.04.130.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.116 Employment—Out-of-state service, when included—"American employer" defined. The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada, and in the case of the Virgin Islands after December 31, 1971 and prior to January 1 of the year following the year in which the United States secretary of labor approves the unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1954) in the employ of an American employer (other than service which is deemed "employment" under the provisions of RCW 50.04.110 or 50.04.120 or the parallel provisions of another state's law), if:

(1) The employer's principal place of business in the United States is located in this state; or

(2) The employer has no place of business in the United States but:

(a) The employer is an individual who is a resident of this state; or

(b) The employer is a corporation which is organized under the laws of this state; or

(c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(3) None of the criteria in subsections (1) and (2) of this section is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the laws of this state.

(4) An "American employer", for the purposes of this section, means a person who is:

(a) An individual who is a resident of the United States; or

(b) A partnership if two-thirds or more of the partners are residents of the United States; or

(c) A trust, if all of the trustees are residents of the United States; or

(d) A corporation organized under the laws of the United States or of any state. [1977 ex.s. c 292 § 1; 1971 c 3 § 7.]

Effective dates—1977 ex.s. c 292: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That sections 6, 12, 14, 15, 16, and 18 of this 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 292 § 28.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.120 Employment—Localized service. Service shall be deemed to be localized within a state, if

(1) the service is performed entirely within the state; or

(2) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions. [1945 c 35 § 14; Rem. Supp. 1945 § 9998-153. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.125 Employment—Foreign degree-granting institutions—Employee services localized in country of domicile. The services of employees of a foreign degree-granting institution who are nonimmigrant aliens under the immigration laws of the United States, shall, for the purposes of RCW 50.04.120, be considered to be localized or principally localized, in the country of domicile of the foreign degree-granting institution as defined in RCW 28B.90.010 in those instances where the income of those employees would be exempt from taxation by virtue of the terms and provisions of any treaty between the United States and the country of domicile of the foreign degree-granting institution. However, a foreign degree-granting institution is not precluded from otherwise establishing that a nonimmigrant employee's services are, for the purpose of such statutes, principally located in its country of domicile. [1993 c 181 § 8.]

50.04.140 Employment—Exception tests. Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless and until it is shown to the satisfaction of the commissioner that:

(1)(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

(2) Or as a separate alternative, it shall not constitute employment subject to this title if it is shown that:

(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(d) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(e) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(f) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting. [1991 c 246 § 6; 1945 c 35 § 15; Rem. Supp. 1945 § 9998-154. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

50.04.145 Employment—Services performed for contractor, when excluded. The term "employment" shall not include services rendered by any person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW when:

(1) Contracting to perform work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(3) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business;

(4) The work which the person, firm, or corporation has contracted to perform is:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW; and

(5) A contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW does not supervise or control the means by which the result is accomplished or the manner in which the work is performed. [1983 1st ex.s. c 23 § 25; 1982 1st ex.s. c 18 § 13.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.148 Employment—Services performed by musician or entertainer. (1) The term "employment" shall not include services performed by a musician or entertainer under a written contract with a purchaser of the services for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. The contract shall designate the leader of the music or entertainment group. A music or entertainment business or a leader of a music or entertainment group shall be considered an employer and not a purchaser of music or entertainment services.

(2) Any musician or entertainer who performs for a music or entertainment business or as a member of a music or entertainment group is deemed an employee of the business or group and the business or the leader of the group shall be required to register as an employer with the department.

(3) Purchasers of services under subsection (1) of this section shall not be subject to RCW 50.24.130 relating to a principal's liability for unpaid contributions if the services are purchased from a business or group registered as an employer with the department.

(4) The term "music or entertainment business" or "group" as used in this section means an employer whose principal business activity is music or entertainment. The term does not include those entities who provide music or entertainment for members or patrons incidental to their principal business activity, and does not include an individual employing musicians or entertainers on a casual basis. [1985 c 47 § 1.]

Effective date—1985 c 47: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions and shall take effect July 1, 1985." [1985 c 47 § 2.]

50.04.150 Employment—Agricultural labor. Except as otherwise provided in RCW 50.04.155, the term "employment" shall not include service performed in agricultural labor by individuals who are enrolled as students and regularly attending classes, or are between two successive academic years or terms, at an elementary school, a secondary school, or an institution of higher education as defined in RCW 50.44.037 and in the case of corporate farms not covered under RCW 50.04.155, the provisions regarding family employment in RCW 50.04.180 shall apply.

Agricultural labor is defined as services performed:

(1) On a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wild life, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or

(2) In packing, packaging, grading, storing, or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations. The exclusions from the term "employment" provided in this paragraph shall not be deemed to be applicable with respect to commercial packing houses, commercial storage establishments, commercial canning, commercial freezing, or any other commercial processing or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or raising and harvesting of mushrooms or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption. [1989 c 380 § 78; 1977 ex.s. c 292 § 2; 1957 c 264 § 1; 1947 c 215 § 3; 1945 c 35 § 16; Rem. Supp. 1945 § 9998-155. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective date—1989 c 380 §§ 78-81: "Sections 78 through 81 of this act shall take effect on January 1, 1990." [1989 c 380 § 91.]

Conflict with federal requirements—1989 c 380: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1989 c 380 § 89.]

Severability—1989 c 380: See RCW 15.58.942.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.155 Service performed in agricultural labor for farm operator or crew leader. (1) Service performed in agricultural labor on and after January 1, 1978, for a farm operator or crew leader will be deemed services in employment if the farm operator or crew leader:

(a) Paid twenty thousand dollars or more as remuneration to individuals employed in agricultural labor during any calendar quarter in the current or preceding calendar year; or

(b) Employed ten or more individuals in agricultural labor for some portion of the day in each of twenty different calendar weeks in either the current or preceding calendar year regardless of whether they were employed at the same moment of time or whether or not the weeks were consecutive.

(2) A farm operator is the owner or tenant of the farmlands who stands to gain or lose economically from the operations of the farm. Employment will be considered employment by the farm operator unless it is established to the satisfaction of the commissioner that the services were performed in the employ of a crew leader. The risk of nonpersuasion is upon the farm operator. The operator will nonetheless be liable for contributions under RCW 50.24.130 even though services performed on the operator's farmlands would not be sufficient to bring the services under the term employment if services performed on the operator's land in the employ of a crew leader would be covered and the crew leader has failed to pay contributions on the services. For the purposes of the preceding sentence and RCW 50.24.130, all moneys paid or payable to the crew leader by the farm operator shall be deemed paid for services unless there is a written contract clearly specifying the amounts of money to be attributed to items other than services of the crew leader or the crew leader's employees.

(3) For the purposes of this section, a crew leader is a person who furnishes individuals to perform services in agricultural labor for the benefit of any other person, who pays for the services performed in agricultural labor (either on his or her own behalf or on behalf of the other person), and who has not made a written agreement making himself or herself an employee of the other person: PROVIDED, That no person shall be deemed a crew leader unless he or she is established independently of the person for whom the services are performed and either has a valid certificate of registration under the farm labor contractor registration act of 1963 or substantially all the members of his or her crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment which is provided by the crew leader. [1977 ex.s. c 292 § 3.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.160 Employment—Domestic service. Services performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority shall not be considered services in employment unless the services are performed after December 31, 1977, for a person who paid remuneration of one thousand dollars or more to individuals employed in this domestic service in any calendar quarter in the current or the preceding calendar year. The terms local college club and local chapter of a college fraternity or sorority shall not be deemed to include alumni clubs or chapters. [1977 ex.s. c 292 § 4; 1947 c 215 § 4; 1945 c 35 § 17; Rem. Supp. 1947 § 9998-156. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.165 Employment—Corporate officers—Election of coverage. Services performed by a person appointed as an officer of a corporation under RCW 23B.08.400, other than those covered by chapter 50.44 RCW, shall not be considered services in employment. However, a corporation may elect to cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. If the employer fails to notify any corporate officer, then that person shall not be considered to be a corporate officer for the purposes of this section. [1993 c 290 § 2; 1993 c 58 § 1; 1991 c 72 § 57; 1986 c 110 § 1; 1983 1st ex.s. c 23 § 4; 1981 c 35 § 13.]

Conflict with federal requirements—1993 c 58: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 58 § 4.]

Severability—1993 c 58: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 58 § 5.]

Effective date—1993 c 58: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect March 6, 1993." [1993 c 58 § 6.] 1993 c 58 was signed by the governor on April 19, 1993.

Conflict with federal requirements—1986 c 110: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 110 § 2.]

Severability—1986 c 110: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 110 § 3.]

Effective date—1986 c 110: "This act shall take effect July 1, 1986." [1986 c 110 § 4.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—1981 c 35: See note following RCW 50.22.030.

50.04.170 Employment—Maritime service. The term "employment" shall include an individual's entire service as an officer or member of a crew of an American vessel wherever performed and whether in intrastate or interstate or foreign commerce, if the employer maintains within this state at the beginning of the pay period an operating office from which the operations of the vessel are ordinarily and regularly supervised, managed, directed and controlled. The term "employment" shall not include services performed as an officer or member of the crew of a vessel not an American vessel and services on or in connection with an American vessel under a contract of service which is not entered into

within the United States and during the performance of which the vessel does not touch at a port of the United States.

"American vessel", means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state. [1949 c 214 § 3; 1947 c 215 § 5; 1945 c 35 § 18; Rem. Supp. 1949 § 9998-157. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.180 Family employment. The term "employment" shall not include service performed by an individual in the employ of his or her spouse, nor shall it include service performed by an unmarried individual under the age of eighteen years in the employ of his or her parent or step-parent. [1973 c 73 § 2; 1951 c 265 § 6; 1945 c 35 § 19; Rem. Supp. 1945 § 9998-158. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.205 Services performed by aliens. Except as provided in RCW 50.04.206, services performed by aliens legally or illegally admitted to the United States shall be considered services in employment subject to the payment of contributions to the extent that services by citizens are covered. [1990 c 245 § 2; 1977 ex.s. c 292 § 5.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.206 Employment—Nonresident alien. The term "employment" shall not include service that is performed by a nonresident alien for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F), (H)(ii), (H)(iii), or (J) of section 101(a)(15) of the federal immigration and naturalization act, as amended, and that is performed to carry out the purpose specified in the applicable subparagraph of the federal immigration and naturalization act. [2003 2nd sp.s. c 4 § 27; 1990 c 245 § 3.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

50.04.210 Employment—Foreign governmental service. The term "employment" shall not include service performed in the employ of any other state or its political subdivisions, or of the United States government, or of any instrumentality of any other state or states or their political subdivisions, or the United States; except that if the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation act, then, to the extent permitted by congress, and from and after the date when such permission becomes effective all

the provisions of this title shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: PROVIDED, That if this state should not be certified by the social security board under section 903 of the social security act, as amended, for any year, then the payment required of such instrumentalities with respect to such year shall be deemed to be erroneously collected and shall be refunded by the commissioner from the fund in accordance with the provisions of this title relating to adjustments and refunds of contributions, interest, or penalties which have been paid. [1983 1st ex.s. c 23 § 5; 1945 c 35 § 22; Rem. Supp. 1945 § 9998-161. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.04.220 Employment—Service covered by federal act. The term "employment" shall not include service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress: PROVIDED, That the commissioner is hereby authorized to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in this title for publication of general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this title, acquired right to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this title. [1945 c 35 § 23; Rem. Supp. 1945 § 9998-162. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.223 Employment—Massage practitioner. The term "employment" does not include services performed by a massage practitioner licensed under chapter 18.108 RCW in a massage business if the use of the business facilities is contingent upon compensation to the owner of the business facilities and the person receives no compensation from the owner for the services performed.

This exemption does not include services performed by a massage practitioner for an employer under chapter 50.44 RCW. [1994 c 3 § 2; 1993 c 167 § 1.]

Conflict with federal requirements—Severability—Effective dates—1994 c 3: See notes following RCW 50.04.020.

Effective date—1993 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1993." [1993 c 167 § 2.]

50.04.225 Employment—Barber and cosmetology services. The term "employment" does not include services performed in a barber shop or cosmetology shop by persons licensed under chapter 18.16 RCW if the person is a booth renter as defined in *RCW 18.16.020. [1991 c 324 § 17; 1985 c 7 § 117; 1982 1st ex.s. c 18 § 20.]

***Reviser's note:** RCW 18.16.020 was amended by 2002 c 111 § 2, deleting the definition of "booth renter."

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Severability—1991 c 324: See RCW 18.16.910.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.230 Employment—Services of insurance agent, broker, or solicitor, real estate broker or real estate salesman, and investment company agent or solicitor. The term "employment" shall not include service performed by an insurance agent, insurance broker, or insurance solicitor or a real estate broker or a real estate salesman to the extent he or she is compensated by commission and service performed by an investment company agent or solicitor to the extent he or she is compensated by commission. The term "investment company", as used in this section is to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940." [1991 c 246 § 7; 1947 c 5 § 24; 1945 c 35 § 24; Rem. Supp. 1947 § 9998-162a.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

50.04.232 Employment—Travel services. The term "employment" shall not include service performed by an outside agent who sells or arranges for travel services that are provided to a travel agent as defined and registered under RCW 19.138.021, to the extent the outside agent is compensated by commission. [1995 c 242 § 1.]

Conflict with federal requirements—1995 c 242: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 242 § 2.]

50.04.235 Employment—Outside salesman paid by commission. The term "employment" shall not include services as an outside salesman of merchandise paid solely by way of commission; and such services must have been performed outside of all the places of business of the enterprises for which such services are performed only. [1957 c 181 § 1.]

50.04.240 Employment—Newsboy's service. The term "employment" shall not include service as a newsboy selling or distributing newspapers on the street or from house to house. [1945 c 35 § 25; Rem. Supp. 1945 § 9998-163. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.245 Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency. (1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, a third party pursuant to a contract with a temporary services agency, employee leasing agency, services referral agency, or other entity shall be deemed to be employment for the temporary services agency, employee leasing agency, services referral agency, or other entity when the agency is

responsible, under contract or in fact, for the payment of wages in remuneration for the services performed.

(2) For the purposes of this section:

(a) "Temporary services agency" means an individual or entity that is engaged in the business of furnishing individuals to perform services on a part-time or temporary basis for a third party.

(b) "Employee leasing agency" means an individual or entity that for a fee places the employees of a client onto its payroll and leases such employees back to the client.

(c) "Services referral agency" means an individual or entity that is engaged in the business of offering the services of an individual to perform specific tasks for a third party. [1995 c 120 § 1.]

Conflict with federal requirements—1995 c 120: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 120 § 2.]

50.04.255 Employment—Appraisal practitioner services. The term "employment" does not include services performed by an appraisal practitioner certified or licensed under chapter 18.140 RCW in an appraisal business if the use of the business facilities is contingent upon compensation to the owner of the business facilities and the person receives no compensation from the owner for the services performed. This exemption does not include services performed by an appraisal practitioner certified or licensed under chapter 18.140 RCW for an employer under chapter 50.44 RCW. [1996 c 182 § 14.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

50.04.265 Employment—Indian tribes. The term "employment" includes services performed in the employ of an Indian tribe as provided in RCW 50.50.010. [2001 1st sp.s. c 11 § 2.]

Conflict with federal requirements—Severability—Effective date—Retroactive application—2001 1st sp.s. c 11: See RCW 50.50.900 through 50.50.903.

50.04.270 Employment—Casual labor. The term "employment" shall not include casual labor not in the course of the employer's trade or business (labor which does not promote or advance the trade or business of the employer). Temporary labor in the usual course of an employer's trade or business or domestic services as defined in RCW 50.04.160 shall not be deemed to be casual labor. [1977 ex.s. c 292 § 7; 1945 c 35 § 28; Rem. Supp. 1945 § 9998-166. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.280 Employment—"Pay period" determination. If the services performed during one-half or more of any pay period by an individual for an employing unit constitute employment, all of the services of such individual for

such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for an employing unit do not constitute employment, then none of the services of such individual on behalf of such employing unit for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to an individual by the employing unit. [1945 c 35 § 29; Rem. Supp. 1945 § 9998-167. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.290 Employment office. "Employment office" means a free public employment office, or branch thereof, operated by this or any other state as a part of a state controlled system of public employment offices, or by a federal agency or any agency of a foreign government charged with the administration of an unemployment compensation program or free public employment offices. All claims for unemployment compensation benefits, registrations for employment, and all job or placement referrals received or made by any of the employment offices as above defined and pursuant to regulation of the commissioner subsequent to December 31, 1941, are hereby declared in all respects to be valid. The commissioner is authorized to make such investigation, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this title as he deems necessary or appropriate to facilitate the administration of any state or federal unemployment compensation or public employment service law and in like manner to accept and utilize information, services and facilities made available to the state by the agency charged with the administration of any such unemployment compensation or public employment service law. Any such action taken by the commissioner subsequent to December 31, 1941, is hereby declared to be in all respects valid. [1945 c 35 § 30; Rem. Supp. 1945 § 9998-168. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

50.04.293 Misconduct. With respect to claims that have an effective date before January 4, 2004, "misconduct" means an employee's act or failure to act in willful disregard of his or her employer's interest where the effect of the employee's act or failure to act is to harm the employer's business. [2003 2nd sp.s. c 4 § 5; 1993 c 483 § 1.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective dates—Applicability—1993 c 483: "(1) Sections 1 and 8 through 11 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and shall be effective as to separations occurring after July 3, 1993.

(2) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and is effective as to weeks claimed after July 3, 1993.

(3) Section 12 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993], and is effective as to new claims filed after July 3, 1993.

(4) Section 19 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and is effective

as to requests for relief of charges received after July 3, 1993.

(5) Sections 15, 17, and 18 of this act shall be effective as to new extended benefit claims filed after October 2, 1993.

(6) Sections 13 and 14 of this act shall take effect January 1, 1994.

(7) Sections 3, 4, and 5 of this act shall take effect January 2, 1994.

(8) Sections 20 and 21 of this act shall take effect for tax year 1994.

(9) Section 16 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 483 § 23.]

Conflict with federal requirements—1993 c 483: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 483 § 24.]

Severability—1993 c 483: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 483 § 25.]

50.04.294 Misconduct—Gross misconduct. With respect to claims that have an effective date on or after January 4, 2004:

(1) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;

(b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or

(d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The following acts are considered misconduct because the acts signify a willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include, but are not limited to:

(a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) Repeated inexcusable tardiness following warnings by the employer;

(c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(d) Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(g) Violations of law by the claimant while acting within the scope of employment that substantially affect the claim-

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ant's job performance or that substantially harm the employer's ability to do business.

(3) "Misconduct" does not include:

(a) Inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(b) Inadvertence or ordinary negligence in isolated instances; or

(c) Good faith errors in judgment or discretion.

(4) "Gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee. [2003 2nd sp.s. c 4 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.04.295 Payments in lieu of contributions. "Payments in lieu of contributions" means money payments due to the state unemployment compensation fund as provided in RCW 50.44.060. [1971 c 3 § 2.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.300 State. "State" includes, in addition to the states of the United States of America, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico. [1977 ex.s. c 292 § 8; 1971 c 3 § 10; 1945 c 35 § 31; Rem. Supp. 1945 § 9998-169. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.310 Unemployed individual—Individual deemed not "unemployed." (1) An individual shall be deemed to be "unemployed" in any week during which the individual performs no services and with respect to which no remuneration is payable to the individual, or in any week of less than full time work, if the remuneration payable to the individual with respect to such week is less than one and one-third times the individual's weekly benefit amount plus five dollars. The commissioner shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to such types of unemployment as the commissioner deems necessary.

(2) An individual shall be deemed not to be "unemployed" during any week which falls totally within a period during which the individual, pursuant to a collective bargaining agreement or individual employment contract, is employed full time in accordance with a definition of full time contained in the agreement or contract, and for which compensation for full time work is payable. This subsection may not be applied retroactively to an individual who had no guarantee of work at the start of such period and subsequently is provided additional work by the employer. [1984 c 134 § 1; 1973 2nd ex.s. c 7 § 1; 1945 c 35 § 32; Rem. Supp. 1945 § 9998-170. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Application—1973 2nd ex.s. c 7: "This act shall apply to weeks of unemployment commencing on or after January 6, 1974." [1973 2nd ex.s. c 7 § 4.]

50.04.320 Wages, remuneration. (1) For the purpose of payment of contributions, "wages" means the remuneration paid by one employer during any calendar year to an individual in its employment under this title or the unemployment compensation law of any other state in the amount specified in RCW 50.24.010. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the operating assets of another employer (hereinafter referred to as a predecessor employer) or assets used in a separate unit of a trade or business of a predecessor employer, and immediately after the acquisition employs in the individual's trade or business an individual who immediately before the acquisition was employed in the trade or business of the predecessor employer, then, for the purposes of determining the amount of remuneration paid by the successor employer to the individual during the calendar year which is subject to contributions, any remuneration paid to the individual by the predecessor employer during that calendar year and before the acquisition shall be considered as having been paid by the successor employer.

(2) For the purpose of payment of benefits, "wages" means the remuneration paid by one or more employers to an individual for employment under this title during his base year: PROVIDED, That at the request of a claimant, wages may be calculated on the basis of remuneration payable. The department shall notify each claimant that wages are calculated on the basis of remuneration paid, but at the claimant's request a redetermination may be performed and based on remuneration payable.

(3) For the purpose of payment of benefits and payment of contributions, the term "wages" includes tips which are received after January 1, 1987, while performing services which constitute employment, and which are reported to the employer for federal income tax purposes.

(4)(a) "Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner. Remuneration does not include payments to members of a reserve component of the armed forces of the United States, including the organized militia of the state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

(b) Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, shall be considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

(c) Settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an

individual written employment contract prior to its expiration date shall be considered remuneration. The proceeds shall be deemed assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract.

(d) Except as provided in (c) of this subsection, the provisions of this subsection (4) pertaining to the assignment of previously accrued compensation shall not apply to individuals subject to RCW 50.44.050. [1998 c 162 § 1; 1995 c 296 § 1; 1986 c 21 § 1; 1984 c 134 § 2; 1983 1st ex.s. c 23 § 6; 1983 c 67 § 1; 1970 ex.s. c 2 § 3; 1953 ex.s. c 8 § 2; 1951 c 265 § 3; 1949 c 214 § 4; 1947 c 215 § 6; 1945 c 35 § 33; Rem. Supp. 1949 § 9998-171. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Conflict with federal requirements—1998 c 162: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1998 c 162 § 2.]

Effective date—1998 c 162: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect on the Sunday following the day that the governor signs this act [March 29, 1998] and is effective for initial claims filed on or after that Sunday." [1998 c 162 § 3.]

Severability—1995 c 296: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 296 § 5.]

Conflict with federal requirements—1995 c 296: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 296 § 6.]

Effective date—1995 c 296: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 9, 1995]." [1995 c 296 § 7.]

Conflict with federal requirements—1986 c 21: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 21 § 2.]

Severability—1986 c 21: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 21 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.323 Wages, remuneration—Government or private retirement pension plan payments—Effect upon

eligibility—Reduction in benefits. (1) The amount of benefits payable to an individual for any week which begins after October 3, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week. However:

(a) The requirements of this subsection shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(i) Such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer; and

(ii) In the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment;

(b) The amount of any such a reduction shall take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment, in accordance with regulations prescribed by the commissioner; and

(c) No deduction shall be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

(2) In the event that a retroactive pension or retirement payment covers a period in which an individual received benefits under the provisions of this title, the amount in excess of the amount to which such individual would have been entitled had such retirement or pension payment been considered as provided in this section shall be recoverable under RCW 50.20.190.

(3) A lump sum payment accumulated in a plan described in this section paid to an individual eligible for such payment shall be prorated over the life expectancy of the individual computed in accordance with the commissioner's regulation.

(4) The resulting weekly benefit amount payable after reduction under this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

(5) Any ambiguity in subsection (1) of this section should be construed in a manner consistent with 26 U.S.C. Sec. 3304 (a)(15) as last amended by P.L. 96-364. [1993 c 483 § 2; 1983 1st ex.s. c 23 § 7; 1981 c 35 § 1; 1980 c 74 § 1; 1973 2nd ex.s. c 7 § 2; 1973 1st ex.s. c 167 § 1; 1970 ex.s. c 2 § 19.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—1980 c 74: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1980 c 74 § 6.]

Effective dates—1980 c 74 §§ 1, 2, and 3: "Sections 1 and 2 of this amendatory act are necessary for the immediate preservation of the public peace, health, and safety, and the support of the state government and its existing public institutions, and shall take effect with weeks of unemployment beginning after March 31, 1980. Section 3 of this amendatory act shall take effect with benefit years beginning after June 30, 1980." [1980 c 74 § 7.]

Application—1973 2nd ex.s. c 7: See note following RCW 50.04.310.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.330 Wages, remuneration—Retirement and disability payments excepted. Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of retirement, sickness or accident disability, or medical and hospitalization expenses in connection with sickness or accident disability. After December 31, 1950, the term "wages" shall not include:

(1) The amount of any payment made (including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment), to, or on behalf of, an individual or any of his dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (a) retirement, or (b) sickness or accident disability, or (c) medical or hospitalization expenses in connection with sickness or accident disability or (d) death;

(2) the amount of any payment by an employing unit to an individual performing service for it (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(3) the amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit;

(4) the amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or his beneficiary (a) from or to a trust exempt from tax under section 165(a) of the federal internal revenue code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (b) under or to an annuity plan which, at the time of such payments, meets the requirements of section 165(a)(3), (4), (5), and (6) of the federal internal revenue code; or

(5) the amount of any payment (other than vacation or sick pay) made to an individual after the month in which he attains the age of sixty-five, if he did not perform services for

the employing unit in the period for which such payment is made. [1951 c 265 § 4; 1949 c 214 § 5; 1945 c 35 § 34; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.335 Wages, remuneration—Stock transfers excepted. After December 31, 2003, for the purpose of the payment of contributions, the term "wages" does not include an employee's income attributable to the transfer of shares of stock to the employee pursuant to his or her exercise of a stock option granted for any reason connected with his or her employment. [2003 2nd sp.s. c 4 § 2.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.04.340 Wages, remuneration—Death benefits excepted. Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.350 Wages, remuneration—Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: PROVIDED, HOWEVER, That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998-174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes. (1) For computations made before January 1, 2007, the employment security department shall

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

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

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

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

(2) For computations made on or after January 1, 2007, the employment security department shall compute, on or before the fifteenth day of June of each year, an "average annual wage," an "average weekly wage," and an "average annual wage for contributions purposes" from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080.

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

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

(c) The "average annual wage for contributions purposes" is the quotient derived by dividing the total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [2003 2nd sp.s. c 4 § 15; 2000 c 2 § 1; 1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 c 73 § 3; 1970 ex.s. c 2 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—2000 c 2: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting

of federal unemployment tax credits to employers in this state." [2000 c 2 s 17.]

Severability—2000 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 2 § 18.]

Effective date—2000 c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 7, 2000]." [2000 c 2 § 19.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: "All sections of this 1975 amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on the first Sunday following signature by the governor [June 29, 1975]." [1975 1st ex.s. c 228 § 19.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.360 Week. "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998-175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Chapter 50.06 RCW

TEMPORARY TOTAL DISABILITY

Sections

50.06.010	Purpose.
50.06.020	Allowable beneficiaries.
50.06.030	Application for initial determination of disability—Special base year—Special individual benefit year.
50.06.040	Laws and regulations governing amounts payable and right to benefits.
50.06.050	Use of wages and time worked for prior claims—Effect.
50.06.900	Application of chapter—Recipients of industrial insurance or crime victims compensation.
50.06.910	Partial invalidity of chapter.

50.06.010 Purpose. This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to persons who have suffered a temporary total disability and is a recognition by this legislature of the economic hardship confronting those persons who have not been promptly reemployed after a prolonged period of temporary total disability. [1993 c 483 § 3; 1984 c 65 § 1; 1975 1st ex.s. c 228 § 7.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.020 Allowable beneficiaries. The benefits of this chapter shall be allowed only to:

(1) Individuals who have suffered a temporary total disability and have received compensation under the industrial insurance or crime victims compensation laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability; or

(2) Individuals who are reentering the work force after an absence of not less than thirteen consecutive calendar weeks resulting from temporary total physical disability because of a nonwork-related injury or illness: PROVIDED, That individuals authorized to receive benefits under this subsection are required to meet other eligibility requirements under Title 50 RCW. [1993 c 483 § 4; 1984 c 65 § 2; 1975 1st ex.s. c 228 § 8.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.030 Application for initial determination of disability—Special base year—Special individual benefit year.

(1) In the case of individuals eligible under RCW 50.06.020(1), an application for initial determination made pursuant to this chapter, to be considered timely, must be filed in accordance with RCW 50.20.140 within twenty-six weeks following the week in which the period of temporary total disability commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability.

(2) In the case of individuals eligible under RCW 50.06.020(2), an application for initial determination must be filed in accordance with RCW 50.20.140 within twenty-six weeks following the week in which the period of temporary total physical disability commenced. This filing requirement is satisfied by filing a signed statement from the attending physician stating the date that the disability commenced and stating that the individual was unable to reenter the work force during the time of the disability. The department may examine any medical information related to the disability. If the claim is appealed, a base year employer may examine the medical information related to the disability and require, at the employer's expense, that the individual obtain the opinion of a second health care provider selected by the employer concerning any information related to the disability.

(3) The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

(4) For the purpose of this chapter, a special base year is established for an individual consisting of either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance or crime victims compensation laws, or the week in which the individual reentered the work force after an absence under subsection (2) of this section, as applicable, except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: PROVIDED HOWEVER, That such special benefit year will not be established unless the criteria contained

in RCW 50.04.030 has been met, except that an individual meeting the eligibility requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: PROVIDED FURTHER, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year.

(5) For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar quarters as the base year, the department shall use the last four completed calendar quarters as the base year. [2002 c 73 § 1; 1993 c 483 § 5; 1987 c 278 § 3; 1984 c 65 § 3; 1975 1st ex.s. c 228 § 9.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.040 Laws and regulations governing amounts payable and right to benefits. The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.050 Use of wages and time worked for prior claims—Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement or amount of benefits in any succeeding benefit year. [1975 1st ex.s. c 228 § 11.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.900 Application of chapter—Recipients of industrial insurance or crime victims compensation. (1) This chapter shall be available to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after June 29, 1975.

(2) This chapter shall also be available to individuals who suffer a temporary total disability compensable under crime victims compensation laws, after June 7, 1984. [1984 c 65 § 4; 1975 1st ex.s. c 228 § 12.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.910 Partial invalidity of chapter. Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Chapter 50.08 RCW

ESTABLISHMENT OF DEPARTMENT

Sections

- 50.08.010 Employment security department established.
- 50.08.020 Divisions established.
- 50.08.030 Administration of family services and programs.

Displaced homemaker act, departmental participation: RCW 28B.04.080.

Labor market information and economic analysis—Duties and authority: Chapter 50.38 RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency. [1973 1st ex.s. c 158 § 1; 1947 c 215 § 9; 1945 c 35 § 39; Rem. Supp. 1947 § 9998-177. Prior: 1943 c 127 § 9; 1939 c 214 § 7; 1937 c 162 § 9.]

Effective date—1973 1st ex.s. c 158: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973." [1973 1st ex.s. c 158 § 21.]

50.08.030 Administration of family services and programs. The commissioner shall administer family services and programs to promote the state's policy as provided in RCW 74.14A.025. [1992 c 198 § 10.]

Severability—Effective date—1992 c 198: See RCW 70.190.910 and 70.190.920.

Chapter 50.12 RCW ADMINISTRATION

Sections

50.12.010	Commissioner's duties and powers.
50.12.020	Personnel appointed by commissioner.
50.12.031	Personnel board—Travel expenses of board.
50.12.040	Rule-making authority.
50.12.042	Rules—2003 2nd sp.s. c 4.
50.12.045	Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications.
50.12.050	Reciprocal benefit arrangements.
50.12.060	Reciprocal coverage arrangements.
50.12.070	Employing unit records and reports—Unified business identifier account number records.
50.12.080	Arbitrary reports.
50.12.090	Interstate use of employing unit records.
50.12.100	Compulsory production of records and information.
50.12.120	Protection against self-incrimination.
50.12.130	Oaths and witnesses.
50.12.140	Destruction of office records.
50.12.150	Representation by attorney general.
50.12.160	Publication of title, rules and regulations, etc.
50.12.170	Services and fees of sheriffs.
50.12.180	State-federal cooperation.
50.12.190	Employment stabilization.
50.12.200	State advisory council—Committees and councils.
50.12.210	Employment services for handicapped—Report to legislative committees.
50.12.220	Penalties for late reports or contributions—Assessment—Appeal.
50.12.230	Job skills training program—Department's duties.
50.12.235	Washington conservation corps—Department's duties.
50.12.240	On-the-job training—Employer qualifications established by rule.
50.12.245	Cooperation with work force training and education coordinating board.
50.12.250	Information clearinghouse to assist in employment of persons of disability.
50.12.252	Information clearinghouse—Consultation on establishment.
50.12.280	Displaced workers account—Compensation and retraining after thermal electric generation facility's cessation of operation.

Administration of OASI plans for members of teachers' retirement and state employees' retirement systems: Chapters 41.33, 41.41 RCW.

Merit system: Chapter 41.06 RCW.

50.12.010 Commissioner's duties and powers. The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication and in the manner, not inconsistent with the provisions of this title, which the commissioner shall prescribe. The commissioner, in accordance with the provisions of this title, shall determine the organization and methods of procedure of the divisions referred to in this title, and shall have an official seal which shall be judicially noticed. The commissioner shall submit to the governor a report covering the administration and operation of this title during the preceding fiscal year, July 1 through June 30, and shall make such recommendations for amendments to this title as he deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in

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excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and legislature and make recommendations with respect thereto. [1977 c 75 § 75; 1955 c 286 § 1; 1949 c 214 § 7; 1945 c 35 § 40; Rem. Supp. 1949 § 9998-178. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 12 § 2.]

50.12.020 Personnel appointed by commissioner.

The commissioner is authorized to appoint and fix the compensation of such officers, accountants, experts, and other personnel as may be necessary to carry out the provisions of this title: PROVIDED, That such appointment shall be made on a nonpartisan merit basis in accordance with the provisions of this title relating to the selection of personnel. The commissioner may delegate to any person appointed such power and authority as the commissioner deems reasonable and proper for the effective administration of this title, including the right to decide matters placed in the commissioner's discretion under this title, and may in his or her discretion bond any person handling moneys or signing checks hereunder. [1985 c 96 § 1; 1973 1st ex.s. c 158 § 2; 1945 c 35 § 41; Rem. Supp. 1945 § 9998-179. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.031 Personnel board—Travel expenses of board. Members of the board shall be allowed travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while traveling to and from and attending regularly called meetings. [1975-'76 2nd ex.s. c 34 § 148; 1959 c 127 § 2.]

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

50.12.040 Rule-making authority. Permanent and emergency rules shall be adopted, amended, or repealed by the commissioner in accordance with the provisions of Title 34 RCW and the rules adopted pursuant thereto: PROVIDED, That the commissioner may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule. [1995 c 403 § 109; 1973 1st ex.s. c 158 § 3; 1945 c 35 § 43; Rem. Supp. 1945 § 9998-181. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.042 Rules—2003 2nd sp.s. c 4. The commissioner of the employment security department may adopt

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such rules as are necessary to implement chapter 4, Laws of 2003 2nd sp. sess. [2003 2nd sp.s. c 4 § 34.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.12.045 Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications. The commissioner may contract with the federal internal revenue service, or other appropriate federal agency, to issue conditional federal employer identification numbers, or other federal credentials or documents, at specified offices and locations of the agency in conjunction with any application for state licenses under chapter 19.02 RCW. [1997 c 51 § 5.]

Intent—1997 c 51: See note following RCW 19.02.300.

50.12.050 Reciprocal benefit arrangements. As used in this section the terms "other state" and "another state" shall be deemed to include any state or territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any foreign government and, where applicable, shall also be deemed to include the federal government or provisions of a law of the federal government, as the case may be.

As used in this section the term "claim" shall be deemed to include whichever of the following terms is applicable, to wit: "Application for initial determination", "claim for waiting period credit", or "claim for benefits".

The commissioner shall enter into an agreement with any other state whereby in the event an individual files a claim in another state against wages earned in employment in this state, or against wage credits earned in this state and in any other state or who files a claim in this state against wage credits earned in employment in any other state, or against wages earned in this state and in any other state, the claim will be paid by this state or another state as designated by the agreement in accordance with a determination on the claim as provided by the agreement and pursuant to the qualification and disqualification provisions of this title or under the provisions of the law of the designated paying state (including another state) or under such a combination of the provisions of both laws as shall be determined by the commissioner as being fair and reasonable to all affected interests, and whereby the wages of such individual, if earned in two or more states (including another state) may be combined, and further, whereby this state or another state shall reimburse the paying state in an amount which shall bear the same ratio to the amount of benefits already paid as the amount of wage credits transferred by this state or another state, and used in the determination, bear to the total wage credits used in computing the claimant's maximum amount of benefits potentially payable.

Whenever any claim is filed by an individual involving the combination of wages or a reciprocal arrangement for the payment of benefits, which is governed by the provisions of this section, the employment security department of this state, when not designated as the paying state, shall promptly make a report to the other state making the determination, showing wages earned in employment in this state.

The commissioner is hereby authorized to make to another state and to receive from another state reimbursements from or to the unemployment compensation fund in

accordance with arrangements made pursuant to the provisions of this section. [1977 ex.s. c 292 § 9; 1971 c 3 § 11; 1959 c 266 § 1; 1949 c 214 § 8; 1945 c 35 § 44; Rem. Supp. 1949 § 9998-182. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.12.060 Reciprocal coverage arrangements. The commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states, foreign governments or the federal government whereby services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (1) in which any part of such individual's service is performed, or (2) in which such individual has his residence, or (3) in which the employing unit maintains a place of business: PROVIDED, That there is in effect, as to such services, an election by the employing unit with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state. [1945 c 35 § 45; Rem. Supp. 1945 § 9998-183. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.070 Employing unit records and reports—Unified business identifier account number records. (1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty determined by the commissioner, but not to exceed two hundred fifty dollars, to be collected as provided in RCW 50.24.120.

(2)(a) Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the names of all such workers, and until April 1, 1978, the number of weeks for which the worker earned the "qualifying weekly wage", and beginning July 1, 1977, the hours worked by each worker and such other information as the commissioner may by regulation prescribe.

(b) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported

by the employing unit. In computing the number of such hours worked the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. [1997 c 54 § 2; 1983 1st ex.s. c 23 § 8; 1977 ex.s. c 33 § 3; 1975 1st ex.s. c 228 § 2; 1945 c 35 § 46; Rem. Supp. 1945 § 9998-184. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.12.080 Arbitrary reports. If any employing unit fails to make or file any report or return required by this title, or any regulation made pursuant hereto, the commissioner may, upon the basis of such knowledge as may be available to him, arbitrarily make a report on behalf of such employing unit and the report so made shall be deemed to be prima facie correct. In any action or proceedings brought for the recovery of contributions, interest, or penalties due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department, or a certificate that a return has been filed by or for an employer or estimated by reason of lack of a return, shall be prima facie evidence of the amount of such payroll for the period stated in the certificate. [1983 1st ex.s. c 23 § 9; 1951 c 215 § 2; 1945 c 35 § 47; Rem. Supp. 1945 § 9998-185. Prior: 1943 c 127 § 8.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.12.090 Interstate use of employing unit records. The records of an employer maintained in this state pertaining to employment of persons in another state shall be open to representatives of the commissioner to permit cooperation with other state unemployment compensation agencies in ascertaining information necessary to administer the unemployment compensation acts of such other states. [1945 c 35 § 48; Rem. Supp. 1945 § 9998-186.]

50.12.100 Compulsory production of records and information. In case of contumacy or refusal to obey subpoenas issued to any person, any court of the state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by any duly authorized representative of the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear before such authorized representative, there to produce evidence, if so ordered, or there to give testimony touching the matter under investigation, or in question. Failure to obey such order of the court may be punished by said court as a contempt thereof. [1945

c 35 § 49; Rem. Supp. 1945 § 9998-187. Prior: 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.120 Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before any duly authorized representative of the commissioner or any appeal tribunal in obedience to the subpoena of such representative of the commissioner or such appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [1945 c 35 § 51; Rem. Supp. 1945 § 9998-189. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.130 Oaths and witnesses. In the discharge of the duties imposed by this title, the appeal tribunal and any duly authorized representative of the commissioner shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed to be necessary as evidence in connection with any dispute or the administration of this title. It shall be unlawful for any person, without just cause, to fail to comply with subpoenas issued pursuant to the provisions of this section. [1945 c 35 § 52; Rem. Supp. 1945 § 9998-190. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.140 Destruction of office records. The commissioner may destroy any form, claim, ledger, check, letter, or other record of the employment security department at the expiration of three years after such record was originated by or filed with the employment security department, except that warrants and claims, claim determination, employer liability forms and contribution reports may be destroyed at the expiration of six years after such form is originated by or filed with the employment security department, and except that this section shall not apply to records pertaining to grants, accounts or expenditures for administration, records of the unemployment compensation fund and the unemployment compensation administration fund. [1947 c 215 § 11; 1945 c 35 § 53; Rem. Supp. 1947 § 99998-191.]

Preservation and destruction of public records: Chapter 40.14 RCW.

50.12.150 Representation by attorney general. The attorney general shall be the general counsel of each and all divisions and departments under this title and it shall be his duty to institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of each, every, and all of the provisions of this title, and it shall be the duty of the attorney general to assign such assistants and attorneys as may be necessary to the exclusive duty

of assisting each, every, and all divisions and departments created under this title in the enforcement of this title. The salaries of such assistants shall be paid out of the unemployment compensation administration fund, together with their expenses fixed by the attorney general and allowed by the treasurer of the unemployment compensation administration fund when approved upon vouchers by the attorney general. [1945 c 35 § 54; Rem. Supp. 1945 § 9998-192. Prior: 1937 c 162 § 17.]

Attorney general: Chapter 43.10 RCW.

50.12.160 Publication of title, rules and regulations, etc. The commissioner may cause to be printed for distribution to the public the text of this title, the regulations and general rules, and other material which he deems relevant and suitable. [1977 c 75 § 76; 1945 c 35 § 55; Rem. Supp. 1945 § 9998-193.]

50.12.170 Services and fees of sheriffs. The sheriff of any county, upon request of the commissioner or his duly authorized representative, or upon request of the attorney general, shall, for and on behalf of the commissioner, perform the functions of service, distraint, seizure, and sale, authority for which is granted to the commissioner or his duly authorized representative. No bond shall be required by the sheriff of any county for services rendered for the commissioner, his duly authorized representative, or the attorney general. The sheriff shall be allowed such fees as may be prescribed for like or similar official services. [1945 c 35 § 56; Rem. Supp. 1945 § 9998-194.]

County sheriff: Chapter 36.28 RCW.

50.12.180 State-federal cooperation. The commissioner, through the Washington state employment service division, shall establish and maintain free public employment offices in such places as may be necessary for the proper administration of this title and for the purpose of performing such duties as are within the purview of the act of congress entitled "An Act to provide for the establishment of a national employment system and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49(c), as amended).

In the administration of this title the commissioner shall cooperate to the fullest extent consistent with the provisions of this title, with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act and there shall be observance of and compliance with the requirements thereof. The commissioner may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities, and make available to said board the state's records relating to the administration of this title, and furnish such copies thereof, at the expense of the board, as it may deem necessary for its purposes.

The commissioner shall comply with such provisions as the social security board, created by the social security act, approved August 14, 1935, as amended, may from time to time require, regarding reports and the correctness and verification thereof, and shall comply with the regulations of the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the social security act for the purpose of assisting the administration of this title. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

The governor is authorized to apply for an advance to the state unemployment fund and to accept the responsibility for the repayment of such advance in accordance with the conditions specified in Title XII of the social security act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of such title.

The commissioner is also authorized and empowered to take such steps, not inconsistent with law, as may be necessary for the purpose of procuring for the people of this state all of the benefits and assistance, financial and otherwise, provided, or to be provided for, by or pursuant to any act of congress.

Upon request therefor the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this title. [1973 1st ex.s. c 158 § 4; 1959 c 266 § 2; 1945 c 35 § 57; Rem. Supp. 1945 § 9998-195. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.190 Employment stabilization. The commissioner shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry and publish the results of investigations and research studies. [1945 c 35 § 58; Rem. Supp. 1945 § 9998-197. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.200 State advisory council—Committees and councils. The commissioner shall appoint a state advisory council composed of not more than nine men and women, of which three shall be representatives of employers, three shall be representatives of employees, and three shall be representatives of the general public. Such council shall aid the commissioner in formulating policies and discussing problems related to the administration of this title and of assuring impartiality and freedom from political influence in the solution of such problems. The council shall serve without com-

compensation. The commissioner may also appoint committees, and industrial or other special councils, to perform appropriate services. Advisory council members shall be reimbursed for travel expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1982 1st ex.s. c 18 § 1; 1975-'76 2nd ex.s. c 34 § 149; 1953 ex.s. c 8 § 4; 1947 c 215 § 12; 1945 c 35 § 59; Rem. Supp. 1947 § 9998-197. Prior: 1941 c 253 § 17.]

Severability—1982 1st ex.s. c 18: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 18 § 22.]

Conflict with federal requirements—1982 1st ex.s. c 18: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1982 1st ex.s. c 18 § 21.]

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

50.12.210 Employment services for handicapped—Report to legislative committees. It is the policy of the state of Washington that persons with physical, mental, or sensory handicaps shall be given equal opportunities in employment. The legislature recognizes that handicapped persons have faced unfair discrimination in employment.

For these reasons, the state employment service division of the employment security department shall give particular and special attention service to those persons with physical, mental, or sensory handicaps which substantially limit one or more of their major life functions as defined under P.L. 93-112 and rules promulgated thereunder. Particular and special attention service shall include but not be limited to particular and special attention in counseling, referral, notification of job listings in advance of other persons, and other services of the employment service division.

Nothing in this section shall be construed so as to affect the veteran's preference or any other requirement of the United States department of labor.

The employment security department shall report to the house and senate commerce and labor committees by December 1, 1987, on its accomplishments under this section and on its future plans for implementation of this section. The department shall report to the above mentioned committees every odd-numbered year thereafter on its actions under this section.

The employment security department shall establish rules to implement this section. [1987 c 76 § 1; 1977 ex.s. c 273 § 1.]

50.12.220 Penalties for late reports or contributions—Assessment—Appeal. (1)(a) If an employer fails to file in a timely and complete manner a report required by RCW 50.12.070, or the rules adopted pursuant thereto, the employer shall be subject to a penalty to be determined by the commissioner, but not to exceed two hundred fifty dollars or ten percent of the quarterly contributions for each such offense, whichever is less.

(b) If an employer knowingly misrepresents to the employment security department the amount of his or her payroll upon which contributions under this title are based, the employer shall be liable to the state for up to ten times the amount of the difference in contributions paid, if any, and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(c) If any part of a delinquency for which an assessment is made under this title is due to an intent to evade the successorship provisions of RCW 50.29.062, then for the calendar year in which the commissioner makes the determination under this subsection, the commissioner shall assign to the employer, and to any business found to be promoting the evasion of such provisions, the contribution rate determined for that calendar year under RCW 50.29.025, including the solvency surcharge, if any, for rate class 20 or rate class 40, as applicable, plus two percent.

(2) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(3) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

(4) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for good cause if the commissioner determines that the failure to timely file reports or pay contributions was not due to the employer's fault.

(5) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW 50.32.030. [2004 c 97 § 1; 2003 2nd sp.s. c 4 § 22; 1987 c 111 § 2; 1979 ex.s. c 190 § 1.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1987 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed

condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1987 c 111 § 10.]

Severability—1987 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 111 § 11.]

Effective date—1987 c 111: "This act shall take effect July 1, 1987. Sections 2 and 8 of this act shall be effective for quarters beginning on and after July 1, 1987." [1987 c 111 § 12.]

50.12.230 Job skills training program—Department's duties. See RCW 28C.04.400 through 28C.04.420.

50.12.235 Washington conservation corps—Department's duties. See chapter 43.220 RCW.

50.12.240 On-the-job training—Employer qualifications established by rule. The commissioner may establish by rule qualifications for employers who agree to provide on-the-job training for new employees. [1985 c 299 § 2.]

50.12.245 Cooperation with work force training and education coordinating board. The commissioner shall cooperate with the work force training and education coordinating board in the conduct of the board's responsibilities under RCW 28C.18.060 and shall provide information and data in a format that is accessible to the board. [1991 c 238 § 80.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

50.12.250 Information clearinghouse to assist in employment of persons of disability. The employment security department shall establish an information clearinghouse for use by persons of disability and governmental and private employers. The services of the clearinghouse shall include:

(1) Provision of information on private and state services available to assist persons of disability in their training and employment needs;

(2) Provision of information on private, state, and federal incentive programs and services available to employers of persons of disability; and

(3) Publication of a comprehensive list of programs and services in subsections (1) and (2) of this section. [1987 c 369 § 2.]

Legislative finding—1987 c 369: "The legislature finds that improving the economic status of persons of disability, the state's largest social minority with over four hundred thousand people, will require active state involvement. Persons of disability suffer unemployment at almost twice the rate and experience poverty at more than twice the rate of the general population. Employers have experienced confusion about the variety of employment services available to them. Optimum service from, and access to, the state's training and placement programs for persons of disability requires coordination and a clear focus on the stated needs of persons of disability and their prospective employers. It is the purpose of this chapter to guarantee that representatives of the disability community, labor, and the private sector have an institutionalized means of meeting their respective needs in the training,

employment, and economic participation of persons of disability." [1987 c 369 § 1.]

50.12.252 Information clearinghouse—Consultation on establishment. In establishing the information clearinghouse, the employment security department shall consult with organizations of private sector employers and persons of disability. [1987 c 369 § 3.]

Legislative finding—1987 c 369: See note following RCW 50.12.250.

50.12.280 Displaced workers account—Compensation and retraining after thermal electric generation facility's cessation of operation. The displaced workers account is established. All moneys from RCW 82.32.393 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to provide for compensation and retraining of displaced workers of the thermal electric generation facility and of the coal mine that supplied coal to the facility. The benefits from the account are in addition to all other compensation and retraining benefits to which the displaced workers are entitled under existing state law. The employment security department shall administer the distribution of moneys from the account. [1997 c 368 § 13.]

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

Chapter 50.13 RCW

RECORDS AND INFORMATION—PRIVACY AND CONFIDENTIALITY

Sections

50.13.010	Legislative intent and recognition.
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50.13.900	Construction.
50.13.905	Severability—1977 ex.s. c 153.
50.13.910	Legislative designation and placement.

50.13.010 Legislative intent and recognition. This chapter is intended to reconcile the free access to public records granted by the open government act and the discovery rights of judicial and administrative systems with the historical confidentiality of certain records of the department of employment security and the individual's right of privacy as acknowledged by the open government act.

The legislature recognizes that records and information held by the department of employment security could be mis-

used. Therefore, this chapter defines a right of privacy and confidentiality as regards individual and employing unit records maintained by the department of employment security. The legislature further recognizes that there are situations where this right of privacy and confidentiality is outweighed by other considerations. Therefore, this chapter also defines certain exceptions to the right of privacy and confidentiality. [1977 ex.s. c 153 § 1.]

50.13.015 Information held private and confidential—Requests for disclosure. (1) If information provided to the department by another governmental agency is held private and confidential by state or federal laws, the department may not release such information.

(2) Information provided to the department by another governmental entity conditioned upon privacy and confidentiality is to be held private and confidential according to the agreement between the department and other governmental agency.

(3) The department may hold private and confidential information obtained for statistical analysis, research, or study purposes if the information was supplied voluntarily, conditioned upon maintaining confidentiality of the information.

(4) Persons requesting disclosure of information held by the department under subsection (1) or (2) of this section shall request such disclosure from the agency providing the information to the department rather than from the department.

(5) This section supersedes any provisions of chapter 42.17 RCW to the contrary. [1989 c 92 § 3.]

50.13.020 Information or records deemed private and confidential—Exceptions. Any information or records concerning an individual or employing unit obtained by the department of employment security pursuant to the administration of this title or other programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this chapter. This chapter does not create a rule of evidence. Information or records may be released by the department of employment security when the release is:

(1) Required by the federal government in connection with, or as a condition of funding for, a program being administered by the department; or

(2) Requested by a county clerk for the purposes of RCW 9.94A.760.

The provisions of RCW 50.13.060 (1) (a), (b) and (c) will not apply to such release. [2004 c 121 § 5; 1981 c 35 § 2; 1977 ex.s. c 153 § 2.]

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

50.13.030 Rules. The commissioner of the department of employment security shall have the authority to adopt, amend, or rescind rules interpreting and implementing the provisions of this chapter. In particular, these rules shall specify the procedure to be followed to obtain information or records to which the public has access under this chapter or chapter 42.17 RCW. [1977 ex.s. c 153 § 3.]

50.13.040 Access of individual or employing unit to records and information. (1) An individual shall have access to all records and information concerning that individual held by the department of employment security, unless the information is exempt from disclosure under RCW 42.17.310.

(2) An employing unit shall have access to its own records and to any records and information relating to a benefit claim by an individual if the employing unit is either the individual's last employer or is the individual's base year employer.

(3) An employing unit shall have access to any records and information relating to any decision to allow or deny benefits if:

(a) The decision is based on employment or an offer of employment with the employing unit; or

(b) If the decision is based on material information provided by the employing unit.

(4) An employing unit shall have access to general summaries of benefit claims by individuals whose benefits are chargeable to the employing unit's experience rating or reimbursement account. [1993 c 483 § 6; 1977 ex.s. c 153 § 4.]

Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

50.13.050 Access to records or information by interested party in proceeding before appeal tribunal or commissioner—Decisions not private and confidential, exception. (1) Any interested party, as defined by rule, in a proceeding before the appeal tribunal or commissioner shall have access to any information or records deemed private and confidential under this chapter if the information or records are material to the issues in that proceeding.

(2) No decisions by the commissioner or the appeals tribunal shall be deemed private and confidential under this chapter unless the decisions are based on information obtained in a closed hearing. [1977 ex.s. c 153 § 5.]

50.13.060 Access to records or information by governmental agencies. (1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with

the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (9) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and (d). Information provided by the department and held to be private and confidential under state or federal laws must not be misused or released to unauthorized parties. A person who misuses such information or releases such information to unauthorized parties is subject to the sanctions in RCW 50.13.080.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the department for purposes authorized in chapter 50.38 RCW. Access to these records and information is

limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are government agencies not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied. Information provided by the department and held to be private and confidential under state or federal laws shall not be misused or released to unauthorized parties subject to the sanctions in RCW 50.13.080.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) The department may provide information for purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program to the department of social and health services, the office of financial management, and other governmental entities with oversight or evaluation responsibilities for the program in accordance with RCW 43.20A.080. The confidential information provided by the department shall remain the property of the department and may be used by the authorized requesting agencies only for statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services, the office of financial management, or other governmental entities with oversight or evaluation responsibilities for the program are not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section and applicable federal laws and regulations must be satisfied. The confidential information used for evaluation and analysis of welfare reform supplied to the authorized requesting entities with regard to the WorkFirst program or any successor state welfare program are exempt from public inspection and copying under RCW 42.17.310.

(9) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

(10) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

(11)(a) To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop career development system. The contracts shall provide for the transfer of data only to the extent that the transfer is necessary for the efficient provisions of work force programs, including but not limited to public labor exchange, unemployment insurance, worker training and retraining, vocational rehabilitation, vocational education, adult education, transition from public assistance, and support services. The transfer of information under con-

tracts with one-stop partners is exempt from subsection (1)(c) of this section.

(b) An individual who applies for services from the department and whose information will be shared under (a) of this subsection (11) must be notified that his or her private and confidential information in the department's records will be shared among the one-stop partners to facilitate the delivery of one-stop services to the individual. The notice must advise the individual that he or she may request that private and confidential information not be shared among the one-stop partners and the department must honor the request. In addition, the notice must:

(i) Advise the individual that if he or she requests that private and confidential information not be shared among one-stop partners, the request will in no way affect eligibility for services;

(ii) Describe the nature of the information to be shared, the general use of the information by one-stop partner representatives, and among whom the information will be shared;

(iii) Inform the individual that shared information will be used only for the purpose of delivering one-stop services and that further disclosure of the information is prohibited under contract and is not subject to disclosure under RCW 42.17.310; and

(iv) Be provided in English and an alternative language selected by the one-stop center or job service center as appropriate for the community where the center is located.

If the notice is provided in-person, the individual who does not want private and confidential information shared among the one-stop partners must immediately advise the one-stop partner representative of that decision. The notice must be provided to an individual who applies for services telephonically, electronically, or by mail, in a suitable format and within a reasonable time after applying for services, which shall be no later than ten working days from the department's receipt of the application for services. A one-stop representative must be available to answer specific questions regarding the nature, extent, and purpose for which the information may be shared.

(12) To facilitate improved operation and evaluation of state programs, the commissioner may enter into data-sharing contracts with other state agencies only to the extent that such transfer is necessary for the efficient operation or evaluation of outcomes for those programs. The transfer of information by contract under this subsection is exempt from subsection (1)(c) of this section.

(13) The misuse or unauthorized release of records or information by any person or organization to which access is permitted by this chapter subjects the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [2003 c 165 § 3; 2000 c 134 § 2. Prior: 1997 c 409 § 605; 1997 c 58 § 1004; 1996 c 79 § 1; 1993 c 281 § 59; 1981 c 177 § 1; 1979 ex.s. c 177 § 1; 1977 ex.s. c 153 § 6.]

Findings—2000 c 134: "The legislature finds that individuals in need of employment and related services would be better served by integrating

employment and training services to form a comprehensive network of state and local programs, called a one-stop career development system. Successful integration of employment and training services demands prompt and efficient exchange of information among service providers. The legislature further finds that efficient operation of state programs and their evaluation demand at times information held by the employment security department. Current restrictions on information exchange hamper this coordination, resulting in increased administrative costs, reduced levels of service, and fewer positive outcomes than could otherwise be achieved." [2000 c 134 § 1.]

Conflict with federal requirements—2000 c 134: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2000 c 134 § 4.]

Severability—2000 c 134: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 134 § 5.]

Effective date—1997 c 409 § 605: "Section 605 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 1997]." [1997 c 409 § 608.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Conflict with federal requirements—1996 c 79: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 79 § 3.]

Effective date—1996 c 79: "This act shall take effect July 1, 1996." [1996 c 79 § 4.]

Effective date—1993 c 281: See note following RCW 41.06.022.

50.13.070 Availability of records or information to parties to judicial or administrative proceedings—Discovery proceedings—Subpoenas. Information or records deemed private and confidential under this chapter shall be available to parties to judicial or formal administrative proceedings only upon a finding by the presiding officer that the need for the information or records in the proceeding outweighs any reasons for the privacy and confidentiality of the information or records. Information or records deemed private and confidential under this chapter shall not be available in discovery proceedings unless the court in which the action has been filed has made the finding specified above. A judicial or administrative subpoena directed to the employment security department must contain this finding. A subpoena for records or information held by the department may be directed to and served upon any employee of the department, but the department may specify by rule which employee shall produce the records or information in compliance with the subpoena. [1977 ex.s. c 153 § 7.]

50.13.080 Disclosure of records or information to private persons or organizations contracting to assist in operation and management of department—Penalties.

(1) The employment security department shall have the right to disclose information or records deemed private and confidential under this chapter to any private person or organization when such disclosure is necessary to permit private contracting parties to assist in the operation and management of the department in instances where certain departmental functions may be delegated to private parties to increase the department's efficiency or quality of service to the public. The private persons or organizations shall use the information or records solely for the purpose for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as employment security department employees.

(2) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.17.260(9).

(3) The misuse or unauthorized release of records or information deemed private and confidential under this chapter by any private person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [1996 c 79 § 2; 1977 ex.s. c 153 § 8.]

Conflict with federal requirements—Effective date—1996 c 79: See notes following RCW 50.13.060.

50.13.090 Disclosure of records or information to contracting governmental or private organizations.

Where the employment security department contracts to provide services to other governmental or private organizations, the department may disclose to those organizations information or records deemed private and confidential which have been acquired in the performance of the department's obligations under the contracts. [1977 ex.s. c 153 § 9.]

50.13.100 Disclosure of records or information where identifying details deleted or individual or employing unit consents. Nothing in this chapter shall prevent the disclosure of information or records deemed private and confidential under this chapter if all details identifying an individual or employing unit are deleted or the individual or employing unit consents to the disclosure. [1977 ex.s. c 153 § 10.]

50.13.900 Construction. Any ambiguities in this chapter shall be construed in a manner consistent with federal laws applying to the employment security department. If any provision of this chapter or the application thereof is held invalid by a final decision of any court or declared by the secretary of the department of labor of the United States to be inconsistent with federal laws upon which funding of the employment security department is contingent, the invalid or inconsistent provision shall be ineffective only to the extent necessary to insure compliance with the court decision or

federal determination and the remainder of the chapter shall be given full effect. [1977 ex.s. c 153 § 11.]

50.13.905 Severability—1977 ex.s. c 153. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 153 § 13.]

50.13.910 Legislative designation and placement. Sections 1 through 11 of this act shall constitute a new chapter in Title 50 RCW and shall be designated as chapter 50.13 RCW. [1977 ex.s. c 153 § 14.]

Chapter 50.16 RCW

FUNDS

Sections

50.16.010	Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund.
50.16.015	Federal interest payment fund—Establishment.
50.16.020	Administration of funds—Accounts.
50.16.030	Withdrawals from federal unemployment trust fund.
50.16.040	Management of funds upon discontinuance of federal unemployment trust fund.
50.16.050	Unemployment compensation administration fund.
50.16.060	Replacement of federal funds.
50.16.070	Federal interest payment fund—Employer contributions—When payable—Maximum rate—Deduction from remuneration unlawful.
50.16.080	Federal targeted jobs tax credit program—Administration—Processing fee—Deposit of fees.

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund.

(1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); and

(viii) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) Moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and no federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide substitute services or program support; and last priority is the direct payment of funds to the federal government.

(d) During the 2003-2005 fiscal biennium, the cost of the job skills program and the alliance for corporate education at community and technical colleges as appropriated by the legislature.

Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010. [2003 2nd sp.s. c 4 § 23; 2003 1st sp.s. c 25 § 925; 2002 c 371 § 914. Prior: 1993 c 483 § 7; 1993 c 226 § 10; 1993 c 226 § 9; 1991 sp.s. c 13 § 59; 1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198; prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

Reviser's note: This section was amended by 2003 1st sp.s. c 25 § 925 and by 2003 2nd sp.s. c 4 § 23, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

(2004 Ed.)

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective dates—1993 c 226 §§ 10, 12, and 14: "(1) Sections 10 and 12 of this act shall take effect June 30, 1999;

(2) Section 14 of this act shall take effect January 1, 1998." [1993 c 226 § 20.]

Conflict with federal requirements—1993 c 226: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 226 § 21.]

Severability—1993 c 226: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 226 § 22.]

Application—1993 c 226: "This act applies to tax rate years beginning with tax rate year 1994." [1993 c 226 § 23.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Intent—1987 c 202: See note following RCW 2.04.190.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1983 1st ex.s. c 13 § 13.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.16.015 Federal interest payment fund—Establishment. A separate and identifiable fund to provide for the payment of interest on advances received from this state's account in the federal unemployment trust fund shall be established and administered under the direction of the commissioner. This fund shall be known as the federal interest payment fund and shall consist of contributions paid under RCW 50.16.070. All money in this fund shall be expended solely for the payment of interest on advances received from this state's account in the federal unemployment trust fund and for no other purposes whatsoever. [2003 2nd sp.s. c 4 § 24; 1983 1st ex.s. c 13 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.22.100.

50.16.020 Administration of funds—Accounts. The commissioner shall designate a treasurer and custodian of the unemployment compensation fund and of the administrative contingency fund, who shall administer such funds in accordance with the directions of the commissioner and shall issue his or her warrants upon them in accordance with such regu-

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lations as the commissioner shall prescribe. The treasurer and custodian shall maintain within the unemployment compensation fund three separate accounts as follows:

- (1) a clearing account,
- (2) an unemployment trust fund account, and
- (3) a benefit account.

All moneys payable to the unemployment compensation fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer, who shall immediately deposit them in the clearing account. Refunds payable pursuant to the provisions of this title from the unemployment compensation fund may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commissioner: PROVIDED, HOWEVER, That refunds of interest or penalties on delinquent contributions shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner.

After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys in the clearing and benefit accounts and in the administrative contingency fund shall not be commingled with other state funds, but shall be deposited by the treasurer, under the direction of the commissioner, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

Such moneys shall be secured by said bank or public depository to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account.

The treasurer shall give a bond conditioned upon the faithful performance of his or her duties as a custodian of the funds in an amount fixed by the director of the department of general administration and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund. All sums recovered on official bonds for losses sustained by the unemployment compensation fund shall be deposited in such fund. All sums recovered on official bonds for losses sustained by the administrative contingency fund shall be deposited in such fund. [1993 c 226 § 12; 1993 c 226 § 11; 1983 1st ex.s. c 23 § 10; 1975 c 40 § 12; 1953 ex.s. c 8 § 6; 1945 c 35 § 61; Rem. Supp. 1945 § 9998-199. Prior: 1943 c 126 §§ 6, 9; 1939 c 214 § 11; 1937 c 162 § 13.]

Effective dates—1993 c 226 §§ 10, 12, and 14: See note following RCW 50.16.010.

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Powers and duties of director of general administration as to official bonds:
RCW 43.41.360.

50.16.030 Withdrawals from federal unemployment trust fund.

(1) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in RCW 50.16.030(5). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his or her warrants for the payment of benefits solely from such benefits account.

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his or her duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to RCW 50.16.030 (4), (5) and (6) and charged against the

amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of RCW 50.16.030 (4), (5) and (6), amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: PROVIDED, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to RCW 50.16.030 (4), (5) and (6). However, moneys credited because of excess amounts in federal accounts in federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature for any other purpose.

(6) Money requisitioned as provided in RCW 50.16.030 (4), (5) and (6) for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund. [1999 c 36 § 1; 1983 1st ex.s. c 7 § 1; 1973 c 6 § 1; 1969 ex.s. c 201 § 1; 1959 c 170 § 2; 1945 c 35 § 62; Rem. Supp. 1945 § 9998-200. Prior: 1943 c 127 § 6; 1941 c 253 § 7.]

Conflict with federal requirements—1999 c 36: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1999 c 36 § 2.]

50.16.040 Management of funds upon discontinuance of federal unemployment trust fund. The provisions of this title, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein for this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is per-

mitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commissioner, in accordance with the provisions of this title: PROVIDED, That such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest bearing obligations of the United States of America: AND PROVIDED FURTHER, That such investment shall at all times be made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commissioner. [1945 c 35 § 63; Rem. Supp. 1945 § 9998-201. Prior: 1941 c 253 § 7.]

50.16.050 Unemployment compensation administration fund. (1) There is hereby established a fund to be known as the unemployment compensation administration fund. Except as otherwise provided in this section, all moneys which are deposited or paid into this fund are hereby made available to the commissioner. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this title, and for no other purpose whatsoever. All moneys received from the United States of America, or any agency thereof, for said purpose pursuant to section 302 of the social security act, as amended, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this title. All moneys received from the United States employment service, United States department of labor, for said purpose pursuant to the act of congress approved June 6, 1933, as amended or supplemented by any other act of congress, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the public employment office system of this state. The unemployment compensation administration fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed by the treasurer of the unemployment compensation fund under rules and regulations of the commissioner and none of the provisions of RCW 43.01.050 shall be applicable to this fund. The treasurer last named shall be the treasurer of the unemployment compensation administration fund and shall give a bond conditioned upon the faithful performance of his duties in connection with that fund. All sums recovered on the official bond for losses sustained by the unemployment compensation administration fund shall be deposited in said fund.

(2) Notwithstanding any provision of this section:

(a) All money requisitioned and deposited in this fund pursuant to RCW 50.16.030(6) shall remain part of the unemployment compensation fund and shall be used only in accor-

dance with the conditions specified in RCW 50.16.030 (4), (5) and (6).

(b) All money deposited in this fund pursuant to RCW 50.38.065 shall be used only after appropriation and only for the purposes of RCW 50.38.060. [1993 c 62 § 8; 1959 c 170 § 3; 1947 c 215 § 13; 1945 c 35 § 64; Rem. Supp. 1947 § 9998-202. Prior: 1941 c 253 § 7; 1939 c 214 § 11; 1937 c 162 § 13.]

Conflict with federal requirements—Effective date—1993 c 62: See RCW 50.38.901 and 50.38.902.

50.16.060 Replacement of federal funds. The state of Washington hereby pledges that it will replace within a reasonable time any moneys paid to this state under Title III of the social security act, and the Wagner-Peyser act, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of the Washington employment security act. [1959 c 170 § 4; 1945 c 35 § 67; Rem. Supp. 1945 § 9998-205.]

50.16.070 Federal interest payment fund—Employer contributions—When payable—Maximum rate—Deduction from remuneration unlawful. The federal interest payment fund shall consist of contributions payable by each employer (except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, employers who are required to make payments in lieu of contributions, and employers paying contributions under RCW 50.44.035) for any calendar quarter which begins on or after January 1, 1984, and for which the commissioner determines that the department will have an outstanding balance of accruing federal interest at the end of the calendar quarter. The amount of wages subject to tax shall be determined according to RCW 50.24.010. The tax rate applicable to wages paid during the calendar quarter shall be determined by the commissioner and shall not exceed fifteen one-hundredths of one percent. In determining whether to require contributions as authorized by this section, the commissioner shall consider the current balance in the federal interest payment fund and the projected amount of interest which will be due and payable as of the following September 30. Except as appropriated for the fiscal biennium ending June 30, 1991, any excess moneys in the federal interest payment fund shall be retained in the fund for future interest payments.

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

In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [1989 1st ex.s. c 19 § 811; 1988 c 289 § 710; 1983 1st ex.s. c 13 § 7.]

Severability—1989 1st ex.s. c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 19 § 817.]

Effective date—1989 1st ex.s. c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 1st ex.s. c 19 § 818.]

Severability—1988 c 289: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 289 § 803.]

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

50.16.080 Federal targeted jobs tax credit program—Administration—Processing fee—Deposit of fees. The cost of administering the federal targeted jobs tax credit program shall be fully borne by the employers requesting the credits. The commissioner shall establish the amount of the processing fee and procedures for collecting the fee. The commissioner shall establish the processing fee at a sufficient level to defray the costs of administering the federal targeted jobs tax credit program. The fee shall be established by the commissioner by rule. However, if federal funding is provided to finance such services, the commissioner shall revise or eliminate this fee based on the amount of federal funding received. Fees received for processing shall be deposited in a special account in the unemployment compensation administration fund. [1988 c 84 § 2.]

Legislative finding—1988 c 84: "The legislature finds that:

(1) The employment security department through the targeted jobs tax credit program has the responsibility to issue federal tax credit certifications to Washington state employers. The tax credit certification allows the employer to claim a credit against federal income tax for wages paid during the first year to employees who qualify for the program.

(2) To the extent that funding is available, the department, through the federal targeted jobs tax credit program, provides service to employers in the form of technical assistance and training, program marketing, monitoring, and maintenance of records and processing of documents that may result in a certification which allows employers to claim a federal tax credit.

(3) The United States Congress through the Tax Reform Act of 1986 reauthorized the targeted jobs tax credit but did not include funds to cover the costs of processing employer requests for federal tax credit certifications.

(4) The state has a vital interest in the economic benefits employers realize from the targeted jobs tax credit because the economic competitiveness of Washington state is enhanced as tax credit savings are reinvested in the state's economy.

(5) The departments of corrections, social and health services, and veterans affairs, and the superintendent of public instruction, along with employment security and other state service providers, utilize the targeted jobs tax credit program as an incentive for employers to hire hard-to-place clients.

(6) Economically disadvantaged youth, Vietnam-era veterans, ex-felons, and vocational rehabilitation, supplemental security income, general assistance and AFDC recipients have an especially difficult time in obtaining employment." [1988 c 84 § 1.]

Conflict with federal requirements—1988 c 84: "If any part of this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 84 § 3.]

Severability—1988 c 84: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 84 § 4.]

Effective date—1988 c 84: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect March 1, 1988." [1988 c 84 § 6.] This act was signed by the governor March 16, 1988.

Chapter 50.20 RCW BENEFITS AND CLAIMS

Sections

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50.20.010 Benefit eligibility conditions. (1) An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that:

(a) He or she has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commissioner finds that the compliance with such requirements

would be oppressive, or would be inconsistent with the purposes of this title;

(b) He or she has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(c) He or she is able to work, and is available for work in any trade, occupation, profession, or business for which he or she is reasonably fitted.

(i) With respect to claims that have an effective date before January 4, 2004, to be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents.

(ii) With respect to claims that have an effective date on or after January 4, 2004, to be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents. If a labor agreement or dispatch rules apply, customary trade practices must be in accordance with the applicable agreement or rules;

(d) He or she has been unemployed for a waiting period of one week;

(e) He or she participates in reemployment services if the individual has been referred to reemployment services pursuant to the profiling system established by the commissioner under RCW 50.20.011, unless the commissioner determines that:

(i) The individual has completed such services; or

(ii) There is justifiable cause for the claimant's failure to participate in such services; and

(f) As to weeks beginning after March 31, 1981, which fall within an extended benefit period as defined in RCW 50.22.010, the individual meets the terms and conditions of RCW 50.22.020 with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

(2) An individual's eligibility period for regular benefits shall be coincident to his or her established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits. [2003 2nd sp.s. c 4 § 3; 1995 c 381 § 1; 1981 c 35 § 3; 1973 c 73 § 6; 1970 ex.s. c 2 § 4; 1959 c 266 § 3; 1953 ex.s. c 8 § 7; 1951 c 265 § 9; 1951 c 215 § 11; 1949 c 214 § 9; 1945 c 35 § 68; Rem. Supp. 1949 § 9998-206. Prior: 1943 c 127 § 2; 1941 c 253 §§ 1, 2; 1939 c 214 § 2; 1937 c 162 § 4.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1995 c 381: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 381 § 5.]

Effective date—1995 c 381: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 381 § 6.]

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.011 Profiling system to identify individuals likely to exhaust benefits—Confidentiality of information—Penalty. (1) The commissioner shall establish and use a profiling system for new claimants for regular compensation under this title that identifies permanently separated workers who are likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment. The profiling system shall use a combination of individual characteristics and labor market information to assign each individual a unique probability of benefit exhaustion. Individuals identified as likely to exhaust benefits shall be referred to reemployment services, such as job search assistance services, to the extent such services are available at public expense.

(2) The profiling system shall include collection and review of follow-up information relating to the services received by individuals under this section and the employment outcomes for the individuals following receipt of the services. The information shall be used in making profiling identifications.

(3) In carrying out reviews of individuals receiving services, the department may contract with public or private entities and may disclose information or records necessary to permit contracting entities to assist in the operation and management of department functions. Any information or records disclosed to public or private entities shall be used solely for the purposes for which the information was disclosed and the entity shall be bound by the same rules of privacy and confidentiality as department employees. The misuse or unauthorized disclosure of information or records deemed private and confidential under chapter 50.13 RCW by any person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [1995 c 381 § 2.]

Conflict with federal requirements—Effective date—1995 c 381: See notes following RCW 50.20.010.

50.20.012 Rules—1995 c 381. The commissioner may adopt rules as necessary to implement the 1995 c 381 §§ 1 and *3 amendments to RCW 50.20.010 and 50.20.043 and 50.20.011, including but not limited to definitions, eligibility standards, program review criteria and procedures, and provisions necessary to comply with applicable federal laws and regulations that are a condition to receipt of federal funds by

the state or the granting of federal unemployment tax credits to employers in this state. [1995 c 381 § 4.]

***Reviser's note:** Section 3 of this act (amendment to RCW 50.20.043) was vetoed by the governor.

Conflict with federal requirements—Effective date—1995 c 381: See notes following RCW 50.20.010.

50.20.020 Waiting period credit limitation. No week shall be counted as a waiting period week,

(1) if benefits have been paid with respect thereto, and
(2) unless the individual was otherwise eligible for benefits with respect thereto, and

(3) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits. [1949 c 214 § 10; 1945 c 35 § 69; Rem. Supp. 1949 § 9998-207.]

50.20.041 Health care professionals who have contracted hepatitis C—Training. (1) Credentialed health care professionals listed in RCW 18.130.040 shall be deemed to be dislocated workers for the purpose of commissioner approval of training under RCW 50.20.043 if they are unemployed as a result of contracting hepatitis C in the course of employment and are unable to continue to work in their profession because of a significant risk that such work would pose to other persons and that risk cannot be eliminated.

(2) For purposes of subsection (1) of this section, a health care professional who was employed on a full-time basis in their profession shall be presumed to have contracted hepatitis C in the course of employment. This presumption may be rebutted by a preponderance of the evidence that demonstrates that the health care professional contracted hepatitis C as a result of activities or circumstances not related to employment. [2003 c 273 § 4.]

50.20.042 Unemployed aerospace workers—Training. Aerospace workers unemployed as the result of downsizing and restructuring of the aerospace industry will be deemed to be dislocated workers for the purpose of commissioner approval of training under RCW 50.20.043. [1993 c 226 § 7.]

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

50.20.043 Training provision. No otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the commissioner, nor shall such individual be denied benefits with respect to any week in which the individual is satisfactorily progressing in a training program with the approval of the commissioner by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

An individual who the commissioner determines to be a dislocated worker as defined by RCW 50.04.075 and who is satisfactorily progressing in a training program approved by the commissioner shall be considered to be in training with the approval of the commissioner. [2003 2nd sp.s. c 4 § 30; 1985 c 40 § 1; 1984 c 181 § 2; 1971 c 3 § 12.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1985 c 40: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 40 § 2.]

Severability—1985 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 40 § 3.]

Effective date—1985 c 40: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 40 § 4.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.20.044 Ineligibility for benefits for failure to attend job search workshop or training course. If an otherwise eligible individual fails without good cause, as determined by the commissioner under rules prescribed by the commissioner, to attend a job search workshop or a training or retraining course when directed by the department and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred. [1984 c 205 § 8.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.20.050 Disqualification for leaving work voluntarily without good cause. (1) With respect to claims that have an effective date before January 4, 2004:

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

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

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

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

- (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or

her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;

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

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

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

(2) With respect to claims that have an effective date on or after January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has

obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

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

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

- (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) He or she: (A) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (I) Is outside the existing labor market area; and (II) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs. [2003 2nd sp.s. c 4 § 4; 2002 c 8 § 1; 2000 c 2 § 12; 1993 c 483 § 8; 1982 1st ex.s. c 18 § 6; 1981 c 35 § 4; 1980 c 74 § 5; 1977 ex.s. c 33 § 4; 1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998-211. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.060 Disqualification from benefits due to misconduct. With respect to claims that have an effective date before January 4, 2004, an individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct. [2003 2nd sp.s. c 4 § 7; 2000 c 2 § 13; 1993 c 483 § 9; 1982 1st ex.s. c 18 § 16; 1977 ex.s. c 33 § 5; 1970 ex.s. c 2 § 22; 1953 ex.s. c 8 § 9; 1951 c 215 § 13; 1949 c 214 § 13; 1947 c 215 § 16; 1945 c 35 § 74; Rem. Supp. 1949 § 9998-212. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.065 Cancellation of hourly wage credits due to felony or gross misdemeanor. With respect to claims that have an effective date before January 4, 2004:

(1) An individual who has been discharged from his or her work because of a felony or gross misdemeanor of which he or she has been convicted, or has admitted committing to

a competent authority, and that is connected with his or her work shall have all hourly wage credits based on that employment canceled.

(2) The employer shall notify the department of such an admission or conviction, not later than six months following the admission or conviction.

(3) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(4) All benefits that are paid in error based on wage/hour credits that should have been removed from the claimant's base year are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title. [2003 2nd sp.s. c 4 § 8; 1993 c 483 § 11.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

50.20.066 Disqualification from benefits due to misconduct—Cancellation of hourly wage credits due to gross misconduct. With respect to claims that have an effective date on or after January 4, 2004:

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

(2) An individual who has been discharged from his or her work because of gross misconduct shall have all hourly wage credits based on that employment or six hundred eighty hours of wage credits, whichever is greater, canceled.

(3) The employer shall notify the department of a felony or gross misdemeanor of which an individual has been convicted, or has admitted committing to a competent authority, not later than six months following the admission or conviction.

(4) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(5) All benefits that are paid in error based on this section are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title. [2003 2nd sp.s. c 4 § 9.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.20.070 Disqualification for misrepresentation. Irrespective of any other provisions of this title an individual shall be disqualified for benefits for any week with respect to which he has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and has thereby obtained or attempted to obtain any benefits under the provisions of this title, and for an additional twenty-six weeks commencing with the first

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week for which he completes an otherwise compensable claim for waiting period credit or benefits following the date of the delivery or mailing of the determination of disqualification under this section: PROVIDED, That such disqualification shall not be applied after two years have elapsed from the date of the delivery or mailing of the determination of disqualification under this section, but all overpayments established by such determination of disqualification shall be collected as otherwise provided by this title. [1973 1st ex.s. c 158 § 5; 1953 ex.s. c 8 § 10; 1951 c 265 § 10; 1949 c 214 § 14; 1947 c 215 § 17; 1945 c 35 § 75; Rem. Supp. 1949 § 9998-213. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.080 Disqualification for refusal to work. An individual is disqualified for benefits, if the commissioner finds that the individual has failed without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner, or to accept suitable work when offered the individual, or to return to his or her customary self-employment (if any) when so directed by the commissioner. Such disqualification shall begin with the week of the refusal and thereafter for seven calendar weeks and continue until the individual has obtained bona fide work in employment covered by this title and earned wages in that employment of not less than seven times his or her suspended weekly benefit amount. [2000 c 2 § 14; 1993 c 483 § 10; 1959 c 321 § 1; 1953 ex.s. c 8 § 11; 1951 c 215 § 14; 1949 c 214 § 15; 1945 c 35 § 76; Rem. Supp. 1949 § 9998-214. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1959 c 321: "This act shall take effect on July 5, 1959." [1959 c 321 § 4.]

50.20.085 Disqualification for receipt of industrial insurance disability benefits. An individual is disqualified from benefits with respect to any day or days for which he or she is receiving, has received, or will receive compensation under RCW 51.32.060 or 51.32.090. [1991 c 117 § 2; 1986 c 75 § 1.]

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

50.20.090 Strike or lockout disqualification—When inapplicable. (1) An individual shall be disqualified for benefits for any week with respect to which the commissioner finds that the individual's unemployment is:

(a) Due to a strike at the factory, establishment, or other premises at which the individual is or was last employed; or

(b) Due to a lockout by his or her employer who is a member of a multi-employer bargaining unit and who has locked out the employees at the factory, establishment, or

other premises at which the individual is or was last employed after one member of the multi-employer bargaining unit has been struck by its employees as a result of the multi-employer bargaining process.

(2) Subsection (1) of this section shall not apply if it is shown to the satisfaction of the commissioner that:

(a) The individual is not participating in or financing or directly interested in the strike or lockout that caused the individual's unemployment; and

(b) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the strike or lockout, there were members employed at the premises at which the strike or lockout occurs, any of whom are participating in or financing or directly interested in the strike or lockout: PROVIDED, That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subdivision, be deemed to be a separate factory, establishment, or other premises.

(3) Any disqualification imposed under this section shall end when the strike or lockout is terminated. [1988 c 83 § 1; 1987 c 2 § 1; 1953 ex.s. c 8 § 12; 1945 c 35 § 77; Rem. Supp. 1945 § 9998-215. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Labor dispute study—1988 c 83: "(1) The department of employment security shall study and analyze the impact of section 1 of this act on the number of claimants receiving unemployment insurance benefits and the total amount of benefits paid, and on the type, frequency, duration, and outcome of labor disputes. In performing the study the department shall specifically address the impact of section 1(1)(b) of this act on the above subjects.

(2) In performing its duties under this section the department shall periodically convene meetings with representatives of labor and management, including but not limited to representatives of the following: A general business association; an organization broadly representing organized labor; the construction industry; construction industry organized labor; the trade industry; trade industry organized labor; the manufacturing industry; manufacturing industry organized labor; the service industry; service industry organized labor; the transportation industry; transportation industry organized labor; the communication industry; and communication industry organized labor.

(3) For the purpose of studying and analyzing the impact of section 1(1)(b) of this act the department shall periodically convene, in addition to those meetings specified in subsection (2) of this section, meetings with representatives of labor and management from industries with multi-employer bargaining units, including but not limited to representatives from a general business association; an organization broadly representing organized labor; the retail trade industry; and retail trade industry organized labor.

(4) The department shall report its findings to the governor, the senate economic development and labor committee, and the house of representatives commerce and labor committee, or the appropriate successor committees, by the commencement of the 1990 regular session of the legislature." [1988 c 83 § 2.]

Effective date—1988 c 83: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on the Sunday following the day on which the governor signs this act [March 20, 1988]." [1988 c 83 § 3.]

Applicability—Effective date—1987 c 2: "(1) This act shall apply retroactively to all applicable employers and employees as of November 16, 1986.

(2) This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [February 20, 1987]." [1987 c 2 § 4.]

Severability—1987 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 2 § 5.]

50.20.095 Disqualification for attending school or institution of higher education. Any individual registered at an established school in a course of study providing scholastic instruction of twelve or more hours per week, or the equivalent thereof, shall be disqualified from receiving benefits or waiting period credit for any week during the school term commencing with the first week of such scholastic instruction or the week of leaving employment to return to school, whichever is the earlier, and ending with the week immediately before the first full week in which the individual is no longer registered for twelve or more hours of scholastic instruction per week: PROVIDED, That registration for less than twelve hours will be for a period of sixty days or longer. The term "school" includes primary schools, secondary schools, and "institutions of higher education" as that phrase is defined in RCW 50.44.037.

This disqualification shall not apply to any individual who:

(1) Is in approved training within the meaning of RCW 50.20.043; or

(2) Demonstrates to the commissioner by a preponderance of the evidence his or her actual availability for work, and in arriving at this determination the commissioner shall consider the following factors:

(a) Prior work history;

(b) Scholastic history;

(c) Past and current labor market attachment; and

(d) Past and present efforts to seek work. [1980 c 74 § 4; 1977 ex.s. c 33 § 8.]

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

50.20.098 Services performed by alien. (1) Benefits shall not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of 8 U.S.C. Sec. 1182(d)(5): PROVIDED, That any modifications to 26 U.S.C. Sec. 3304(a)(14) as provided by PL 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by 26 U.S.C. Sec. 3301 shall be deemed applicable under this section.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence. [1993 c 58 § 2; 1989 c 92 § 1; 1977 ex.s. c 292 § 10.]

Conflict with federal requirements—Severability—Effective date—1993 c 58: See notes following RCW 50.04.165.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.20.099 Training benefits—Eligibility to work in the United States. (1) To ensure that unemployment insurance benefits are paid in accordance with RCW 50.20.098, the employment security department shall verify that an individual is eligible to work in the United States before the individual receives training benefits under RCW 50.22.150.

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

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

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

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

(3) Where federal law prohibits the conditioning of unemployment benefits on a verification of an individual's status as a qualified or authorized alien, the requirements of this section shall not apply. [2000 c 2 § 10.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.20.100 Suitable work factors. (1) Suitable work for an individual is employment in an occupation in keeping with the individual's prior work experience, education, or training and if the individual has no prior work experience, special education, or training for employment available in the general area, then employment which the individual would have the physical and mental ability to perform. In determining whether work is suitable for an individual, the commissioner shall also consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies.

(2) For individuals with base year work experience in agricultural labor, any agricultural labor available from any employer shall be deemed suitable unless it meets conditions in RCW 50.20.110 or the commissioner finds elements of specific work opportunity unsuitable for a particular individual.

(3) For part-time workers as defined in RCW 50.20.119, suitable work includes suitable work under subsection (1) of this section that is for seventeen or fewer hours per week.

(4) For individuals who have qualified for unemployment compensation benefits under RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as applicable, an evaluation of the suitability of the work must consider the individual's need to address the physical, psychological, legal, and other effects of domestic violence or stalking. [2004 c 110 § 2; 2003 2nd sp.s. c 4 § 13; 2002 c 8 § 2; 1989 c 380 § 80; 1977 ex.s. c 33 § 6; 1973 1st

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ex.s. c 158 § 6; 1945 c 35 § 78; Rem. Supp. 1945 § 9998-216.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942 and 15.58.943.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.20.110 Suitable work exceptions. Notwithstanding any other provisions of this title, no work shall be deemed to be suitable and benefits shall not be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; or

(2) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if as a condition of being employed the individual would be required by the employing unit to join a company union or to resign from or refrain from joining any bona fide labor organization. [1945 c 35 § 79; Rem. Supp. 1945 § 9998-217.]

50.20.113 Unemployment of sport or athletic event participant during period between sport seasons. Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if the individual performed the services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform the services in the latter of the seasons (or similar periods). [1977 ex.s. c 292 § 6.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.20.115 Unemployment due to vacation. When an unemployed individual is qualified for receipt of unemployment compensation benefits by the specific provisions of RCW 50.20.010, 50.20.120 and 50.20.130, and such individual is not specifically disqualified from receiving such benefits by reason of the provisions of RCW 50.20.090, 50.20.050, 50.20.060, 50.20.070 or 50.20.080, he shall, for all purposes of the unemployment compensation act, be deemed to be involuntarily unemployed and entitled to unemployment compensation benefits: PROVIDED, That the cessation of operations by an employer for the purpose of granting vacations, whether by union contract or other reasons, shall in no manner be construed to be a voluntary quit nor a voluntary unemployment on the part of the employees. [1983 c 3 § 158; 1951 c 265 § 12.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.117 Jury service. No otherwise eligible individual shall be denied benefits for any week because he or she is serving as a prospective or impaneled juror in any court of this state. Compensation received for service as a juror shall not be considered wages subject to contributions under this title nor shall such compensation be considered in determining base-year wages, but it shall be considered remuneration for purposes of a deduction from benefits under RCW 50.20.130. [1979 ex.s. c 135 § 6.]

Severability—1979 ex.s. c 135: See note following RCW 2.36.080.

50.20.118 Unemployment while in approved training. (1) Notwithstanding any other provision of this chapter, an otherwise eligible individual shall not be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the Trade Act of 1974, P.L. 93-618, nor may that individual be denied benefits for any such week by reason of leaving work which is not suitable employment to enter such training, or for failure to meet any requirement of federal or state law for any such week which relates to the individual's availability for work, active search for work, or refusal to accept work.

(2) For the purposes of this section, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as described for the purposes of the Trade Act of 1974, P.L. 93-618), if the wages for such work are not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974, P.L. 93-618. [1982 1st ex.s. c 18 § 7.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.20.119 Part-time workers. (1) With respect to claims that have an effective date on or after January 2, 2005, an otherwise eligible individual may not be denied benefits for any week because the individual is a part-time worker and is available for, seeks, applies for, or accepts only work of seventeen or fewer hours per week by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

(2) For purposes of this section, "part-time worker" means an individual who: (a) Earned wages in "employment" in at least forty weeks in the individual's base year; and (b) did not earn wages in "employment" in more than seven-teen hours per week in any weeks in the individual's base year. [2003 2nd sp.s. c 4 § 12.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.20.120 Amount of benefits. (1)(a) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title: PROVIDED, That as to any week which falls in an extended benefit period as defined in RCW 50.22.010(1), an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit

amount will be subject to the terms and conditions set forth in RCW 50.22.020.

(b) With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the commissioner finds that the state unemployment rate is six and eight-tenths percent or less, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2)(a) For claims with an effective date before January 4, 2004, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(b) With respect to claims with an effective date on or after January 4, 2004, and before January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the three quarters of the individual's base year in which such total wages were highest.

(c) With respect to claims with an effective date on or after January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one percent of the total wages paid in the individual's base year.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a)(i) With respect to claims that have an effective date before January 4, 2004, the maximum amount payable weekly shall be seventy percent of the "average weekly wage" for the calendar year preceding such June 30th.

(ii) With respect to claims that have an effective date on or after January 4, 2004, the maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar. [2003 2nd sp.s. c 4 § 11; 2002 c 149 § 4; 1993 c 483 § 12; 1984 c 205 § 1; 1983 1st ex.s. c 23 § 11; 1981 c 35 § 5; 1980 c 74 § 3; 1977 ex.s. c 33 § 7; 1970 ex.s. c 2 § 5; 1959 c 321 § 2; 1955 c 209 § 1; 1951 c 265 § 11; 1949 c 214 § 16; 1945 c 35 § 80; Rem. Supp. 1949 § 9998-218. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—1984 c 205: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting

part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1984 c 205 § 11.]

Severability—1984 c 205: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 205 § 12.]

Effective dates—1984 c 205: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1984], except as follows:

(1) Sections 6 and 13 of this act shall take effect on January 1, 1985;

(2) Section 7 of this act shall be effective for compensable weeks of unemployment beginning on or after January 6, 1985; and

(3) Section 9 of this act shall take effect on July 1, 1985." [1984 c 205 § 14.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Effective date—1959 c 321: See note following RCW 50.20.080.

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.130 Deduction from weekly benefit amount. If an eligible individual is available for work for less than a full week, he shall be paid his weekly benefit amount reduced by one-seventh of such amount for each day that he is unavailable for work: PROVIDED, That if he is unavailable for work for three days or more of a week, he shall be considered unavailable for the entire week.

Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less seventy-five percent of that part of the remuneration (if any) payable to him with respect to such week which is in excess of five dollars. Such benefit, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar. [1983 1st ex.s. c 23 § 12; 1973 2nd ex.s. c 7 § 3; 1959 c 321 § 3; 1951 c 215 § 15; 1949 c 214 § 17; 1945 c 35 § 81; Rem. Supp. 1949 § 9998-219. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Application—1973 2nd ex.s. c 7: See note following RCW 50.04.310.

Effective date—1959 c 321: See note following RCW 50.20.080.

50.20.140 Filing applications and claims—Definitions. An application for initial determination, a claim for waiting period, or a claim for benefits shall be filed in accordance with such rules as the commissioner may prescribe. An application for an initial determination may be made by any individual whether unemployed or not. Each employer shall post and maintain printed statements of such rules in places readily accessible to individuals in his or her employment and shall make available to each such individual at the time he or she becomes unemployed, a printed statement of such

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rules and such notices, instructions, and other material as the commissioner may by rule prescribe. Such printed material shall be supplied by the commissioner to each employer without cost to the employer.

The term "application for initial determination" shall mean a request in writing, or by other means as determined by the commissioner, for an initial determination. The term "claim for waiting period" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for waiting period have been met. The term "claim for benefits" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for receipt of benefits have been met.

A representative designated by the commissioner shall take the application for initial determination and for the claim for waiting period credits or for benefits. When an application for initial determination has been made, the employment security department shall promptly make an initial determination which shall be a statement of the applicant's base year wages, his or her weekly benefit amount, his or her maximum amount of benefits potentially payable, and his or her benefit year. Such determination shall fix the general conditions under which waiting period credit shall be granted and under which benefits shall be paid during any period of unemployment occurring within the benefit year fixed by such determination. [1998 c 161 § 2; 1951 c 215 § 4; 1945 c 35 § 82; Rem. Supp. 1945 § 9998-220. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Finding—Intent—1998 c 161: "The legislature finds that the shift by the employment security department from in-person written initial applications for unemployment insurance benefits to a call center approach creates opportunities for improved service but also raises serious concerns. Eliminating face-to-face contact may increase the potential for fraud and reduce the probability that claimants will utilize existing reemployment resources. Therefore, it is the intent of the legislature that if the written application process is to be eliminated, the employment security department must ensure that unemployment insurance claimants remain actively involved in reemployment activities and that an independent evaluation be conducted of the call center approach to unemployment insurance." [1998 c 161 § 1.]

Evaluation of call center: "(1) The joint legislative audit and review committee, in consultation with members of the senate and house of representatives commerce and labor committees and the unemployment insurance advisory committee, shall conduct an evaluation of the new call center approach to unemployment insurance. The evaluation shall review the performance of the call center system, including, but not limited to, the: (a) Promptness of payments; (b) number and types of errors; (c) amount and types of fraud; and (d) level of overpayments and underpayments, compared with the current system.

(2) The joint legislative audit and review committee is directed to contract with a private entity consistent with the provisions of chapter 39.29 RCW. The committee shall consult with the unemployment insurance advisory committee in the design of the request for proposals from potential contractors and shall use the advisory committee to evaluate the responses. The joint legislative audit and review committee shall provide a report on its findings and recommendations to the appropriate standing committee of the senate and house of representatives by September 1, 2001." [1998 c 161 § 5.]

Funding—1998 c 161 § 5: "The employment security department is authorized to expend funds provided under RCW 50.24.014(1)(b) for the purposes of the evaluation provided for in section 5 of this act." [1998 c 161 § 6.]

50.20.150 Notice of application or claim. The applicant for initial determination, his most recent employing unit as stated by the applicant, and any other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of

unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his last separation from work. If, during his benefit year, the applicant becomes unemployed after having accepted subsequent work, and reports for the purpose of reestablishing his eligibility for benefits, a similar notice shall be given promptly to his then most recent employing unit as stated by him, or to any other interested party which the commissioner by regulation prescribes.

Each base year employer shall be promptly notified of the filing of any application for initial determination which may result in a charge to his account. [1970 ex.s. c 2 § 7; 1951 c 215 § 5; 1945 c 35 § 83; Rem. Supp. 1945 § 9998-221. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.160 Redetermination. (1) A determination of amount of benefits potentially payable issued pursuant to the provisions of RCW 50.20.120 and 50.20.140 shall not serve as a basis for appeal but shall be subject to request by the claimant for reconsideration and/or for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof: PROVIDED, That in the absence of fraud or misrepresentation on the part of the claimant, any benefits paid prior to the date of any redetermination which reduces the amount of benefits payable shall not be subject to recovery under the provisions of RCW 50.20.190. A denial of a request to reconsider or a redetermination shall be furnished the claimant in writing and provide the basis for appeal under the provisions of RCW 50.32.020.

(2) A determination of denial of benefits issued under the provisions of RCW 50.20.180 shall become final, in absence of timely appeal therefrom: PROVIDED, That the commissioner may reconsider and redetermine such determinations at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

(3) A determination of allowance of benefits shall become final, in absence of a timely appeal therefrom: PROVIDED, That the commissioner may redetermine such allowance at any time within two years following the benefit year in which such allowance was made in order to recover any benefits improperly paid and for which recovery is provided under the provisions of RCW 50.20.190: AND PROVIDED FURTHER, That in the absence of fraud, misrepresentation, or nondisclosure, this provision or the provisions of RCW 50.20.190 shall not be construed so as to permit redetermination or recovery of an allowance of benefits which having been made after consideration of the provisions of RCW 50.20.010(1)(c), or the provisions of RCW 50.20.050, 50.20.060, 50.20.080, or 50.20.090 has become final.

(4) A redetermination may be made at any time: (a) To conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits; (b) in the event of a back pay award or settlement affecting the allowance of benefits; or (c) in the case of fraud, misrepresentation, or willful nondisclosure. Written notice

of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such regulation as the commissioner may prescribe, would be an interested party. [2003 2nd sp.s. c 4 § 31; 1990 c 245 § 4; 1959 c 266 § 4; 1953 ex.s. c 8 § 13; 1951 c 215 § 6; 1945 c 35 § 84; Rem. Supp. 1945 § 9998-222. Prior: 1941 c 253 § 4.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

50.20.170 Payment of benefits. An individual who has received an initial determination finding that he is potentially entitled to receive waiting period credit or benefits shall, during the benefit year, be given waiting period credit or be paid benefits in accordance with such initial determination for any week with respect to which the conditions of eligibility for such credit or benefits, as prescribed by this title, are met, unless the individual is denied waiting period credit or benefits under the disqualification provisions of this title.

All benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe. [1945 c 35 § 85; Rem. Supp. 1945 § 9998-223. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

50.20.180 Denial of benefits. If waiting period credit or the payment of benefits shall be denied to any claimant for any week or weeks, the claimant and such other interested party as the commissioner by regulation prescribes shall be promptly issued written notice of the denial and the reasons therefor. In any case where the department is notified in accordance with such regulation as the commissioner prescribes or has reason to believe that the claimant's right to waiting period credit or benefits is in issue because of his separation from work for any reason other than lack of work, the department shall promptly issue a determination of allowance or denial of waiting period credit or benefits and the reasons therefor to the claimant, his most recent employing unit as stated by the claimant, and such other interested party as the commissioner by regulation prescribes. Notice that waiting period credit or benefits are allowed or denied shall suffice for the particular weeks stated in the notice or until the condition upon which the allowance or denial was based has been changed. [1951 c 215 § 7; 1945 c 38 § 86; Rem. Supp. 1945 § 9998-224. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.20.190 Recovery of benefit payments. (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits,

fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States,

or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full. The interest penalty shall be used, first, to fully fund

either social security number cross-match audits or other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid and, second, to fund other detection and recovery of overpayment and collection activities. [2003 2nd sp.s. c 4 § 26; 2002 c 371 § 915; 2001 c 146 § 7; 1995 c 90 § 1; 1993 c 483 § 13; 1991 c 117 § 3; 1990 c 245 § 5; 1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3; 1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225. Prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—1995 c 90: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 90 § 2.]

Application—1995 c 90: "This act applies to job separations occurring after July 1, 1995." [1995 c 90 § 3.]

Effective date—1995 c 90: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 18, 1995]." [1995 c 90 § 4.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

Severability—1981 c 35: See note following RCW 50.22.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.191 Authority to compromise benefit overpayments. See RCW 50.24.020.

50.20.192 Collection of benefit overpayments, limitation of actions. See RCW 50.24.190.

50.20.193 Chargeoff of uncollectible benefit overpayments. See RCW 50.24.200.

50.20.195 Assessed interest—Use. All receipts from interest assessed against unemployment insurance claimants shall be deposited in the administrative contingency fund and shall be used for the purpose of RCW 50.20.190(6). [1993 c 483 § 14.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

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50.20.200 Nonliability of state. Benefits shall be deemed to be due and payable under this title only to the extent provided in this title and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commissioner shall be liable for any amount in excess of such sums. [1945 c 35 § 88; Rem. Supp. 1945 § 9998-226.]

50.20.210 Notification of availability of basic health plan. The commissioner shall notify any person filing a claim under this chapter who resides in a local area served by the Washington basic health plan of the availability of basic health care coverage to qualified enrollees in the Washington basic health plan under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the commissioner of a closure of enrollment in the area. The commissioner shall maintain a supply of Washington basic health plan enrollment application forms, which shall be provided in reasonably necessary quantities by the administrator, in each appropriate employment service office for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 16.]

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

50.20.220 Federal income tax deduction and withholding—Notice—Rules. (1) An individual filing a new claim for unemployment insurance must, at the time of filing such claim, be advised that:

(a) Unemployment insurance is subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment insurance at the amount specified in the federal internal revenue code; and

(d) The individual is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation must remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(4) The commissioner shall adopt rules to implement this section. Amounts shall be deducted and withheld in accordance with the priorities established in rules adopted by the commissioner. [1996 c 28 § 2.]

Findings—1996 c 28: "The legislature finds that:

(1) The unique federal and state partnership of the unemployment insurance program places a special responsibility on states, and selected Congressional legislation requires conforming legislation at the state level;

(2) The most recent conformity legislation requires states to offer unemployed workers the option of having the employment security department withhold federal income tax from unemployment insurance benefits;

(3) Unemployment benefits have been subject to income tax for several years, and voluntary withholding is a reasonable strategy some claimants will use to spread the payment of their federal income tax liability over several weeks or months rather than a single payment at income tax time; and

(4) Conformity with federal law supports the federal and state partner-

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ship and responds to the needs of this state's unemployed workers." [1996 c 28 § 1.]

Conflict with federal requirements—1996 c 28: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 28 § 3.]

Severability—1996 c 28: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 28 § 4.]

Effective date—Application—1996 c 28: "This act shall take effect December 31, 1996, and shall apply to payments made after December 31, 1996." [1996 c 28 § 5.]

50.20.230 Electronic labor exchange system. The employment security department will ensure that within a reasonably short period of time after the initiation of benefits, all unemployment insurance claimants, except those with employer attachment, union referral, in commissioner-approved training, or the subject of antiharassment orders, register for job search in an electronic labor exchange system that supports direct employer access for the purpose of selecting job applicants. [1998 c 161 § 3.]

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

50.20.240 Job search monitoring. (1)(a) To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, the employment security department shall implement a job search monitoring program. Effective January 4, 2004, the department shall contract with employment security agencies in other states to ensure that individuals residing in those states and receiving benefits under this title are actively engaged in searching for work in accordance with the requirements of this section. The department may use interactive voice technology and other electronic means to ensure that individuals are subject to comparable job search monitoring, regardless of whether they reside in Washington or elsewhere.

(b) Except for those individuals with employer attachment or union referral, individuals who qualify for unemployment compensation under RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as applicable, and individuals in commissioner-approved training, an individual who has received five or more weeks of benefits under this title, regardless of whether the individual resides in Washington or elsewhere, must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week beyond five in which a claim is filed. With regard to claims with an effective date before January 4, 2004, the evidence must demonstrate contacts with at least three employers per week or documented in-person job search activity at the local reemployment center. With regard to claims with an effective date on or after January 4, 2004, the evidence must demonstrate contacts with at least three employers per week or documented in-person job search activities at the local reemployment center at least three times per week.

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(c) In developing the requirements for the job search monitoring program, the commissioner or the commissioner's agents shall utilize an existing advisory committee having equal representation of employers and workers.

(2) Effective January 4, 2004, an individual who fails to comply fully with the requirements for actively seeking work under RCW 50.20.010 shall lose all benefits for all weeks during which the individual was not in compliance, and the individual shall be liable for repayment of all such benefits under RCW 50.20.190. [2004 c 110 § 1; 2003 2nd sp.s. c 4 § 10; 2002 c 8 § 3; 1998 c 161 § 4.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

Chapter 50.22 RCW

EXTENDED AND ADDITIONAL BENEFITS

(Formerly: Extended benefits)

Sections

50.22.010	Definitions.
50.22.020	Application of statute and rules—Eligibility for extended benefits.
50.22.030	Extended benefit eligibility conditions—Interstate claim.
50.22.040	Weekly extended benefit amount.
50.22.050	Total extended benefit amount—Reduction.
50.22.060	Public announcement when extended benefit period becomes effective or is terminated—Computations of rate of insured unemployment.
50.22.105	Supplemental additional benefits—February 26, 1994, through December 31, 1995—Eligibility.
50.22.130	Training benefits program—Intent.
50.22.140	Employment security department authorized to pay training benefits—Expenditures.
50.22.150	Training benefits—Eligibility—Payment—Local work force development council to identify declining and high demand occupations and skill sets—Rules.

50.22.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is an "on" indicator; and

(b) Ends with the third week after the first week for which there is an "off" indicator: PROVIDED, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of an "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state.

(2) There is an "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks:

(a) The rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent; or

(b) For benefits for weeks of unemployment beginning after March 6, 1993:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three

months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (b)(i) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(3) "High unemployment period" means any period of unemployment beginning after March 6, 1993, during which an extended benefit period would be in effect if:

(a) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(b) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(4) There is an "off" indicator for this state for a week only if, for the period consisting of such week and immediately preceding twelve weeks, none of the options specified in subsection (2) or (3) of this section result in an "on" indicator.

(5) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(6) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(7) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(8) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(9) "Additional benefit eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an additional benefit period that is in effect and, if his or her benefit year ends within such additional benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-ser-

vicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to regular benefits: PROVIDED, That, for the purposes of (a) and (b), an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(d)(i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954. [1993 c 483 § 15; 1985 ex.s. c 5 § 10; 1983 c 1 § 1; 1982 1st ex.s. c 18 § 2; 1981 c 35 § 7; 1977 ex.s. c 292 § 11; 1973 c 73 § 7; 1971 c 1 § 2.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Application—1977 ex.s. c 292 § 11: "The provisions of section 11 of this 1977 amendatory act shall apply to the week ending May 21, 1977, and all weeks thereafter." [1977 ex.s. c 292 § 25.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Emergency—Effective date—1971 c 1: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on the Sunday following the day on which the governor signs this enactment [January 17, 1971]." [1971 c 1 § 11.]

Repealer—Effect as to benefits—1971 c 1: "Section 23, chapter 2, Laws of 1970 ex. sess. and RCW 50.20.127 are each hereby repealed. No benefits shall be paid pursuant to RCW 50.20.127 for weeks commencing on or after the effective date of this 1971 amendatory act." [1971 c 1 § 10.]

50.22.020 Application of statute and rules—Eligibility for extended benefits. When the result would not be inconsistent with the other provisions of this chapter, the provisions of this title and commissioner's regulations enacted pursuant thereto, which apply to claims for, or the payment of, regular benefits, shall apply to claims for, and the payment of, extended benefits: PROVIDED, That

(1) Payment of extended compensation under this chapter shall not be made to any individual for any week of unemployment in his or her eligibility period—

(a) During which he or she fails to accept any offer of suitable work (as defined in subsection (3) of this section) or fails to apply for any suitable work to which he or she was referred by the employment security department; or

(b) During which he or she fails to actively engage in seeking work.

(2) If any individual is ineligible for extended compensation for any week by reason of a failure described in subsections (1)(a) or (1)(b) of this section, the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

(a) Begins with the week following the week in which such failure occurs; and

(b) Does not end until such individual has been employed during at least four weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four multiplied by the individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year.

(3) For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities and which does not involve conditions described in RCW 50.20.110: PROVIDED, That if the individual furnishes evidence satisfactory to the employment security department that such individual's prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with

respect to such individual shall be made in accordance with RCW 50.20.100.

(4) Extended compensation shall not be denied under subsection (1)(a) of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if:

(a) The gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

(i) The individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year; plus

(ii) The amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954, 26 U.S.C. Sec. 501(c)(17)(D)), payable to such individual for such week;

(b) The position was not offered to such individual in writing and was not listed with the employment security department;

(c) Such failure would not result in a denial of compensation under the provisions of RCW 50.20.080 and 50.20.100 to the extent such provisions are not inconsistent with the provisions of subsections (3) and (5) of this section; or

(d) The position pays wages less than the higher of—

(i) The minimum wage provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) Any applicable state or local minimum wage.

(5) For purposes of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(b) The individual provides tangible evidence to the employment security department that he or she has engaged in such an effort during such week.

(6) The employment security department shall refer applicants for benefits under this chapter to any suitable work to which subsections (4)(a) through (4)(d) of this section would not apply.

(7) No provisions of this title which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

(8) The provisions of subsections (1) through (7) of this section shall apply with respect to weeks of unemployment beginning after March 31, 1981: PROVIDED HOWEVER, That the provisions of subsections (1) through (7) of this section shall not apply to those weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. [1993 c 483 § 16; 1993 c 58 § 3; 1981 c 35 § 8; 1971 c 1 § 3.]

Reviser's note: This section was amended by 1993 c 58 § 3 and by 1993 c 483 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—Effective date—1993 c 58: See notes following RCW 50.04.165.

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

50.22.030 Extended benefit eligibility conditions—Interstate claim. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the commissioner finds with respect to such week that:

(a) The individual is an "exhaustee" as defined in RCW 50.22.010;

(b) He or she has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(c) He or she has earned wages in the applicable base year of at least:

(i) Forty times his or her weekly benefit amount; or

(ii) One and one-half times his or her insured wages in the calendar quarter of the base period in which the insured wages are the highest, for weeks of unemployment on or after July 3, 1992.

(2) An individual filing an interstate claim in any state under the interstate benefit payment plan shall not be eligible to receive extended benefits for any week beyond the first two weeks claimed for which extended benefits are payable unless an extended benefit period embracing such week is also in effect in the agent state. [1993 c 483 § 17; 1982 1st ex.s. c 18 § 4; 1981 c 35 § 9; 1971 c 1 § 4.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective dates—1982 1st ex.s. c 18: "Sections 2, 9[10], 10[11], 11[12], 16[17], and 17[18] of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [April 2, 1982]. Section 4 of this act shall take effect on September 26, 1982." [1982 1st ex.s. c 18 § 23.] The bracketed section references in this section correct erroneous internal references which occurred during the engrossing process after a new section was added by amendment.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Construction—1981 c 35 §§ 3, 5, 8, and 9: "Sections 3, 5, and 8 of this 1981 amendatory act are being enacted to comply with the provisions of Pub. L. 96-499. Ambiguities in those sections should be interpreted in accordance with provisions of that federal law. Section 9 of this 1981 amendatory act is enacted pursuant to Pub. L. 96-364. Any ambiguities in that section should be construed in accordance with that federal law." [1981 c 35 § 15.]

Effective dates—1981 c 35 §§ 1, 2, 3, 5, 8, 9, and 12: "Sections 1, 2, 3, 5, 8, and 12 of this amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect immediately [April 20, 1981]; section 9 of this amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect with weeks beginning on and after June 1, 1981." [1981 c 35 § 16.]

Severability—1981 c 35: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 35 § 17.]

50.22.040 Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. However, for those individuals whose eligibility period for extended benefits commences with weeks beginning after October 1, 1983, the weekly benefit amount, as computed in RCW 50.20.120(2) and payable under this section, if not a multiple of one dollar,

shall be reduced to the next lower multiple of one dollar. [1983 1st ex.s. c 23 § 13; 1971 c 1 § 5.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.22.050 Total extended benefit amount—Reduction. (1) The total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(a) Fifty percent of the total amount of regular benefits which were payable to him or her under this title in his or her applicable benefit year;

(b) Thirteen times his or her weekly benefit amount which was payable to him or her under this title for a week of total unemployment in the applicable benefit year; or

(c) Thirty-nine times his or her weekly benefit amount which was payable to him or her under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to him or her under this title with respect to the benefit year.

(2) Notwithstanding any other provision of this chapter, if the benefit year of any eligible individual ends within an extended benefit period, the extended benefits which the individual would otherwise be entitled to receive with respect to weeks of unemployment beginning after the end of the benefit year and within the extended benefit period shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amount as a trade readjustment allowance within that benefit year, multiplied by the individual's weekly extended benefit amount.

(3) Effective for weeks beginning in a high unemployment period as defined in RCW 50.22.010(3) the total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(a) Eighty percent of the total amount of regular benefits that were payable to him or her under this title in his or her applicable benefit year;

(b) Twenty times his or her weekly benefit amount that was payable to him or her under this title for a week of total unemployment in the applicable benefit year; or

(c) Forty-six times his or her weekly benefit amount that was payable to him or her under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid, or deemed paid, to him or her under this title with respect to the benefit year. [1993 c 483 § 18; 1982 1st ex.s. c 18 § 5; 1971 c 1 § 6.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.22.060 Public announcement when extended benefit period becomes effective or is terminated—Computations of rate of insured unemployment. (1) Whenever an extended benefit period is to become effective in this state (or in all states) as a result of an "on" indicator, or an extended benefit period is to be terminated in this state as a result of an "off" indicator, the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of RCW 50.22.010(4) shall be made by the commissioner, in accordance with regulations prescribed by the United States secretary of labor. [1982 1st ex.s. c 18 § 3; 1971 c 1 § 7.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.22.105 Supplemental additional benefits—February 26, 1994, through December 31, 1995—Eligibility. Supplemental additional benefits shall be available to individuals who, under this chapter, had a balance of extended benefits available after payments up to and including the week ending February 26, 1994.

(1) Total supplemental additional benefits payable shall be equal to the extended benefit balance remaining after extended benefit payments for up to and including the week ending February 26, 1994, and shall be paid at the same weekly benefit amount.

(2) The week ending March 5, 1994, is the first week for which supplemental additional benefits are payable.

(3) Supplemental additional benefits shall be paid under the same terms and conditions as extended benefits.

(4) Supplemental additional benefits are not payable for weeks more than one year beyond the end of the benefit year of the regular claim.

(5) Weeks of supplemental additional benefits may not be paid for weeks that begin after the start of a new extended benefit period, or any totally federally funded benefit program with eligibility criteria and benefits comparable to additional benefits.

(6) Weeks of supplemental additional benefits may not be paid for weeks of unemployment beginning after December 31, 1995.

(7) The department shall seek federal funding to reimburse the state for the supplemental additional benefits paid under this section. Any federal funds received by the state for reimbursement shall be deposited in the unemployment trust fund solely for the payment of benefits under this title. [1994 c 3 § 3.]

Conflict with federal requirements—Severability—Effective dates—1994 c 3: See notes following RCW 50.04.020.

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

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

(1) Retraining should be available for those unemployed individuals whose skills are no longer in demand;

(2) To be eligible for retraining, an individual must have a long-term attachment to the labor force;

(3) Training must enhance the individual's marketable skills and earning power; and

(4) Retraining must be targeted to those industries or skills that are in high demand within the labor market.

Individuals unemployed as a result of structural changes in the economy and technological advances rendering their skills obsolete must receive the highest priority for participation in this program. It is the further intent of the legislature

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that individuals for whom suitable employment is available are not eligible for additional benefits while participating in training.

The legislature further intends that funding for this program be limited by a specified maximum amount each fiscal year. [2000 c 2 § 6.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.22.140 Employment security department authorized to pay training benefits—Expenditures. (1) The employment security department is authorized to pay training benefits under RCW 50.22.150, but may not obligate expenditures beyond the limits specified in this section or as otherwise set by the legislature. For the fiscal year ending June 30, 2000, the commissioner may not obligate more than twenty million dollars for training benefits. For the two fiscal years ending June 30, 2002, the commissioner may not obligate more than sixty million dollars for training benefits. Any funds not obligated in one fiscal year may be carried forward to the next fiscal year. For each fiscal year beginning after June 30, 2002, the commissioner may not obligate more than twenty million dollars annually in addition to any funds carried forward from previous fiscal years. The department shall develop a process to ensure that expenditures do not exceed available funds and to prioritize access to funds when again available.

(2) After June 30, 2002, in addition to the amounts that may be obligated under subsection (1) of this section, the commissioner may obligate up to thirty-four million dollars for training benefits under RCW 50.22.150 for individuals in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411" whose claims are filed before January 5, 2003. The funds provided in this subsection must be fully obligated for training benefits for these individuals before the funds provided in subsection (1) of this section may be obligated for training benefits for these individuals. Any amount of the funds specified in this subsection that is not obligated as permitted may not be carried forward to any future period. [2002 c 149 § 1; 2000 2nd sp.s. c 1 § 916; 2000 c 2 § 7.]

Conflict with federal requirements—2002 c 149: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2002 c 149 § 15.]

Severability—2002 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 149 § 16.]

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.22.150 Training benefits—Eligibility—Payment—Local work force development council to identify

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declining and high demand occupations and skill sets—

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

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

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

(c) Is, after assessment of demand for the individual's occupation or skills in the individual's labor market, determined to need job-related training to find suitable employment in his or her labor market. Beginning July 1, 2001, the assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in local labor market areas by the local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection (10) of this section;

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

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

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

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

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

(b) An exhaustee who has base year employment in the forest products industry, determined by the department, but including the industries assigned the major group standard industrial classification codes "24" and "26" or any equivalent codes in the North American industry classification system code, and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment; or

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

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

(a) Is a standby claimant who expects recall to his or her regular employer;

(b) Has a definite recall date that is within six months of the date he or she is laid off; or

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

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

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

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

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

(d) "Training program" means:

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

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

(A) That is targeted to training for a high demand occupation. Beginning July 1, 2001, the assessment of high demand occupations authorized for training under this section must be substantially based on labor market and employment information developed by local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection (10) of this section;

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

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

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

(5) Benefits shall be paid as follows:

(a)(i) Except as provided in (a)(iii) of this subsection, for exhaustees who are eligible under subsection (1) of this section, the total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(ii) For exhaustees who are eligible under subsection (2) of this section, for claims filed before June 30, 2002, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(iii) For exhaustees eligible under subsection (1) of this section from industries listed under subsection (2)(a) of this section, for claims filed on or after June 30, 2002, but before

January 5, 2003, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

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

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

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

(7)(a) Except as provided in (b) of this subsection, individuals who receive training benefits under this section or under any previous additional benefits program for training are not eligible for training benefits under this section for five years from the last receipt of training benefits under this section or under any previous additional benefits program for training.

(b) With respect to claims that are filed before January 5, 2003, an individual in the aerospace industry assigned the standard industrial code "372" or the North American industry classification system code "336411" who received training benefits under this section, and who had been making satisfactory progress in a training program but did not complete the program, is eligible, without regard to the five-year limitation of this section and without regard to the requirement of subsection (1)(b) of this section, if applicable, to receive training benefits under this section in order to complete that training program. The total training benefit amount that applies to the individual is seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year in which the training program resumed and, if applicable, reduced by the amount of training benefits paid, or deemed paid, with respect to the benefit year in which the training program commenced.

(8) An individual eligible to receive a trade readjustment allowance under chapter 2 of Title II of the Trade Act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance. An individual eligible to receive emergency unemployment compensation, so called, under any federal law, shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

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

(10) By July 1, 2001, each local work force development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and occupations

and skill sets that are in high demand. For the purposes of RCW 50.22.130 through 50.22.150 and section 9, chapter 2, Laws of 2000, "high demand" means demand for employment that exceeds the supply of qualified workers for occupations or skill sets in a labor market area. Local work force development councils must use state and locally developed labor market information. Thereafter, each local work force development council shall update this information annually or more frequently if needed.

(11) The commissioner shall adopt rules as necessary to implement this section. [2002 c 149 § 2; 2000 c 2 § 8.]

***Reviser's note:** RCW 50.20.015 was repealed by 2003 2nd sp.s. c 4 § 35.

Effective dates—2002 c 149 §§ 2 and 8: "(1) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002].

(2) Section 8 of this act takes effect January 1, 2005." [2002 c 149 § 19.]

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: "(1) Sections 1, 2, 4, 5, and 15 of this act apply to rate years beginning on or after January 1, 2000.

(2)(a) Except as provided under (b) of this subsection, sections 8 and 12 through 14 of this act apply beginning with weeks of unemployment that begin on or after the Sunday following the day on which the governor signs chapter 2, Laws of 2000 [February 13, 2000].

(b) For individuals eligible under section 8(2)(a) of this act who are enrolled in a national reserve grant on February 7, 2000, section 8 of this act applies beginning with weeks of unemployment that begin after the termination of their needs-related payments under a national reserve grant." [2000 c 2 § 16.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Chapter 50.24 RCW

CONTRIBUTIONS BY EMPLOYERS

Sections

50.24.010	Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration.
50.24.014	Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions.
50.24.015	Wages—Deemed paid when contractually due.
50.24.020	Authority to compromise.
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50.24.040	Interest on delinquent contributions.
50.24.050	Lien for contributions generally.
50.24.060	Lien in event of insolvency or dissolution.
50.24.070	Order and notice of assessment.
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50.24.090	Distraint, seizure, and sale.
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50.24.120	Collection by civil action.
50.24.125	Collection by civil action—Collection of delinquent payments in lieu of contributions from political subdivisions or instrumentalities thereof.
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50.24.150	Contribution adjustments and refunds.
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50.24.170	Joint accounts.
50.24.180	Injunction proceedings.
50.24.190	Limitation of actions.
50.24.200	Chargeoff of uncollectible accounts.

50.24.210 Contributions due and payable upon termination or disposal of business—Successor liability.

50.24.010 Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration. Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make payments in lieu of contributions) for each calendar year in which the employer is subject to this title at the rate established pursuant to chapter 50.29 RCW.

In each rate year, the amount of wages subject to tax for each individual shall be one hundred fifteen percent of the amount of wages subject to tax for the previous year rounded to the next lower one hundred dollars, except that the amount of wages subject to tax in any rate year shall not exceed eighty percent of the "average annual wage for contributions purposes" for the second preceding calendar year rounded to the next lower one hundred dollars. However, the amount subject to tax shall be twenty-four thousand three hundred dollars for rate year 2000.

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

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

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [2000 c 2 § 2; 1984 c 205 § 2; 1977 ex.s. c 33 § 9; 1971 c 3 § 13; 1970 ex.s. c 2 § 8; 1949 c 214 § 18; 1945 c 35 § 89; Rem. Supp. 1949 § 9998-227. Prior: 1943 c 127 § 5; 1941 c 253 § 5; 1939 c 214 § 5; 1937 c 162 § 7.]

Reviser's note: Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

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Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.24.014 Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions. (1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative cost under RCW 50.22.150 and the costs under RCW 50.22.150(9). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(1)(f)(ii), and those qualified employers assigned rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the unemployment compensation trust fund.

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

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

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the employer. Any deduction in violation of this section is unlawful.

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

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st. [2003 2nd sp.s. c 4 § 25; 2000 c 2 § 15. Prior: 1998 c 346 § 901; 1998 c 161 § 7; 1994 c 187 § 3; 1993 c 483 § 20; 1987 c 171 § 4; 1985 ex.s. c 5 § 8.]

Reviser's note: Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Construction—1998 c 346: "This act shall not be construed as affecting any right or cause of action asserted in *Washington State Legislature v. State of Washington* (Thurston county superior court cause no. 98-2-00105-1)." [1998 c 346 § 912.]

Severability—1998 c 346: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 346 § 914.]

Effective date—1998 c 346: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 346 § 915.]

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

Conflict with federal requirements—1994 c 187: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1994 c 187 § 6.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.24.015 Wages—Deemed paid when contractually due. For the purposes of liability for, collection of, and assessment of contributions, wages shall be deemed paid when such wages are contractually due but are unpaid because of the refusal or inability of the employer to make such payment. [1973 1st ex.s. c 158 § 19.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.020 Authority to compromise. The commissioner may compromise any claim for contributions, interest, or penalties, and any amount owed by an individual because of benefit overpayments, whether reduced to judgment or

otherwise, existing or arising under this title in any case where collection of the full claim, in the case of contributions, interest, or penalties, would result in the insolvency of the employing unit or individual from whom such contributions, interest, or penalties are claimed, and any case where collection of the full amount of benefit overpayments made to an individual, whether reduced to judgment or otherwise, would be against equity and good conscience.

Whenever a compromise is made by the commissioner in the case of a claim for contributions, interest, or penalties, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of contributions, interest, and penalties imposed by law and claimed due, a complete record of the compromise agreement and the amount actually paid in accordance with the terms of the compromise agreement. Whenever a compromise is made by the commissioner in the case of a claim of a benefit overpayment, whether reduced to judgment or otherwise, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of the benefit overpayment, attorneys' fees and costs, if any, a complete record of the compromise agreement and the amount actually paid in accordance with the terms of the compromise agreement.

If any such compromise is accepted by the commissioner, within such time as may be stated in the compromise or agreed to, such compromise shall be final and conclusive and except upon showing of fraud or malfeasance or misrepresentation of a material fact the case shall not be reopened as to the matters agreed upon. In any suit, action, or proceeding, such agreement or any determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded. [1983 1st ex.s. c 23 § 14; 1955 c 286 § 5; 1945 c 35 § 90; Rem. Supp. 1945 § 9998-228.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1955 c 286: "The provisions of section 5 of this act shall not become effective until the 3rd day of July, 1955." [1955 c 286 § 17.]

50.24.030 Contributions erroneously paid to United States or another state. Payments of contributions erroneously paid to an unemployment compensation fund of another state or to the United States government which should have been paid to this state and which thereafter shall be refunded by such other state or the United States government and paid by the employer to this state, shall be deemed to have been paid to this state and to have filed contribution reports thereon at the date of payment to the United States government or such other state. [1953 ex.s. c 8 § 15; 1949 c 214 § 19; 1945 c 35 § 91; Rem. Supp. 1949 § 9998-229.]

50.24.040 Interest on delinquent contributions. If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him. The date as of which payment of contributions, if mailed, is deemed to have been received may be determined by such

regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the administrative contingency fund. Interest shall not accrue on contributions from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer shall become due and shall draw interest in the same manner as contributions due from other employers. Where adequate information has been furnished the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived. [1987 c 111 § 3; 1973 1st ex.s. c 158 § 8; 1953 ex.s. c 8 § 16; 1945 c 35 § 92; Rem. Supp. 1945 § 9998-230. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.050 Lien for contributions generally. The claim of the employment security department for any contributions, interest, or penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien hereby created, the department shall file with any county auditor where property of the employer is located a statement and claim of lien specifying the amount of delinquent contributions, interest, and penalties claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him. The lien shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien shall be separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this title. When any such notice of lien has been so filed, the commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent contributions, interest, and penalties have been paid, or when such assurance of payment shall be made as the commissioner may deem to be adequate. Fees for filing and releasing the lien provided herein may be charged to the employer and may be collected from the employer utilizing the remedies provided in this title for the collection of contributions. [1981 c 302 § 39; 1979 ex.s. c 190 § 2; 1973 1st ex.s. c 158 § 9; 1947 c 215 § 19; 1945 c 35 § 93; Rem. Supp. 1947 § 9998-231. Prior: 1943 c 127 § 10; 1941 c 253 § 11; 1939 c 214 § 12; 1937 c 162 § 14.]

Severability—1981 c 302: See note following RCW 19.76.100.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Penalties for late reports or contributions: RCW 50.12.220.

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50.24.060 Lien in event of insolvency or dissolution.

In the event of any distribution of an employer's assets pursuant to an order of any court, including any receivership, probate, legal dissolution, or similar proceeding, or in case of any assignment for the benefit of creditors, composition, or similar proceeding, contributions, interest, or penalties then or thereafter due shall be a lien upon all the assets of such employer. Said lien will be prior to all other liens or claims except prior tax liens, other liens provided by this title, and claims for remuneration for services of not more than two hundred and fifty dollars to each claimant earned within six months of the commencement of the proceeding. The mere existence of a condition of insolvency or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution of assets shall cause such a lien to attach without action on behalf of the commissioner or the state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions, interest, or penalties then or thereafter due shall be entitled to such priority as provided in that act, as amended. [1983 1st ex.s. c 23 § 15; 1945 c 35 § 94; Rem. Supp. 1945 § 9998-232. Prior: 1943 c 127 § 10; 1941 c 253 § 11; 1939 c 214 § 12; 1937 c 162 § 14.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.24.070 Order and notice of assessment. At any time after the commissioner shall find that any contributions, interest, or penalties have become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, or by certified mail to the last known address of the employer as shown by the records of the department. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax, or any interest or penalties thereon. [1987 c 111 § 4; 1979 ex.s. c 190 § 3; 1945 c 35 § 95; Rem. Supp. 1945 § 9998-233. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Commencement of actions: Chapter 4.28 RCW.

50.24.080 Jeopardy assessment. If the commissioner shall have reason to believe that an employer is insolvent or if any reason exists why the collection of any contributions accrued will be jeopardized by delaying collection, he may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest and penalties shall not begin to accrue upon any contributions until the date when such contributions would normally have become delinquent. [1979 ex.s. c 190 § 4; 1945 c 35 § 96; Rem. Supp. 1945 § 9998-234. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.090 Distraint, seizure, and sale. If the amount of contributions, interest, or penalties assessed by the commissioner by order and notice of assessment provided in this title is not paid within ten days after the service or mailing of the order and notice of assessment, the commissioner or his duly

authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [1979 ex.s. c 190 § 5; 1945 c 35 § 97; Rem. Supp. 1945 § 9998-235. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Executions: Chapter 6.17 RCW.

Personal exemptions, generally: Chapter 6.15 RCW.

50.24.100 Distraint procedure. The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the commissioner or his authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the commissioner or his representative may declare such property to be purchased by the employment security department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the employment security department as herein prescribed may be sold by the commissioner or his representative at public or private sale, and the amount realized shall be placed in the unemployment compensation trust fund.

In all cases of sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the employment security department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent contributions, interest, and penalties the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions. [1979 ex.s. c 190 § 6; 1949 c 214 § 20; 1945 c 35 § 98; Rem. Supp. 1949 § 9998-236. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

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50.24.110 Notice and order to withhold and deliver.

The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision, or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when the commissioner has reason to believe that there is in the possession of such person, firm, corporation, political subdivision, or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for unemployment compensation contributions, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time.

The notice and order to withhold and deliver shall be served by the sheriff or the sheriff's deputy of the county wherein the service is made, by certified mail, return receipt requested, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision, or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person, firm, corporation, political subdivision, or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or the commissioner's duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability.

Should any person, firm, or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs. [1990 c 245 § 6; 1987 c 111 § 5; 1979 ex.s. c 190 § 7; 1947 c 215 § 20; 1945 c 35 § 99; Rem. Supp. 1947 § 9998-237.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

50.24.115 Warrant—Authorized—Filing—Lien—Enforcement. Whenever any order and notice of assessment or jeopardy assessment shall have become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket

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under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit by certified mail to his last known address within five days of filing with the clerk. [2001 c 146 § 8; 1983 1st ex.s. c 23 § 16; 1979 ex.s. c 190 § 8; 1975 1st ex.s. c 228 § 15.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.24.120 Collection by civil action. (1) If after due notice, any employer defaults in any payment of contributions, interest, or penalties, the amount due may be collected by civil action in the name of the state, and the employer adjudged in default shall pay the cost of such action. Any lien created by this title may be foreclosed by decree of the court in any such action. Civil actions brought under this title to collect contributions, interest, or penalties from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this title and cases arising under the industrial insurance laws of this state.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any action under this title. In instituting such an action against any such employing unit the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit, and shall be of the same force and validity as if served upon it personally within this state: PROVIDED, That the commissioner shall forthwith send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employing unit at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such action is pending.

(3) The courts of this state shall in the manner provided in subsections (1) and (2) of this section entertain actions to collect contributions, interest, or penalties for which liability

has accrued under the employment security law of any other state or of the federal government. [1979 ex.s. c 190 § 9; 1959 c 266 § 5; 1953 ex.s. c 8 § 17; 1945 c 35 § 100; Rem. Supp. 1945 § 9998-238. Prior: 1943 c 127 § 10.]

Civil procedure: Title 4 RCW.

Industrial insurance: Title 51 RCW.

50.24.125 Collection by civil action—Collection of delinquent payments in lieu of contributions from political subdivisions or instrumentalities thereof. Delinquent payments in lieu of contributions due the unemployment compensation fund and interest and penalties may be recovered from any of the political subdivisions of this state or any instrumentality of a political subdivision of this state by civil action. The governor is authorized to deduct the amount of delinquent payments in lieu of contributions and interest and penalties from any moneys payable by the state to said political subdivisions or instrumentalities and pay such moneys to the commissioner for deposit in the appropriate account. [1979 ex.s. c 190 § 10; 1971 c 3 § 15.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.24.130 Contractor's and principal's liability for contributions—Exceptions. No employing unit which contracts with or has under it any contractor or subcontractor who is an employer under the provisions of this title shall make any payment or advance to, or secure any credit for, such contractor or subcontractor or on account of any contract or contracts to which said employing unit is a party unless such contractor or subcontractor has paid contributions, due or to become due for wages paid or to be paid by such contractor or subcontractor for personal services performed pursuant to such contract or subcontract, or has furnished a good and sufficient bond acceptable to the commissioner for payment of contributions, interest, and penalties. Failure to comply with the provisions of this section shall render said employing unit directly liable for such contributions, interest, and penalties and the commissioner shall have all of the remedies of collection against said employing unit under the provisions of this title as though the services in question were performed directly for said employing unit.

For the purposes of this section, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW shall not be responsible for any contributions for the work of any subcontractor if:

(1) The subcontractor is currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) There is no other person, firm or corporation doing the same work at the same time on the same project except two or more persons, firms or corporations may contract and do the same work at the same time on the same project if each person, firm or corporation has employees;

(3) The subcontractor has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(4) The subcontractor maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(5) The subcontractor has contracted to perform:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW. [1982 1st ex.s. c 18 § 15; 1979 ex.s. c 190 § 11; 1973 1st ex.s. c 158 § 10; 1949 c 214 § 21; 1945 c 35 § 101; Rem. Supp. 1949 § 9998-239.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Music or entertainment services purchasers, liability for unpaid contributions: RCW 50.04.148.

50.24.140 Collection remedies cumulative. Remedies given to the state under this title for the collection of contributions, interest, or penalties shall be cumulative and no action taken by the commissioner or his duly authorized representative, the attorney general, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other. [1979 ex.s. c 190 § 12; 1945 c 35 § 102; Rem. Supp. 1945 § 9998-240. Prior: 1943 c 127 § 10.]

50.24.150 Contribution adjustments and refunds. No later than three years after the date on which any contributions, interest, or penalties have been paid, an employer who has paid such contributions, interest, or penalties may file with the commissioner a petition in writing for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof when such adjustment cannot be made. If the commissioner upon an ex parte consideration shall determine that such contributions, interest, penalties, or portion thereof were erroneously collected, he shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commissioner shall refund said amount without interest from the unemployment compensation fund: PROVIDED, HOWEVER, That after June 20, 1953, that refunds of interest on delinquent contributions or penalties shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner. For like cause and within the same period, adjustment or refund may be made on the commissioner's own initiative. If the commissioner finds that upon ex parte consideration he cannot readily determine that such adjustment or refund should be allowed, he shall deny such application and notify the employer in writing. [1979 ex.s. c 190 § 13; 1953 ex.s. c 8 § 19; 1945 c 35 § 103; Rem. Supp. 1945 § 9998-241. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.160 Election of coverage. Any employing unit for which services that do not constitute employment as defined in this title are performed may file with the commissioner a written election that all such services performed by

any distinct class or group of individuals or by all individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this title for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this title from and after the date stated in such approval. Services covered pursuant to this section shall cease to be deemed employment subject hereto as of January 1st of any calendar year subsequent to such two calendar years, only if the employing unit files with the commissioner prior to the fifteenth day of January of such year a written application for termination of coverage. [1977 ex.s. c 292 § 12; 1972 ex.s. c 35 § 1; 1971 c 3 § 14; 1959 c 266 § 6; 1951 c 265 § 8; 1951 c 215 § 9; 1945 c 35 § 104; Rem. Supp. 1945 § 9998-242.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Severability—1951 c 265: See note following RCW 50.98.070.

Corporate officers, election of coverage: RCW 50.04.165.

50.24.170 Joint accounts. The commissioner shall prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account. [1945 c 35 § 105; Rem. Supp. 1945 § 9998-243. Prior: 1941 c 253 § 5.]

50.24.180 Injunction proceedings. Any employer who shall be delinquent in the payment of contributions, interest, or penalties may be enjoined upon the suit of the state of Washington from continuing in business in this state or employing persons herein until the delinquent contributions, interest, and penalties shall have been paid, or until the employer shall have furnished a good and sufficient bond in a sum equal to double the amount of contributions, interest, and penalties already delinquent, plus such further sum as the court shall deem adequate to protect the department in the collection of contributions, interest, and penalties which will become due from such employer during the next ensuing calendar year, said bond to be conditioned upon payment of all contributions, interest, and penalties due and owing within thirty days after the expiration of the next ensuing calendar year or at such earlier date as the court may fix.

Action pursuant to the provisions of this section may be instituted in the superior court of any county of the state wherein the employer resides, has its principal place of business, or where it has anyone performing services for it, whether or not such services constitute employment. [1979 ex.s. c 190 § 14; 1945 c 35 § 106; Rem. Supp. 1945 § 998-244. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.190 Limitation of actions. The commissioner shall commence action for the collection of contributions, interest, penalties, and benefit overpayments imposed by this

title by assessment or suit within three years after a return is filed or notice of benefit overpayment is served. No proceedings for the collection of such amounts shall be begun after the expiration of such period.

In case of a false or fraudulent return with intent to evade contributions, interest, or penalties, or in the event of a failure to file a return, the contributions, interest, and penalties may be assessed or a proceeding in court for the collection thereof may be begun at any time. [1979 ex.s. c 190 § 15; 1955 c 286 § 7. Prior: 1947 c 215 § 21, part; 1945 c 35 § 107, part; 1943 c 127 § 10, part; Rem. Supp. 1947 § 9998-245, part.]

50.24.200 Chargeoff of uncollectible accounts. The commissioner may charge off as uncollectible and no longer an asset of the unemployment compensation fund or the administrative contingency fund, as the case may be, any delinquent contributions, interest, penalties, credits, or benefit overpayments if the commissioner is satisfied that there are no cost-effective means of collecting the contributions, interest, penalties, credits, or benefit overpayments. [1989 c 78 § 1; 1979 ex.s. c 190 § 16; 1955 c 286 § 8. Prior: 1947 c 215 § 21, part; 1945 c 35 § 107, part; Rem. Supp. 1947 § 9998-245, part.]

50.24.210 Contributions due and payable upon termination or disposal of business—Successor liability. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any contributions payable under this title shall become immediately due and payable, and the employer shall, within ten days, make a return and pay the contributions due; and any person who becomes a successor to such business shall become liable for the full amount of the contributions and withhold from the purchase price a sum sufficient to pay any contributions due from the employer until such time as the employer produces a receipt from the employment security department showing payment in full of any contributions due or a certificate that no contribution is due and, if such contribution is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of contributions, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any contributions due from the person from whom that person has acquired a business or stock of goods if that person gives written notice to the employment security department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [1991 c 117 § 4.]

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

Chapter 50.29 RCW

EMPLOYER EXPERIENCE RATING

Sections

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50.29.010 Definitions. As used in this chapter:

- (1) "Computation date" means July 1st of any year;
- (2) "Cut-off date" means September 30th next following the computation date;
- (3) "Qualification date" means April 1st of the second year preceding the computation date;
- (4) "Rate year" means the calendar year immediately following the computation date;
- (5) "Payroll" means all wages (as defined for contribution purposes) paid by an employer to individuals in his or her employment;
- (6) "Qualified employer" means any employer who (a) reported some employment in the twelve-month period beginning with the qualification date, (b) had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the computation date, and (c) has submitted by the cut-off date all reports, contributions, interest, and penalties required under this title for the period preceding the computation date. Unpaid contributions, interest, and penalties may be disregarded for the purposes of this section if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding the computation date. Late reports, contributions, penalties, or interest from employment defined under RCW 50.04.160 may be disregarded for the purposes of this section if showing is made to the satisfaction of the commissioner that an otherwise qualified employer acted in good faith and that forfeiture of qualification for a reduced contribution rate because of such delinquency would be inequitable. [2002 c 149 § 11; 1987 c 213 § 2; 1986 c 111 § 1; 1984 c 205 § 3; 1983 1st ex.s. c 23 § 17; 1973 1st ex.s. c 158 § 11; 1971 c 3 § 16; 1970 ex.s. c 2 § 10.]

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Construction—1987 c 213: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act, or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted thereunder." [1987 c 213 § 4.]

Conflict with federal requirements—1986 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of

the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 111 § 2.]

Severability—1986 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 111 § 4.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Wages defined for contribution purposes: RCW 50.04.320.

50.29.020 Experience rating accounts—Benefits not charged—Claims with an effective date before January 4, 2004.

(1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date before January 4, 2004.

(2) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(2004 Ed.)

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(1)(b)(iv) shall not have their benefits charged to the experience rating account of any contribution paying employer.

(f) In the case of individuals identified under *RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in *RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2004 c 110 § 3; 2003 2nd sp.s. c 4 § 20. Prior: 2002 c 149 § 6; 2002 c 8 § 4; 2000 c 2 § 3; 1995 c 57 § 3; 1993 c 483 § 19; 1991 c 129 § 1; 1988 c 27 § 1; prior: 1987 c 213 § 3; 1987 c 2 § 2; prior: 1985 c 299 § 1; 1985 c 270 § 2; 1985 c 42 § 1; 1984 c 205 § 7; 1975 1st ex.s. c 228 § 6; 1970 ex.s. c 2 § 11.]

*Reviser's note: RCW 50.20.015 was repealed by 2003 2nd sp.s. c 4 § 35.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Application—1995 c 57: "This act applies only to benefit charges attributable to new claims effective after July 1, 1995." [1995 c 57 § 4.]

Effective date—1995 c 57: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 17, 1995]." [1995 c 57 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—1988 c 27: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 27 § 2.]

Construction—1987 c 213: See note following RCW 50.29.010.

Applicability—Effective date—Severability—1987 c 2: See notes following RCW 50.20.090.

Conflict with federal requirements—1985 c 42: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 42 § 2.]

Severability—1985 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 42 § 3.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050(2)(b)(v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(2)(b)(iv), as applicable, shall not have their benefits charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notifica-

tion of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2003 2nd sp.s. c 4 § 21.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.025 Contribution rate. (1) Except as provided in subsection (2) of this section, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this subsection.

(a) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the September 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(b) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in (e) of this subsection shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.10 to 2.89	A
1.70 to 2.09	B
1.40 to 1.69	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	F

(c) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (i) Identification number; (ii) benefit ratio; (iii) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (iv) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (v) the percentage equivalent of the cumulative total of taxable payrolls.

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(e) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate spec-

ified in the following tables for the rate class to which he or she has been assigned, as determined under (d) of this subsection, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls		Rate Class	Schedules of Contributions Rates for Effective Tax Schedule							
From	To		AA	A	B	C	D	E	F	
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47	
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67	
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87	
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98	
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08	
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18	
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27	
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47	
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66	
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86	
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95	
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15	
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34	
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54	
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63	
75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73	
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97	
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17	
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37	
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40	

(f) The contribution rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(ii) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent.

(2) Beginning with contributions assessed for rate year 2005, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identifica-

tion number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20

0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than two-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year. For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent.

(ii) The graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose standard industrial classification code is within major group "01," "02," "07," "091," "203," "209," or "5148," or the equivalent code in the North American industry classification system code, may not exceed six percent:

- (A) Rate class 1 - 78 percent;
- (B) Rate class 2 - 82 percent;
- (C) Rate class 3 - 86 percent;
- (D) Rate class 4 - 90 percent;
- (E) Rate class 5 - 94 percent;
- (F) Rate class 6 - 98 percent;
- (G) Rate class 7 - 102 percent;
- (H) Rate class 8 - 106 percent;
- (I) Rate class 9 - 110 percent;
- (J) Rate class 10 - 114 percent;

- (K) Rate class 11 - 118 percent; and
 (L) Rate classes 12 through 40 - 120 percent.
 (iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(C) The array calculation factor rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) For all other employers not qualified to be in the array, the array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40.

(d) The graduated social cost factor rate for each employer not qualified to be in the array shall be as follows:

(i) For employers whose array calculation factor rate is determined under (c)(i) of this subsection, the social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For employers whose array calculation factor rate is determined under (c)(ii) of this subsection, the social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code. [2003 2nd sp.s. c 4 § 14; 2003 c 4 § 1; 2000 c 2 § 4; 1995 c 4

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§ 2; (1995 c 4 § 1 expired January 1, 1998). Prior: 1993 c 483 § 21; 1993 c 226 § 14; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Reviser's note: (1) Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

(2) The 2002 c 149 § 18 expiration date no longer applies to this section.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2003 c 4 § 1: "Section 1 of this act applies to rate years beginning on or after January 1, 2003." [2003 c 4 § 2.]

Effective date—2003 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2003]." [2003 c 4 § 3.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates—1995 c 4: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 16, 1995].

(2) Section 2 of this act shall take effect January 1, 1998." [1995 c 4 § 4.]

Expiration date—1995 c 4 § 1: "Section 1 of this act shall expire January 1, 1998." [1995 c 4 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Elevation of employer contribution rates—Report by commissioner—1993 c 226: "Prior to any increase in the employer tax schedule as provided in section 13, chapter 226, Laws of 1993, the commissioner shall provide a report to the appropriate committees of the legislature specifying to what extent the work force training expenditures in chapter 226, Laws of 1993 elevated employer contribution rates for the effective tax schedule." [1993 c 226 § 16.]

Effective dates—1993 c 226 §§ 10, 12, and 14: See note following RCW 50.16.010.

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.026 Modification of contribution rate. (1) Beginning with contributions assessed for rate year 1996, a qualified employer's contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005, determined under RCW 50.29.025 may be modified as follows:

(a) Subject to the limitations of this subsection, an employer may make a voluntary contribution of an amount equal to part or all of the benefits charged to the employer's

account during the two years most recently ended on June 30th that were used for the purpose of computing the employer's contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005. On receiving timely payment of a voluntary contribution, plus a surcharge of ten percent of the amount of the voluntary contribution, the commissioner shall cancel the benefits equal to the amount of the voluntary contribution, excluding the surcharge, and compute a new benefit ratio for the employer. The employer shall then be assigned the contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005, applicable to the rate class within which the recomputed benefit ratio is included. The minimum amount of a voluntary contribution, excluding the surcharge, must be an amount that will result in a recomputed benefit ratio that is in a rate class at least four rate classes lower than the rate class that included the employer's original benefit ratio.

(b) Payment of a voluntary contribution is considered timely if received by the department during the period beginning on the date of mailing to the employer the notice of contribution rate applicable for rate years beginning before January 1, 2005, or notice of array calculation factor rate applicable for rate years beginning on or after January 1, 2005, required under this title for the rate year for which the employer is seeking a modification of his or her rate and ending on February 15th of that rate year or, for voluntary contributions for rate year 2000, ending on March 31, 2000.

(c) A benefit ratio may not be recomputed nor a rate be reduced under this section as a result of a voluntary contribution received after the payment period prescribed in (b) of this subsection.

(2) This section does not apply to any employer who has not had an increase of at least twelve rate classes from the previous tax rate year. [2003 2nd sp.s. c 4 § 17; 2000 c 2 § 5; 1995 c 322 § 1.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Conflict with federal requirements—1995 c 322: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 322 § 2.]

50.29.027 Benefit ratio computed for 1985 and thereafter. For the rate year 1985 and each rate year thereafter, a benefit ratio shall be computed for each qualified employer by dividing the total amount of benefits charged to the account of the employer during the forty-eight consecutive months immediately preceding the computation date by the taxable payrolls of the employer for the same forty-eight month period as reported to the department by the cut-off

dates. The division shall be carried to the sixth decimal place with the remaining fraction, if any, disregarded. [1984 c 205 § 4.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.030 "Wages" defined for purpose of prorating benefit charges. For the purpose of prorating benefit charges "wages" shall mean "wages" as defined for purpose of payment of benefits in RCW 50.04.320. [1970 ex.s. c 2 § 12.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.29.041 Contribution rate—Solvency surcharge. Beginning with contributions assessed for rate year 2005, the contribution rate of each employer subject to contributions under RCW 50.24.010 shall include a solvency surcharge determined as follows:

(1) This section shall apply to employers' contributions for a rate year immediately following a cut-off date only if, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide fewer than six months of unemployment benefits.

(2) The solvency surcharge shall be the lowest rate necessary, as determined by the commissioner, but not more than two-tenths of one percent, to provide revenue during the applicable rate year that will fund unemployment benefits for the number of months that is the difference between eight months and the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits.

(3) The basis for determining the number of months of unemployment benefits shall be the same basis used in RCW 50.29.025(2)(b)(i)(B). [2003 2nd sp.s. c 4 § 16.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.062 Contribution rates for predecessor and successor employers. Predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer, its contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs. From and after January 1 following the transfer, the successor's contribution rate for each rate year shall be based on its experience with payrolls and benefits including the experience of the acquired business or portion of a business from the date of transfer, as of the regular computation date for that rate year.

(2) For transfers before January 1, 2005, the following applies if the successor is not an employer at the time of the transfer. The successor shall pay contributions at the lowest rate determined under either of the following:

(a)(i) For transfers before January 1, 1997, the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that

rate year and continuing until the successor qualifies for a different rate in its own right;

(ii) For transfers on or after January 1, 1997, the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor. Beginning with the January 1 following the transfer, the successor's contribution rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer; or

(b) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification code system.

(3) For transfers before January 1, 2005, if the successor is not an employer at the time of the transfer and simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, its rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition, but not less than one percent.

(4) For transfers on or after January 1, 2005, the following applies if the successor is not an employer at the time of the transfer:

(a) Except as provided in (b) of this subsection, the successor shall pay contributions:

(i) At the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of the rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. On and after January 1st following the transfer, the successor's array calculation factor rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer; or

(ii) At the contribution rate equal to the sum of the rates determined by the commissioner under RCW 50.29.025(2) (c)(ii) and (d)(ii), and 50.29.041, if applicable, and continuing until the successor qualifies for a different rate in its own right.

(b) If there is a substantial continuity of ownership or management by the successor of the business of the predecessor, the successor shall pay contributions at the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. On and after January 1st following the transfer, the successor's array calculation factor rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer.

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(c) If the successor simultaneously acquires the business or a portion of the business of two or more employers with different contribution rates, the successor's rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the sum of the rates determined by the commissioner under RCW 50.29.025(2) (a) and (b), and 50.29.041, applicable at the time of the acquisition to the predecessor employer who, among the parties to the acquisition, had the largest taxable payroll in the completed calendar quarter immediately preceding the date of transfer, but not less than the sum of the rates determined by the commissioner under RCW 50.29.025(2) (c)(ii) and (d)(ii), and 50.29.041, if applicable.

(5) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(6) In all cases, from and after January 1 following the transfer, the predecessor's contribution rate or, beginning January 1, 2005, the predecessor's array calculation factor for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year including the experience of the acquired business or portion of business up to the date of transfer: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010. [2003 2nd sp.s. c 4 § 18; 1996 c 238 § 1; 1995 c 56 § 1; 1989 c 380 § 81; 1984 c 205 § 6.]

Reviser's note: Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—1996 c 238: "This act applies to unemployment contribution rates effective on and after January 1, 1996." [1996 c 238 § 2.]

Conflict with federal requirements—1996 c 238: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 238 § 3.]

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.065 Notice of benefits paid and charged to employer's account. Within thirty days after the end of every calendar quarter, the commissioner shall notify each employer of the benefits received during that quarter by each claimant for whom he or she is the base year employer and the amount of those benefits charged to his or her experience rating account. [1984 c 205 § 10.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.070 Notice of employer benefit charges and rate of contribution—Review and appeal. (1) Within a reasonable time after the computation date each employer shall be notified of the employer's rate of contribution as determined for the succeeding rate year and factors used in the calculation. Beginning with rate year 2005, the notice must include the amount of the contribution rate that is attributable to each component of the rate under RCW 50.29.025(2).

(2) Any employer dissatisfied with the benefit charges made to the employer's account for the twelve-month period immediately preceding the computation date or with his or her determined rate may file a request for review and redetermination with the commissioner within thirty days of the mailing of the notice to the employer, showing the reason for such request. Should such request for review and redetermination be denied, the employer may, within thirty days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this section. [2003 2nd sp.s. c 4 § 19; 1990 c 245 § 8; 1983 1st ex.s. c 23 § 19; 1973 1st ex.s. c 158 § 14; 1970 ex.s. c 2 § 16.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Appeal on denial of refund: RCW 50.32.030, 50.32.050.

Appeal to the courts: RCW 50.32.120.

Review by commissioner: RCW 50.32.070.

50.29.080 Redetermination and correction of employer's contribution rate. The commissioner may redetermine any contribution rate if, within three years of the rate computation date he finds that the rate as originally computed was erroneous.

In the event that the redetermined rate is lower than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll for the rate year involved shall be established as a credit against his tax liability; however, if the redetermined rate is higher than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll shall be assessed against the employer as contributions owing for the rate year involved.

The redetermination of an employer's contribution rate shall not affect the contribution rates which have been established for any other employer nor shall such redetermination affect any other computation made pursuant to this title.

The employer shall have the same rights to request review and redetermination as he had from his original rate determination. [1970 ex.s. c 2 § 17.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Chapter 50.32 RCW

REVIEW, HEARINGS, AND APPEALS

Sections

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50.32.010 Appeal tribunals. The commissioner shall establish one or more impartial appeal tribunals, each of which shall consist of an administrative law judge appointed under chapter 34.12 RCW who shall decide the issues submitted to the tribunal. No administrative law judge may hear or decide any disputed claim in any case in which he is an interested party. Wherever the term "appeal tribunal" or "the appeal tribunal" is used in this title the same refers to an appeal tribunal established under the provisions of this section. Notice of any appeal or petition for hearing taken to an appeal tribunal in any proceeding under this title may be filed with such agency as the commissioner may by regulation prescribe. [1981 c 67 § 30; 1945 c 35 § 117; Rem. Supp. 1945 § 9998-255. Prior: 1943 c 127 § 4; 1941 c 253 § 4.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

50.32.020 Filing of benefit appeals. The applicant or claimant, his or her most recent employing unit or any interested party which the commissioner by regulation prescribes, may file an appeal from any determination or redetermination with the appeal tribunal within thirty days after the date of notification or mailing, whichever is earlier, of such determination or redetermination to his or her last known address: PROVIDED, That in the event an appeal with respect to any determination is pending as of the date when a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination. Any appeal from a determination of denial of benefits which is effective for an indefinite period shall be deemed to be an appeal as to all weeks subsequent to the effective date of the denial for which benefits have already been denied. If no appeal is taken from any determination, or redetermination, within the time allowed by the provisions of this section for appeal therefrom, said determination, or redetermination, as the case may be, shall be conclusively deemed to be correct except as hereinbefore provided in respect to reconsideration by the commissioner of any determination. [1987 c 61 § 1; 1951 c 215 § 10; 1945 c 35 § 118; Rem. Supp. 1945 § 9998-256.]

Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.32.025 Mailed appeal or petition. The appeal or petition from a determination, redetermination, order and notice of assessment, appeals decision, or commissioner's decision which is (1) transmitted through the United States mail, shall be deemed filed and received by the addressee on the date shown by the United States postal service cancellation mark stamped by the United States postal service employees upon the envelope or other appropriate wrapper containing it or, (2) mailed but not received by the addressee, or where received and the United States postal service cancellation mark is illegible, erroneous or omitted, shall be deemed filed and received on the date it was mailed, if the sender establishes by competent evidence that the appeal or petition was deposited in the United States mail on or before the date due for filing: PROVIDED, That in the case of a metered cancellation mark by the sender and a United States postal service cancellation mark on the same envelope or other wrapper, the latter shall control: PROVIDED, FURTHER, That in any of the above circumstances, the appeal or petition must be properly addressed and have sufficient postage affixed thereto. [1975 1st ex.s. c 228 § 4; 1969 ex.s. c 200 § 1.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.030 Appeal from order and notice of assessment. When an order and notice of assessment has been served upon or mailed to a delinquent employer, as heretofore provided, such employer may within thirty days thereafter file a petition in writing with the appeal tribunal, stating that such assessment is unjust or incorrect and requesting a hearing thereon. Such petition shall set forth the reasons why the assessment is objected to and the amount of contributions, if any, which said employer admits to be due the employment security department. If no such petition be filed with the appeal tribunal within thirty days, the assessment shall be conclusively deemed to be just and correct: PROVIDED, That in such cases, and in cases where payment of contributions, interest, or penalties has been made pursuant to a jeopardy assessment, the commissioner may properly entertain a subsequent application for refund. The filing of a petition on a disputed assessment with the appeal tribunal shall stay the distraint and sale proceeding provided for in this title until a final decision thereon shall have been made, but the filing of such petition shall not affect the right of the commissioner to perfect a lien, as provided by this title, upon the property of the employer. The filing of a petition on a disputed assessment shall stay the accrual of interest and penalties on the disputed contributions until a final decision shall have been made thereon.

Within thirty days after notice of denial of refund or adjustment has been mailed or delivered (whichever is the earlier) to an employer, the employer may file a petition in writing with the appeal tribunal for a hearing thereon: PROVIDED, That this right shall not apply in those cases in which assessments have been appealed from and have become final. The petitioner shall set forth the reasons why such hearing should be granted and the amount which the petitioner

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believes should be adjusted or refunded. If no such petition be filed within said thirty days, the determination of the commissioner as stated in said notice shall be final. [1987 c 111 § 6; 1987 c 61 § 2; 1983 1st ex.s. c 23 § 20; 1959 c 266 § 7; 1949 c 214 § 23; 1945 c 35 § 119; Rem. Supp. 1949 § 9998-257.]

Reviser's note: This section was amended by 1987 c 61 § 2 and by 1987 c 111 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.32.040 Benefit appeal procedure. In any proceeding before an appeal tribunal involving a dispute of an individual's initial determination, all matters covered by such initial determination shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal.

In any proceeding before an appeal tribunal involving a dispute of an individual's claim for waiting period credit or claim for benefits, all matters and provisions of this title relating to the individual's right to receive such credit or benefits for the period in question, including but not limited to the question and nature of the claimant's availability for work within the meaning of RCW 50.20.010(1)(c) and 50.20.080, shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal in single claimant cases. The claimant's availability for work shall be determined apart from all other matters.

In any proceeding before an appeal tribunal involving an individual's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice in accordance with RCW 34.05.434.

In any proceeding involving an appeal relating to benefit determinations or benefit claims, the appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the unemployment compensation division. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor, which shall be deemed to be the final decision on the initial determination or the claim for waiting period credit or the claim for benefits unless, within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner. [2003 2nd sp.s. c 4 § 32; 1989 c 175 § 117; 1987 c 61 § 3; 1981 c 35 § 10; 1973 c 73 § 8; 1945 c 35 § 120; Rem. Supp. 1945 § 9998-258. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1981 c 35: See note following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.32.050 Contributions appeal procedure. In any proceeding before an appeal tribunal involving an appeal

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from a disputed order and notice of assessment (for contributions, interest, or penalties due) a disputed denial of refund or adjustment (of contributions, interest, or penalties paid) or a disputed experience rating credit, the appeal tribunal, after affording the parties a reasonable opportunity for hearing, shall affirm, modify or set aside the notice of assessment, denial of refund or experience rating credit. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor which shall be deemed to be the final decision on the order and notice of assessment, denial of refund or experience rating credit, as the case may be, unless within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner. [1987 c 61 § 4; 1983 1st ex.s. c 23 § 21; 1949 c 214 § 24; 1945 c 35 § 121; Rem. Supp. 1949 § 9998-259.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Review by commissioner: RCW 50.32.070.

50.32.060 Conduct of appeal hearings. The manner in which any dispute shall be presented to the appeal tribunal, and the conduct of hearings and appeals, shall be in accordance with regulations prescribed by the commissioner for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all appeal tribunal proceedings. All testimony at any appeal tribunal hearing shall be recorded, but need not be transcribed unless further appeal is taken. [1945 c 35 § 122; Rem. Supp. 1945 § 9998-260.]

50.32.070 Petition for review by commissioner. Within thirty days from the date of notification or mailing, whichever is the earlier, of any decision of an appeal tribunal, the commissioner on his or her own order may, or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose of review thereof. Appeal from any decision of an appeal tribunal may be perfected so as to prevent finality of such decision if, within thirty days from the date of mailing the appeal tribunal decision, or notification thereof, whichever is the earlier, a petition in writing for review by the commissioner is received by the commissioner or by such representative of the commissioner as the commissioner by regulation shall prescribe. The commissioner may also prevent finality of any decision of an appeal tribunal and take jurisdiction of the proceedings for his or her review thereof by entering an order so providing on his or her own motion and mailing a copy thereof to the interested parties within the same period allowed herein for receipt of a petition for review. The time limit provided herein for the commissioner's assumption of jurisdiction on his or her own motion for review shall be deemed to be jurisdictional. [1987 c 61 § 5; 1975 1st ex.s. c 228 § 5; 1947 c 215 § 31; 1945 c 35 § 123; Rem. Supp. 1947 § 9998-261.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.075 Waiver of time for appeal or petition. For good cause shown the appeal tribunal or the commissioner

may waive the time limitations for administrative appeals or petitions set forth in the provisions of this title. [1975 1st ex.s. c 228 § 16.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.080 Commissioner's review procedure. After having acquired jurisdiction for review, the commissioner shall review the proceedings in question. Prior to rendering his decision, the commissioner may order the taking of additional evidence by an appeal tribunal to be made a part of the record in the case. Upon the basis of evidence submitted to the appeal tribunal and such additional evidence as the commissioner may order to be taken, the commissioner shall render his decision in writing affirming, modifying, or setting aside the decision of the appeal tribunal. Alternatively, the commissioner may order further proceedings to be held before the appeal tribunal, upon completion of which the appeal tribunal shall issue a decision in writing affirming, modifying, or setting aside its previous decision. The new decision may be appealed under RCW 50.32.070. The commissioner shall mail his decision to the interested parties at their last known addresses. [1982 1st ex.s. c 18 § 8; 1945 c 35 § 124; Rem. Supp. 1945 § 9998-262.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.32.090 Finality of commissioner's decision. Any decision of the commissioner involving a review of an appeal tribunal decision, in the absence of a petition therefrom as provided in chapter 34.05 RCW, becomes final thirty days after service. The commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the attorney general. [1989 c 175 § 118; 1973 1st ex.s. c 158 § 15; 1945 c 35 § 125; Rem. Supp. 1945 § 9998-263.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Procedure for judicial review: RCW 50.32.120.

50.32.095 Commissioner's decisions as precedents—Publication. The commissioner may designate certain commissioner's decisions as precedents. The commissioner's decisions designated as precedents shall be published and made available to the public by the department. [1982 1st ex.s. c 18 § 9.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.32.097 Applicability of finding, determination, etc., to other action. Any finding, determination, conclusion, declaration, or final order made by the commissioner, or his or her representative or delegate, or by an appeal tribunal, administrative law judge, reviewing officer, or other agent of the department for the purposes of Title 50 RCW, shall not be conclusive, nor binding, nor admissible as evidence in any separate action outside the scope of Title 50 RCW between an individual and the individual's present or prior employer before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the

same or related parties or involved the same facts or was reviewed pursuant to RCW 50.32.120. [1988 c 28 § 1.]

50.32.100 Costs. In all proceedings provided by this title prior to court review involving dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena shall be paid at the rate fixed by such regulation as the commissioner shall prescribe and such fees and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund. In all other respects and in all other proceedings under this title the rule in civil cases as to costs and attorney fees shall apply: PROVIDED, That cost bills may be served and filed and costs shall be taxed in accordance with such regulation as the commissioner shall prescribe. [1945 c 35 § 126; Rem. Supp. 1945 § 9998-264.]

Costs and attorneys' fees: Chapter 4.84 RCW.

50.32.110 Fees for administrative hearings. No individual shall be charged fees of any kind in any proceeding involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits, under this title by the commissioner or his representatives, or by an appeal tribunal, or any court, or any officer thereof. Any individual in any such proceeding before the commissioner or any appeal tribunal may be represented by counsel or other duly authorized agent who shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding. [1945 c 35 § 127; Rem. Supp. 1945 § 9998-265.]

50.32.120 Procedure for judicial review. Judicial review of a decision of the commissioner involving the review of an appeals tribunal decision may be had only in accordance with the procedural requirements of RCW 34.05.570. [1973 1st ex.s. c 158 § 16; 1971 c 81 § 119; 1945 c 35 § 128; Rem. Supp. 1945 § 9998-266. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Appeals: Chapter 4.88 RCW.

50.32.130 Undertakings on seeking judicial review. No bond of any kind shall be required of any individual seeking judicial review from a commissioner's decision affecting such individual's application for initial determination or claim for waiting period credit or for benefits.

No commissioner's decision shall be stayed by a petition for judicial review unless the petitioning employer shall first deposit an undertaking in an amount theretofore deemed by the commissioner to be due, if any, from the petitioning employer, together with interest thereon, if any, with the commissioner or in the registry of the court: PROVIDED, HOWEVER, That this section shall not be deemed to authorize a stay in the payment of benefits to an individual when such individual has been held entitled thereto by a decision of the commissioner which decision either affirms, reverses, or

modifies a decision of an appeals tribunal. [1973 1st ex.s. c 158 § 17; 1971 c 81 § 120; 1945 c 35 § 129; Rem. Supp. 1945 § 9998-267. Prior: 1943 c 127 § 4; 1941 c 253 § 4.]

Rules of court: Cf. Title 8 RAP, RAP 18.22.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.32.140 Interstate petitions to Thurston county. RCW 34.05.514 to the contrary notwithstanding, petitions to the superior court from decisions of the commissioner dealing with the applications or claims relating to benefit payments which were filed outside of this state with an authorized representative of the commissioner shall be filed with the superior court of Thurston county which shall have the original venue of such appeals. [1989 c 175 § 119; 1973 1st ex.s. c 158 § 18; 1945 c 35 § 130; Rem. Supp. 1945 § 9998-268.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.32.150 Jurisdiction of court. In all court proceedings under or pursuant to this title the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

If the court shall determine that the commissioner has acted within his power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the commissioner with an order directing him to proceed in accordance with the findings of the court.

Whenever any order and notice of assessment shall have become final in accordance with the provisions of this title, the court shall upon application of the commissioner enter a judgment in the amount provided for in said order and notice of assessment, and said judgment shall have and be given the same effect as if entered pursuant to civil action instituted in said court. [1945 c 35 § 131; Rem. Supp. 1945 § 9998-269. Prior: 1941 c 253 § 4.]

Judgments

entry of: Chapter 4.64 RCW.

generally: Chapter 4.56 RCW.

50.32.160 Attorneys' fees. It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an individual involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits to charge or receive any fee therein in excess of a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken thereto and to be fixed by the supreme court or the court of appeals in the event of appellate review, and if the decision of the commissioner shall be reversed or modified, such fee and the costs shall be payable out of the unemployment compensation administration fund. In the allowance of fees the court shall give consideration to the provisions of this title in respect to fees pertaining to proceedings involving an individual's application for initial determination, claim for waiting period credit, or claim for benefits. In other respects the practice in civil cases shall apply. [1988 c 202 § 48; 1971 c

81 § 121; 1945 c 35 § 132; Rem. Supp. 1945 § 9998-270. Prior: 1941 c 253 § 4.]

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

Attorneys' fees: Chapter 4.84 RCW.

Costs: RCW 50.32.100.

Costs on appeal: Chapter 4.84 RCW.

50.32.170 Decision final by agreement. No appeal from the decision of an appeal tribunal, or of the commissioner, or of any court in any proceedings provided by this title may be taken subsequent to the filing with the appeal tribunal, commissioner, or court which rendered the decision, within the time allowed for appeal, of an agreement in writing approved by all interested parties to the proceedings, providing that no appeal will be taken from such decision. The provisions of this section shall be jurisdictional. [1945 c 35 § 133; Rem. Supp. 1945 § 9998-271.]

50.32.180 Remedies of title exclusive. The remedies provided in this title for determining the justness or correctness of assessments, refunds, adjustments, or claims shall be exclusive and no court shall entertain any action to enjoin an assessment or require a refund or adjustment except in accordance with the provisions of this title. Matters which may be determined by the procedures set out in this title shall not be the subject of any declaratory judgment. [1945 c 35 § 134; Rem. Supp. 1945 § 9998-272.]

50.32.190 Costs, charges, and expenses. Whenever any appeal is taken from any decision of the commissioner to any court, all expenses and costs incurred therein by said commissioner, including court reporter costs and attorneys' fees and all costs taxed against such commissioner, shall be paid out of the unemployment compensation administration fund.

Neither the commissioner nor the state shall be charged any fee for any service rendered in connection with litigation under the unemployment compensation act by the clerk of any court. [1945 c 35 § 135; Rem. Supp. 1945 § 9998-273.]

Chapter 50.36 RCW PENALTIES

Sections

50.36.010	Violations generally.
50.36.020	Violations by employers.
50.36.030	Concealing cause of discharge.

50.36.010 Violations generally. (1) It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title.

(2) Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, is guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days.

(3) Any person who in connection with any compromise or offer of compromise willfully conceals from any officer or

employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, is guilty of a gross misdemeanor and shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.

(4) The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section. [2003 c 53 § 279; 1953 ex.s. c 8 § 22; 1945 c 35 § 180; Rem. Supp. 1945 § 9998-319. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

50.36.020 Violations by employers. (1) Any person required under this title to collect, account for and pay over any contributions imposed by this title, who willfully fails to collect or truthfully account for and pay over such contributions, and any person who willfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, is guilty of a gross misdemeanor and shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(2) The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prosecution as prescribed herein for a person. [2003 c 53 § 280; 1953 ex.s. c 8 § 23; 1945 c 35 § 181; Rem. Supp. 1945 § 9998-320. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Crimes and punishment: Titles 9, 9A RCW.

50.36.030 Concealing cause of discharge. Employing units or agents thereof supplying information to the employment security department pertaining to the cause of a benefit claimant's separation from work, which cause stated to the department is contrary to that given the benefit claimant by such employing unit or agent thereof at the time of his separation from the employing unit's employ, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days. [1951 c 265 § 13.]

Severability—1951 c 265: See note following RCW 50.98.070.

Chapter 50.38 RCW

LABOR MARKET INFORMATION AND
ECONOMIC ANALYSIS

(Formerly: Occupational information service—Forecast)

Sections

50.38.010	Intent.
50.38.015	Definitions.
50.38.020	Occupational information responsibility—Forecast, criteria.
50.38.030	Occupational forecast—Agency consultation.
50.38.040	Annual report.
50.38.050	Department—Duties.
50.38.060	Department—Powers.
50.38.065	Moneys for nonfunded labor market information costs—Disposition.
50.38.900	Effective date—1982 c 43.
50.38.901	Conflict with federal requirements—1993 c 62.
50.38.902	Effective date—1993 c 62.

50.38.010 Intent. It is the intent of this chapter to establish the duties and authority of the employment security department relating to labor market information and economic analysis. State and federal law mandate the use of labor market information in the planning, coordinating, management, implementation, and evaluation of certain programs. Often this labor market information is also needed in studies for the legislature and state programs, like those dealing with growth management, community diversification, export assistance, prison industries, energy, agriculture, social services, and environment. Employment, training, education, job creation, and other programs are often mandated without adequate federal or state funding for the needed labor market information. Clarification of the department's duties and authority will assist users of state and local labor market information products and services to have realistic expectations and provide the department authority to recover actual costs for labor market information products and services developed in response to individual requests. [1993 c 62 § 1; 1982 c 43 § 1.]

50.38.015 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Labor market information" means the body of information generated from measurement and evaluation of the socioeconomic factors and variables influencing the employment process in the state and specific labor market areas. These socioeconomic factors and variables affect labor demand and supply relationships and include:

(a) Labor force information, which includes but is not limited to employment, unemployment, labor force participation, labor turnover and mobility, average hours and earnings, and changes and characteristics of the population and labor force within specific labor market areas and the state;

(b) Occupational information, which includes but is not limited to occupational supply and demand estimates and projections, characteristics of occupations, wage levels, job duties, training and education requirements, conditions of employment, unionization, retirement practices, and training opportunities;

(c) Economic information, which includes but is not limited to number of business starts and stops by industry and labor market area, information on employment growth and decline by industry and labor market area, employer estab-

lishment data, and number of labor-management disputes by industry and labor market area; and

(d) Program information, which includes but is not limited to program participant or student information gathered in cooperation with other state and local agencies along with related labor market information to evaluate the effectiveness, efficiency, and impact of state and local employment, training, education, and job creation efforts in support of planning, management, implementation, and evaluation.

(2) "Labor market area" means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such areas shall be identified in accordance with criteria used by the bureau of labor statistics of the department of labor in defining such areas or similar criteria established by the governor. The area generally takes the name of its community. The boundaries depend primarily on economic and geographic factors. Washington state is divided into labor market areas, which usually include a county or a group of contiguous counties.

(3) "Labor market analysis" means the measurement and evaluation of economic forces as they relate to the employment process in the local labor market area. Variables affecting labor market relationships include, but are not limited to, such factors as labor force changes and characteristics, population changes and characteristics, industrial structure and development, technological developments, shifts in consumer demand, volume and extent of unionization and trade disputes, recruitment practices, wage levels, conditions of employment, and training opportunities.

(4) "Public records" has the same meaning as set forth in RCW 42.17.020.

(5) "Department" means the employment security department. [1993 c 62 § 2.]

50.38.020 Occupational information responsibility—Forecast, criteria. The Washington state employment security department shall be the responsible state entity for the development, administration, and dissemination of Washington state occupational information, including the state occupational forecast. The generation of the forecast is subject to the following criteria:

(1) The occupational forecast shall be consistent with the state economic forecast;

(2) Standardized occupational classification codes shall be adopted, to be cross-referenced with other generally accepted occupational codes. [1982 c 43 § 2.]

50.38.030 Occupational forecast—Agency consultation. The employment security department shall consult with the following agencies prior to the issuance of the state occupational forecast:

- (1) Office of financial management;
- (2) Department of community, trade, and economic development;
- (3) Department of labor and industries;
- (4) State board for community and technical colleges;
- (5) Superintendent of public instruction;
- (6) Department of social and health services;

(7) Work force training and education coordinating board; and

(8) Other state and local agencies as deemed appropriate by the commissioner of the employment security department.

These agencies shall cooperate with the employment security department, submitting information relevant to the generation of occupational forecasts. [1995 c 399 § 142; 1993 c 62 § 3; 1985 c 466 § 66; 1985 c 6 § 18; 1982 c 43 § 3.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

50.38.040 Annual report. The department shall submit an annual report to the legislature and the governor that includes, but is not limited to:

(1) Identification and analysis of industries in the United States, Washington state, and local labor markets with high levels of seasonal, cyclical, and structural unemployment;

(2) The industries and local labor markets with plant closures and mass lay-offs and the number of affected workers;

(3) An analysis of the major causes of plant closures and mass lay-offs;

(4) The number of dislocated workers and persons who have exhausted their unemployment benefits, classified by industry, occupation, and local labor markets;

(5) The experience of the unemployed in their efforts to become reemployed. This should include research conducted on the continuous wage and benefit history;

(6) Five-year industry and occupational employment projections; and

(7) Annual and hourly average wage rates by industry and occupation. [1993 c 62 § 4.]

50.38.050 Department—Duties. The department shall have the following duties:

(1) Oversight and management of a statewide comprehensive labor market and occupational supply and demand information system, including development of a five-year employment forecast for state and labor market areas;

(2) Produce local labor market information packages for the state's counties, including special studies and job impact analyses in support of state and local employment, training, education, and job creation programs, especially activities that prevent job loss, reduce unemployment, and create jobs;

(3) Coordinate with the office of financial management and the office of the forecast council to improve employment estimates by enhancing data on corporate officers, improving business establishment listings, expanding sample for employment estimates, and developing business entry/exit analysis relevant to the generation of occupational and economic forecasts; and

(4) In cooperation with the office of financial management, produce long-term industry and occupational employment forecasts. These forecasts shall be consistent with the official economic and revenue forecast council biennial economic and revenue forecasts. [1993 c 62 § 5.]

50.38.060 Department—Powers. To implement this chapter, the department has authority to:

(1) Establish mechanisms to recover actual costs incurred in producing and providing otherwise nonfunded labor market information.

(a) If the commissioner, in his or her discretion, determines that providing labor market information is in the public interest, the requested information may be provided at reduced costs.

(b) The department shall provide access to labor market information products that constitute public records available for public inspection and copying under chapter 42.17 RCW, at fees not exceeding those allowed under RCW 42.17.300 and consistent with the department's fee schedule;

(2) Receive federal set aside funds from several federal programs that are authorized to fund state and local labor market information and are required to use such information in support of their programs;

(3) Enter into agreements with other public agencies for statistical analysis, research, or evaluation studies of local, state, and federally funded employment, training, education, and job creation programs to increase the efficiency or quality of service provided to the public consistent with chapter 50.13 RCW;

(4) Coordinate with other state agencies to study ways to standardize federal and state multi-agency administrative records, such as unemployment insurance information and other information to produce employment, training, education, and economic analysis needed to improve labor market information products and services; and

(5) Produce agricultural labor market information and economic analysis needed to facilitate the efficient and effective matching of the local supply and demand of agricultural labor critical to an effective agricultural labor exchange in Washington state. Information collected for an agricultural labor market information effort will be coordinated with other federal, state, and local statistical agencies to minimize reporting burden through cooperative data collection efforts for statistical analysis, research, or studies. [1993 c 62 § 6.]

50.38.065 Moneys for nonfunded labor market information costs—Disposition. Moneys received under RCW 50.38.060(1) to cover the actual costs of nonfunded labor market information shall be deposited in the unemployment compensation administration fund and expenditures shall be authorized only by appropriation. [1993 c 62 § 7.]

50.38.900 Effective date—1982 c 43. This act shall take effect July 1, 1982. [1982 c 43 § 5.]

50.38.901 Conflict with federal requirements—1993 c 62. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1993 c 62 § 10.]

50.38.902 Effective date—1993 c 62. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 62 § 13.]

Chapter 50.40 RCW

MISCELLANEOUS PROVISIONS

Sections

50.40.010	Waiver of rights void.
50.40.020	Exemption of benefits.
50.40.040	No vested rights.
50.40.050	Child support obligations.
50.40.065	"Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules.
50.40.066	Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account.

50.40.010 Waiver of rights void. (1) Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under this title shall be void.

(2) Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this title from such employer, shall be void.

(3) No employer shall directly or indirectly make or require or accept any deduction from remuneration for services to finance the employer's contributions required from him or her, or require or accept any waiver of any right hereunder by any individual in his or her employ.

(4) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 281; 1945 c 35 § 182; Rem. Supp. 1945 § 9998-321. Prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

50.40.020 Exemption of benefits. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this title shall be void. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debts, except as provided in RCW 50.40.050. Benefits received by any individual, so long as they are not commingled with other funds of the recipient, shall be exempt from any remedy whatsoever for collection of all debts except debts incurred for necessities furnished such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. [1982 1st ex.s. c 18 § 10. Prior: 1982 c 201 § 7; 1945 c 35 § 183; Rem. Supp. 1945 § 9998-322; prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15. Formerly codified in RCW 50.40.020, part and 50.40.030, part.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.40.040 No vested rights. The legislature reserves the right to amend or repeal all or any part of this title at any time; and there shall be no vested private right of any kind

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against such amendment or repeal. All the rights, privileges, or immunities conferred by this title or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this title at any time. [1945 c 35 § 187; no RRS. Prior: 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

50.40.050 Child support obligations. (1) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations as defined under subsection (7) of this section. If the individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the state or local child support enforcement agency enforcing those obligations that the individual has been determined to be eligible for unemployment compensation.

(2) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes child support obligations as defined under subsection (7) of this section:

(a) The amount specified by the individual to the commissioner to be deducted and withheld under this subsection, if neither (b) nor (c) of this subsection is applicable;

(b) The amount (if any) determined pursuant to an agreement submitted to the commissioner under section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless (c) of this subsection is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the commissioner.

(3) Any amount deducted and withheld under subsection (2) of this section shall be paid by the commissioner to the appropriate state or local child support enforcement agency.

(4) Any amount deducted and withheld under subsection (2) of this section shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by that individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(5) For the purposes of this section, "unemployment compensation" means any compensation payable under this chapter including amounts payable by the commissioner under an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(6) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(7) "Child support obligations" as used in this section means only those obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under part D of Title IV of the Social Security Act.

(8) "State or local child support enforcement agency" as used in this section means any agency of this state or a political subdivision thereof operating pursuant to a plan described in subsection (7) of this section. [1982 1st ex.s. c 18 § 11. Prior: 1982 c 201 § 3.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.40.065 "Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules. (Expires December 31, 2007.) (1) No less frequently than once each year, the governor's committee on disability issues and employment shall determine whether entities seeking to qualify as vendors in good standing, pursuant to this section and RCW 43.19.531, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages.

(2) In making the determination provided for in subsection (1) of this section, the governor's committee on disability issues and employment shall appoint and, except in the case of malfeasance or misfeasance, shall rely upon the conclusions of an advisory subcommittee consisting of: (a) Three members chosen from among those current or former clients of a community rehabilitation program who have nominated themselves, at least one of whom must be a person with a developmental disability; (b) one member chosen from among those guardians, parents, or other relatives of a current client or employee of a community rehabilitation program who have nominated themselves; (c) one member chosen from among those who have been nominated by a community rehabilitation program; (d) one member chosen from among those owners of a business owned and operated by persons with disabilities who have nominated themselves; (e) one member who is designated by the developmental disabilities council; (f) one member who is a member of and selected by the governor's committee on disability issues and employment; (g) one member who is designated by the secretary of the department of social and health services; and (h) one member who is designated by the director of the department of services for the blind.

(3) The advisory subcommittee appointed by the governor's committee on disability issues and employment shall conclude that entities seeking to qualify, pursuant to this section and RCW 43.19.531, as vendors in good standing, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages if, and only if, the entity provides reasonably conclusive evidence that, during the twelve-month period immediately preceding the entity's application, at least one-half of the following measurement categories applicable to the entity have been either achieved, pursuant to rules established under subsection (4) of this section, or have been improved as compared to the entity's condition with respect to that measurement category one year ago:

(a) The number of people with disabilities in the entity's total work force who are working in integrated settings;

(b) The percentage of the people with disabilities in the entity's total work force who are working in integrated settings;

(c) The number of people with disabilities in the entity's total work force who are working in individual supported employment settings;

(d) The percentage of the people with disabilities in the entity's total work force who are working in individual supported employment settings;

(e) The number of people with disabilities in the entity's total work force who, during the last twelve months, have transitioned to less restrictive employment settings either within the entity or with other community employers;

(f) The number of people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(g) The percentage of the people with disabilities in the entity's total work force who are earning at least the state minimum wage;

(h) The number of people with disabilities serving in supervisory capacities within the entity;

(i) The percentage of supervisory positions within the entity that are occupied by people with disabilities;

(j) The number of people with disabilities serving in an ownership capacity or on the governing board of the entity;

(k) The ratio of the total amount paid by the entity in wages, salaries, and related employment benefits to people with disabilities, as compared to the amount paid by the entity in wages, salaries, and related employment benefits paid by the entity to persons without disabilities during the previous year; and

(l) The percentage of people with disabilities in the entity's total work force for whom the entity has developed a reasonable, achievable, and written career plan.

(4) The commissioner shall consult with the advisory subcommittee established in subsection (2) of this section to develop and adopt rules establishing the measurement at which it is deemed that the measurement categories identified in subsection (3)(b), (d), (e), (g), (h), (j), (k), and (l) of this section have been achieved.

(5) This section expires December 31, 2007. [2003 c 136 § 7.]

50.40.066 Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account. (Expires December 31, 2007.) (1) The commissioner is authorized to adopt rules to implement RCW 50.40.065, including but not limited to authority to establish (a) a nonrefundable application fee of not more than five hundred dollars to be paid by each entity seeking to establish or renew qualification as a vendor in good standing, pursuant to RCW 43.19.531 and 50.40.065; (b) a fee of not more than two percent of the face amount of any contract awarded under chapter 136, Laws of 2003; or (c) both fees identified in (a) and (b) of this subsection.

(2) The fee or fees established pursuant to subsection (1) of this section must set a level of revenue sufficient to recover costs incurred by the department of general administration in fulfilling the duties identified in RCW 43.19.531 and the governor's committee on disability issues and employment in fulfilling the duties identified in RCW 50.40.065.

(3) The vendors in good standing account is created in the custody of the state treasurer. All receipts from the fee or fees established pursuant to subsection (1) of this section must be deposited into the account. Expenditures from the account may be used only for the purpose described in subsection (2) of this section. Expenditures from the account may be authorized only upon the approval of both the director of the department of general administration and the commissioner, or their respective designees. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) This section expires December 31, 2007, and any unencumbered funds remaining in the vendors in good standing account on that date shall revert to the general fund. [2003 c 136 § 8.]

Chapter 50.44 RCW

SPECIAL COVERAGE PROVISIONS

Sections

50.44.010	Religious, charitable, educational, or other nonprofit organizations—Exemption—Payments.
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50.44.070	Election to make payments in lieu of contributions—Bond or deposit.
50.44.080	Construction—Compliance with federal unemployment tax act, department of labor guidelines.
50.44.090	Construction—Mandatory coverage of employees of political subdivision under 1977 ex.s. c 292.

Coverage of corporate officers: RCW 50.04.165.

50.44.010 Religious, charitable, educational, or other nonprofit organizations—Exemption—Payments. Services performed subsequent to December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization which is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act shall be deemed services performed in employment unless such service is exempted under RCW 50.44.040.

Such organization shall make payments to the unemployment compensation fund based on such services in accordance with the provisions of RCW 50.44.060. [1971 c 3 § 18.]

50.44.020 Instrumentalities of this state, other states, political subdivisions. Commencing with benefit years beginning on or after January 28, 1971, services performed subsequent to September 30, 1969 in the employ of this state or any of its wholly owned instrumentalities or jointly owned instrumentalities of this state and another state or this state and one or more of its political subdivisions shall be deemed

services in employment unless such services are excluded from the term employment by RCW 50.44.040.

The state shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (2) and (3) of RCW 50.44.060: PROVIDED, HOWEVER, That for weeks of unemployment beginning after January 1, 1979, the state shall pay in addition to the full amount of regular and additional benefits so attributable the full amount of extended benefits so attributable: PROVIDED, FURTHER, That no payment will be required from the state until the expiration of the twelve-month period following the end of the biennium in which the benefits attributable to such employment were paid. The amount of this payment shall include an amount equal to the amount of interest that would have been realized for the benefit of the unemployment compensation trust fund had such payments been received within thirty days after the day of the quarterly billing provided for in RCW 50.44.060(2)(a). [1977 ex.s. c 292 § 13; 1971 c 3 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.030 Political subdivisions, instrumentalities of this state and other state. (1) All services performed for any political subdivision or instrumentality of one or more political subdivisions of this state or one or more political subdivisions of this state and any other state after December 31, 1977, will be deemed to be services in employment to the extent coverage is not exempted under RCW 50.44.040.

(2) All such units of government shall file, before December 15, 1977, a written registration with the commissioner of the employment security department. Such registration shall specify the manner in which the unit of government will finance the payment of benefits. The elections available to counties, cities and towns are the local government tax, provided for in RCW 50.44.035, or payment in lieu of contributions, as described in RCW 50.44.060. The elections available to other units of government are the contributions plan in chapters 50.24 and 50.29 RCW, or payments in lieu of contributions, described in RCW 50.44.060. Under any election the governmental unit will be charged the full amount of regular, additional, and extended benefits attributable to its account.

(3) A unit of government may switch from its current method of financing the payment of benefits by electing any other method which it would be authorized to select pursuant to the terms of subsection (2) of this section. Notification of such election must be filed with the commissioner no less than thirty days prior to the taxable year for which the new method of financing the payment of benefits is to be effective. An election under this section shall remain in effect for no less than two taxable years.

(4) Any political subdivision or instrumentality of more than one political subdivision of this state is hereby authorized to enter into agreements with other political subdivisions or instrumentalities of more than one political subdivision of this state to form pool accounts for the purpose of making payments in lieu of contributions. These accounts shall be formed and administered in accordance with applicable regulations. The formation of such accounts shall not relieve the governmental unit of the responsibility for making

required payments in the event that the pool account does not make the payments. [1981 c 35 § 11; 1977 ex.s. c 292 § 14; 1972 ex.s. c 35 § 2; 1971 c 3 § 20.]

Severability—1981 c 35: See note following RCW 50.22.030.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.035 Local government tax. (1) Any county, city, or town not electing to make payments in lieu of contributions shall pay a "local government tax." Taxes paid under this section shall be paid into an administratively identifiable account in the unemployment compensation fund. This account shall be self-sustaining. For calendar years 1978 and 1979 all such employers shall pay local government tax at the rate of one and one-quarter percent of all remuneration paid by the governmental unit for services in its employment. For each year after 1979 each such employer's rate of tax shall be determined in accordance with this section: PROVIDED, HOWEVER, That whenever it appears to the commissioner that the anticipated benefit payments from the account would jeopardize reasonable reserves in this identifiable account the commissioner may at the commencement of any calendar quarter, impose an emergency excess tax of not more than one percent of remuneration paid by the participating governmental units which "excess tax" shall be paid in addition to the applicable rate computed pursuant to this section until the calendar year following the next September 1st.

(2) A reserve account shall be established for each such employer.

(a) The "reserve account" of each such employer shall be credited with tax amounts paid and shall be charged with benefit amounts charged in accordance with the formula set forth in RCW 50.44.060 as now or hereafter amended except that such employer's account shall be charged for the full amount of extended benefits so attributable for weeks of unemployment commencing after January 1, 1979. Such credits and charges shall be cumulative from January 1, 1978.

(b) After the cutoff date, the "reserve ratio" of each such employer shall be computed by dividing its reserve account balance as of the computation date by the total remuneration paid during the preceding calendar year for services in its employment. This division shall be carried to four decimal places, with the remaining fraction, if any, disregarded.

(3) A "benefit cost ratio" for each such employer shall be computed by dividing its total benefit charges during the thirty-six months ending on June 30th by its total remuneration during the three preceding calendar years: PROVIDED, That after August 31st in 1979 each employer's total benefit charges for the twelve months ending on June 30th shall be divided by its total remuneration paid in the last three quarters of calendar year 1978; and after August 31st in 1980 each employer's total benefit charges for the twenty-four months ending June 30th shall be divided by its total remuneration paid in the last three calendar quarters of 1978 and the four calendar quarters of 1979. Such computations shall be carried to four decimal places, with the remaining fraction, if any, disregarded.

(4) For each such employer its benefit cost ratio shall be subtracted from its reserve ratio. One-third of the resulting amount shall be subtracted from its benefit cost ratio. The resulting figure, expressed as a percentage and rounded to the

nearest tenth of one percent, shall become its local government tax rate for the following rate year. For the rate year 1980 no tax rate shall be less than 0.6 percent nor more than 2.2 percent. For 1981 no tax rate shall be less than 0.4 percent nor more than 2.6 percent. For years after 1981 no tax rate shall be less than 0.2 percent or more than 3.0 percent. No individual rate shall be increased any more than 1.0 percent from one rate year to the next.

(5) Any county, city, or town electing participation under this section at any time after December 15, 1977, shall be assigned a tax rate of one and one-quarter percent of total remuneration for the first eight quarters of the participation.

(6) "Local government tax" shall be deemed to be "contributions" to the extent that such usage is consistent with the purposes of this title. Such construction shall include but not be limited to those portions of this title and the rules enacted pursuant thereto dealing with assessments, interest, penalties, liens, collection procedures and remedies, administrative and judicial review, and the imposition of administrative, civil, and criminal sanctions. [1998 c 245 § 100; 1983 1st ex.s. c 23 § 22; 1977 ex.s. c 292 § 15.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.037 "Institution of higher education" defined.

For the purposes of this chapter, the term "institution of higher education" means an educational institution in this state which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized within this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing subsections, all colleges and universities in this state are "institutions of higher education". [1977 ex.s. c 292 § 16.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.040 Services excluded under "employment" for certain purposes. The term "employment" as used in RCW 50.44.010, 50.44.020, and 50.44.030 shall not include service performed:

(1) In the employ of (a) a church or convention or association of churches, or (b) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) Before January 1, 1978, in the employ of a nongovernmental educational institution, approved or accredited by the state board of education, which is not an "institution of higher education"; or

(4) In a facility conducted for the purpose of carrying out a program of (a) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or (b) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(5) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or

(6) For a custodial or penal institution by an inmate of the custodial or penal institution; or

(7) In the employ of a hospital, if such service is performed by a patient of such hospital; or

(8) In the employ of a school, college, or university, if such service is performed (a) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (b) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (ii) such employment will not be covered by any program of unemployment insurance; or

(9) By an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employee, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers; or

(10) Before January 1, 1978, in the employ of the state or one of its instrumentalities or a political subdivision or one of its instrumentalities by an individual who is (a) occupying an elective office, or (b) who is compensated solely on a fee or per diem basis; or

(11) Before January 1, 1978, in the employ of the legislature of the state of Washington by an individual who is compensated pursuant to an agreement which provides for a guaranteed rate of compensation for irregular hours worked; or

(12) In the employ of a nongovernmental preschool which is devoted exclusively to the area of child development training of preschool age children through an established curriculum of formal classroom or laboratory instruction which did not employ four or more individuals on each of some twenty days during the calendar year or the preceding calendar year, each day being in a different calendar week; or

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(13) After December 31, 1977, in the employ of the state or any of its instrumentalities or political subdivisions of this state in any of its instrumentalities by an individual in the exercise of duties:

(a) As an elected official;

(b) As a member of the national guard or air national guard; or

(c) In a policymaking position the performance of the duties of which ordinarily do not require more than eight hours per week. [1977 ex.s. c 292 § 17; 1975 1st ex.s. c 67 § 1; 1975 c 4 § 1; 1973 c 73 § 9; 1971 c 3 § 21.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Exemption from unemployment compensation coverage conservation corps members: RCW 43.220.170.

Washington service corps enrollees: RCW 50.65.120.

50.44.050 Benefits payable, terms and conditions— "Academic year" defined. Except as otherwise provided in subsections (1) through (4) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title.

(1) Benefits based on any and all service in an instructional, research, or principal administrative capacity for any and all educational institutions shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year (or, when an agreement provides instead for a similar period between two regular but not successive terms within an academic year, during such period) if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Any employee of a common school district who is presumed to be reemployed pursuant to RCW 28A.405.210 shall be deemed to have a contract for the ensuing term.

(2) Benefits shall not be paid based on any and all services in any other capacity for any and all educational institutions for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms: PROVIDED, That if benefits are denied to any individual under this subsection and that individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an estab-

lished and customary vacation period or holiday recess if such individual performs such services for any educational institution in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services for any educational institution in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in any educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.310 RCW and exists to provide services to local school districts.

(5) As used in this section, "academic year" means: Fall, winter, spring, and summer quarters or comparable semesters unless, based upon objective criteria including enrollment and staffing, the quarter or comparable semester is not in fact a part of the academic year for the particular institution. [2001 c 100 § 2; 1998 c 233 § 2; 1995 c 296 § 2; 1990 c 33 § 587; 1984 c 140 § 2; 1983 1st ex.s. c 23 § 23; 1981 c 35 § 12; 1980 c 74 § 2; 1977 ex.s. c 292 § 18; 1975 1st ex.s. c 288 § 17; 1973 c 73 § 10; 1971 c 3 § 22.]

Intent—Findings—2001 c 100: "It is the intent of the legislature to clarify requirements related to the use of base year hours and wages for certain employees at educational institutions, for the purpose of determining eligibility for unemployment insurance benefits.

The legislature finds that, unless clarified, Washington's unemployment compensation law may be out of conformity with the federal unemployment tax act, which poses a significant economic risk to the state's private employers, the state's general fund, and to the administration of the state's unemployment insurance system. It is the intent of the legislature to change Washington's unemployment law only to the extent necessary to ensure it conforms with federal law governing the use of base year hours and wages earned at educational institutions.

The legislature finds that the United States department of labor will rely on state law and its application as interpreted in state court decisions, especially *Pechman v. Employment Security*, to determine if Washington state law conforms to federal guidelines in this area. Therefore, it is the intent of the legislature to clearly communicate to the courts that the purpose for the section 2, chapter 100, Laws of 2001 amendment to RCW 50.44.050 is to interpret state law in a manner that conforms to federal guidelines.

The legislature finds that federal law requires that school hours and wages in the base year must be restricted from use to establish eligibility for an unemployment compensation claim for employees of educational institutions during specified times. Further, federal law specifies that when required to restrict base year school hours and wages, it must be any and all hours and wages from any and all educational institutions, not just the hours and wages from institutions where there is a reasonable assurance of returning to work following a customary nonwork period. Therefore, it is the intent of the legislature to restrict hours worked and wages earned as required by federal law.

Customary nonwork periods for educational institutions include:

- (1) The period between two successive academic years;
- (2) The period between two successive academic terms within an academic year;
- (3) A similar period between two regular but not successive terms within an academic year; or
- (4) An established and customary vacation period or holiday recess.

Restricted use of base year hours and wages from educational institutions shall occur only in the circumstances described in RCW 50.44.050 (as amended by chapter 100, Laws of 2001) and in RCW 50.44.053, and as further defined in rules promulgated by the employment security department." [2001 c 100 § 1.]

Conflict with federal requirements—2001 c 100: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this

act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2001 c 100 § 3.]

Effective date—2001 c 100: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 100 § 4.]

Intent—Findings—1998 c 233: "It is the intent of the legislature to clarify requirements related to unemployment compensation for employees at educational institutions.

The legislature finds that, unless clarified, Washington's unemployment compensation law may be out of conformity with the federal unemployment tax act, which finding poses a significant economic risk to the state's private employers and to the administration of the state's unemployment insurance system. It is the intent of the legislature, by the 1998, chapter 233 amendments to RCW 50.44.050 and 50.44.053, to bring Washington's unemployment compensation law into conformity with federal law in these areas of concern.

The legislature finds that some instructional staff at the state's educational institutions receive an appointment of employment for an indefinite period while others may face circumstances that do not provide a reasonable expectation of employment during an ensuing academic year or term.

Therefore, it is the intent of the legislature that the employment security department continue to make determinations of educational employees' eligibility for unemployment compensation for the period between academic years or terms based on a finding of reasonable assurance that the employee will have employment for the ensuing academic year or term and that the determination in each employee's case is made on an individual basis, consistent with federal guidelines. This determination must take into consideration contingencies that may exist in fact in an individual case. The 1998, chapter 233 amendment to RCW 50.44.053 is not intended to change the practice used by the employment security department when determining reasonable assurance. If, during fact-finding, there is a disagreement about whether an individual has reasonable assurance, the educational institution must provide documentation that reasonable assurance exists for that individual." [1998 c 233 § 1.]

Conflict with federal requirements—1998 c 233: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1998 c 233 § 5.]

Effective date—1998 c 233: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1998]." [1998 c 233 § 6.]

Severability—Conflict with federal requirements—Effective date—1995 c 296: See notes following RCW 50.04.320.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Effective date—Applicability—1984 c 140: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984]. This act shall apply to weeks of unemployment beginning on or after April 1, 1984." [1984 c 140 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.44.053 "Reasonable assurance" defined—Presumption, employees of educational institutions. (1) The term "reasonable assurance," as used in RCW 50.44.050, means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term. A person shall not be deemed to be performing services "in the same capacity" unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term.

(2) An individual who is tenured or holds tenure track status is considered to have reasonable assurance, unless advised otherwise by the college. For the purposes of this section, tenure track status means a probationary faculty employee having an opportunity to be reviewed for tenure.

(3) In the case of community and technical colleges assigned the standard industrial classification code 8222 or the North American industry classification system code 611210 for services performed in a principal administrative, research, or instructional capacity, a person is presumed not to have reasonable assurance under an offer that is conditioned on enrollment, funding, or program changes. It is the college's burden to provide sufficient documentation to overcome this presumption. Reasonable assurance must be determined on a case-by-case basis by the total weight of evidence rather than the existence of any one factor. Primary weight must be given to the contingent nature of an offer of employment based on enrollment, funding, and program changes. [2001 c 99 § 2; 1998 c 233 § 3; 1995 c 296 § 3; 1985 ex.s. c 5 § 9.]

Conflict with federal requirements—2001 c 99: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2001 c 99 § 4.]

Severability—2001 c 99: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 99 § 5.]

Applicability—2001 c 99: "This act applies to weeks that begin after March 31, 2001." [2001 c 99 § 6.]

Effective date—2001 c 99: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 99 § 7.]

Intent—Findings—Conflict with federal requirements—Effective date—1998 c 233: See notes following RCW 50.44.050.

Severability—Conflict with federal requirements—Effective date—1995 c 296: See notes following RCW 50.04.320.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.44.055 Finding—Intent—Reasonable assurance, application to employees of educational institutions. The legislature finds the interests of the state and its citizens are best served by a strong community and technical college system. As described by their establishing legislation, these two-year institutions are an independent, unique, and vital section of our state's higher education system, separate from

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both the common school system and other institutions of higher education. Paramount to that system's success is the attraction and retention of qualified instructors. In order to attract and retain instructors, those who are subject to uncertainties of employment must be provided assurance their economic needs are addressed. Over time, a change in hiring patterns has occurred, and for the last decade a substantial portion of community and technical college faculty are hired on a contingent, as needed, basis. That contingent nature distinguishes them from the more stable, majority employment found in the common school system and in the other institutions of higher education. Contingent assurances of future employment are often speculative and do not rise to the level of other forms of assurance. As such, assurances conditioned on forecast enrollment, funding, or program decisions are typically not reasonable assurances of employment.

It is the intent of the legislature that reasonable assurance continue to apply to all employees of educational institutions as required by federal provisions and RCW 50.44.080. [2001 c 99 § 1.]

Conflict with federal requirements—Severability—Applicability—Effective date—2001 c 99: See notes following RCW 50.44.053.

50.44.060 Nonprofit organization employees—Financing of benefits—Election of payments in lieu of contributions. Benefits paid to employees of "nonprofit organizations" shall be financed in accordance with the provisions of this section. For the purpose of this section and RCW 50.44.070, the term "nonprofit organization" is limited to those organizations described in RCW 50.44.010, and joint accounts composed exclusively of such organizations.

(1) Any nonprofit organization which is, or becomes subject to this title on or after January 1, 1972 shall pay contributions under the provisions of RCW 50.24.010 and chapter 50.29 RCW, unless it elects, in accordance with this subsection, to pay to the commissioner for the unemployment compensation fund an amount equal to the full amount of regular and additional benefits and one-half of the amount of extended benefits paid to individuals for weeks of unemployment that are based upon wages paid or payable during the effective period of such election to the extent that such payments are attributable to service in the employ of such nonprofit organization.

(a) Any nonprofit organization which becomes subject to this title after January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(b) Any nonprofit organization which makes an election in accordance with paragraph (a) of this subsection will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(c) Any nonprofit organization which has been paying contributions under this title for a period subsequent to January 1, 1972 may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the begin-

ning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(d) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(e) The commissioner, in accordance with such regulations as the commissioner may prescribe, shall notify each nonprofit organization of any determination which the commissioner may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Any nonprofit organization subject to such determination and dissatisfied with such determination may file a request for review and redetermination with the commissioner within thirty days of the mailing of the determination to the organization. Should such request for review and redetermination be denied, the organization may, within ten days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this paragraph.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this section including either paragraph (a) or (b) of this subsection.

(a) At the end of each calendar quarter, the commissioner shall bill each nonprofit organization or group of such organizations which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular and additional benefits plus one-half of the amount of extended benefits paid during such quarter that is attributable to service in the employ of such organization.

(b)(i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as provided in this paragraph. Such method of payment shall become effective upon approval by the commissioner.

(ii) At the end of each calendar quarter, or at the end of such other period as determined by the commissioner, the commissioner shall bill each nonprofit organization for an amount representing one of the following:

(A) The percentage of its total payroll for the immediately preceding calendar year as the commissioner shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

(B) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall determine.

(iii) At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each taxable year, the commissioner shall determine whether the total of payments for such year

made by a nonprofit organization is less than, or in excess of, the total amount of regular and additional benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with paragraph (c). If the total payments exceed the amount so determined for the taxable year, all of the excess payments will be retained in the fund as part of the payments which may be required for the next taxable year, or a part of the excess may, at the discretion of the commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

(c) Payment of any bill rendered under paragraph (a) or (b) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, and if not paid within such thirty days, the reimbursement payments itemized in the bill shall be deemed to be delinquent and the whole or part thereof remaining unpaid shall bear interest and penalties from and after the end of such thirty days at the rate and in the manner set forth in RCW 50.12.220 and 50.24.040.

(d) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization. Any deduction in violation of the provisions of this paragraph shall be unlawful.

(3) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the total amount of regular and additional benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of paragraphs (a) and (b) of this subsection.

(a) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers. [1990 c 245 § 9; 1983 1st ex.s. c 23 § 24; 1977 ex.s. c 292 § 19; 1971 c 3 § 23.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.070 Election to make payments in lieu of contributions—Bond or deposit. In the discretion of the commissioner, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election, to execute and file with the commissioner a surety bond approved by the commissioner or it may elect instead to deposit with the commissioner money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this section.

(1) The amount of the bond or deposit required by this subsection shall be an amount deemed by the commissioner to be sufficient to cover any reimbursement payments which may be required from the employer attributable to employment during any year for which the election is in effect but in no event shall such amount be in excess of the amount which said employer would pay for such year if he were subject to the contribution provisions of this title. The determination made pursuant to this subsection shall be based on payroll information, employment experience, and such other factors as the commissioner deems pertinent.

(2) Any bond deposited under this section shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the commissioner, at such times as the commissioner may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The commissioner shall require adjustments to be made in a previously filed bond as he deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in this title, shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

(3) Any deposit of money or securities in accordance with this section shall be retained by the commissioner in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The commissioner may deduct from the money deposited under this section by a nonprofit organization or sell the securities it has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in this act. The commissioner shall require the organization within thirty days following any deduction from a money deposit or sale of deposited securities under the provisions of this subsection to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The commissioner may, at any time review the adequacy of the deposit made by any organization. If, as a result of such review, he determines that an adjustment is necessary he shall

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require the organization to make an additional deposit within thirty days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(4) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this section, the commissioner may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which termination becomes effective: PROVIDED, That the commissioner may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty days. [1973 c 73 § 11; 1971 c 3 § 24.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.44.080 Construction—Compliance with federal unemployment tax act, department of labor guidelines. In view of the importance of compliance of this chapter with the federal unemployment tax act, any ambiguities contained herein should be resolved in a manner consistent with the provisions of that act. Department of labor guidelines implementing chapter 99, Laws of 2001 should be referred to when interpreting the provisions of this chapter.

Language in this chapter concerning the extension of coverage to employers entitled to make payments in lieu of contributions should, in a manner consistent with the foregoing paragraph, be construed so as to have a minimum financial impact on the employers subject to the experience rating provisions of this title. [2001 c 99 § 3; 1971 c 3 § 25.]

Conflict with federal requirements—Severability—Applicability—Effective date—2001 c 99: See notes following RCW 50.44.053.

50.44.090 Construction—Mandatory coverage of employees of political subdivision under 1977 ex.s. c 292.

(1) The provisions of chapter 292, Laws of 1977 ex. sess. mandating coverage of employees of political subdivisions have been enacted to comply with the provisions of Public Law 94-566. Therefore, as provided in subsection (2), this mandatory feature shall be contingent on the existence of valid and constitutional federal law requiring the Secretary of Labor to refuse to certify as approved the employment security laws of this state if such laws did not continue such mandatory coverage.

(2) In the event the mandatory coverage feature for political subdivisions ceases to be necessary for compliance with valid and constitutional federal law, then the mandatory feature of chapter 292, Laws of 1977 ex. sess. shall cease to be effective as of the end of the next quarter following the quarter in which the mandatory feature contained in chapter 292, Laws of 1977 ex. sess. is not necessary for such compliance.

(3) In the event mandatory coverage ceases to be effective pursuant to subsection (2), then the sections, or subsections as the case may be, of chapter 292, Laws of 1977 ex. sess. shall to the extent that they apply to coverage of employees of political subdivisions be deemed nullified and

the language of the sections being amended shall be deemed reinstated as the laws of this state.

(4) Benefits paid based on the services covered during the effective life of the mandatory coverage feature shall be financed as follows:

(a) If the political subdivision was financing payment of benefits on a reimbursable basis, benefits attributable to employment with the political subdivision shall be assessed to and paid by the political subdivision;

(b) If the political subdivision is a county, city, or town which elected financing pursuant to RCW 50.44.035, such political subdivision will pay "the local government tax" for all earnings by employees through the end of the calendar quarter in which the mandatory coverage is no longer effective pursuant to subsection (2);

(c) If the political subdivision was financing benefits by the contribution method it will pay contributions on wages earned by its employees through the end of the calendar quarter in which mandatory coverage is no longer effective pursuant to subsection (2). [1977 ex.s. c 292 § 23.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Chapter 50.50 RCW INDIAN TRIBES

Sections

50.50.010	Employment.
50.50.020	Benefits—Generally.
50.50.030	Contributions—Election of payments in lieu of contributions.
50.50.040	Option to make payments in lieu of contributions—Revocation—Reinstatement—Notices.
50.50.050	Notices—Contents.
50.50.060	Extended benefits—Financing by Indian tribe.
50.50.070	Indian tribes subject to same terms and conditions as other employers.
50.50.900	Conflict with federal requirements—2001 1st sp.s. c 11.
50.50.901	Severability—2001 1st sp.s. c 11.
50.50.902	Effective date—2001 1st sp.s. c 11.
50.50.903	Retroactive application—2001 1st sp.s. c 11.

50.50.010 Employment. The term "employment" includes service performed in the employ of an Indian tribe, as defined in section 3306(u) of the federal unemployment tax act, provided such service is excluded from "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(7), the federal unemployment tax act, and is not otherwise excluded from "employment" under this title. For purposes of this section, the exclusions from employment in RCW 50.44.040, except RCW 50.44.040(12) addressing nongovernmental preschools, are applicable to services performed in the employ of an Indian tribe. [2001 1st sp.s. c 11 § 3.]

50.50.020 Benefits—Generally. Benefits based on service in employment defined in this chapter are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service under this title. [2001 1st sp.s. c 11 § 4.]

50.50.030 Contributions—Election of payments in lieu of contributions. (1) Indian tribes or tribal units, including subdivisions, subsidiaries, or business enterprises wholly

owned by such Indian tribes, subject to this title shall pay contributions under the same terms and conditions as all other subject employers, unless they elect to pay into the unemployment compensation fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in RCW 50.44.030 pertaining to other units of government subject to this title. Indian tribes shall determine if reimbursement for benefits paid are to be elected by the tribe as a whole, by individual tribal units, or by combinations of tribal units.

(3) Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(4) At the discretion of the commissioner and on the same basis as other employers with the same election option, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions is required, within thirty days after the effective date of its election, to: (a) Execute and file with the commissioner a surety bond approved by the commissioner; or (b) deposit with the commissioner money or securities in an amount determined by the commissioner. [2001 1st sp.s. c 11 § 5.]

50.50.040 Option to make payments in lieu of contributions—Revocation—Reinstatement—Notices. (1)(a) The commissioner shall revoke the option for an Indian tribe or tribal unit to make payments in lieu of contributions as described in RCW 50.50.030 if the Indian tribe or tribal unit: (i) Did not make payments, including assessments of interest and penalties, required under this chapter within ninety days of receipt of statement; or (ii) entered into an approved agency deferred payment contract, and was not in compliance with the contract on the cutoff date, as authorized in chapter 50.29 RCW. The revocation shall begin on January 1 of the first calendar year after the Indian tribe or tribal unit meets these conditions, and shall continue until the option is reinstated as described in (b) of this subsection.

(b) The commissioner shall reinstate the option if, as of the cutoff date, an Indian tribe or tribal unit whose option was revoked as described in (a) of this subsection: (i) Paid contributions owed in the current calendar year when due; and (ii) made required payments, including assessments of interest and penalties, for any preceding calendar years. The reinstatement shall begin on January 1 of the first calendar year after the Indian tribe or tribal unit satisfies these conditions.

(2)(a) Services performed for an Indian tribe or tribal unit are not services in "employment" for purposes of RCW 50.04.265 and 50.50.010 if:

(i) The Indian tribe or tribal unit elected to make payments in lieu of contributions, had the option revoked, and has not met the conditions for reinstatement of the option; and

(ii) The Indian tribe or tribal unit either: (A) Did not make required payments, including assessments of interest and penalties, within one hundred eighty days of receipt of statement; or (B) entered into an approved agency deferred

payment contract, and was not in compliance with the contract on the last day of the current calendar quarter.

This revocation of coverage shall begin on the first day of the first calendar quarter after the Indian tribe or tribal unit meets these conditions, and shall continue until coverage is reinstated as described in (c) of this subsection.

(b) Services performed for an Indian tribe or tribal unit are not services in "employment" for purposes of RCW 50.04.265 and 50.50.010 if:

(i) The Indian tribe or tribal unit is a contribution-paying employer; and

(ii) The Indian tribe or tribal unit either: (A) Did not make required payments, including assessments of interest and penalties, within one hundred eighty days of receipt of statement; or (B) entered into an approved agency deferred payment contract, and was not in compliance with the contract on the last day of the current calendar quarter.

This revocation of coverage shall begin on the first day of the first calendar quarter after the Indian tribe or tribal unit meets these conditions, and shall continue until coverage is reinstated as described in (c) of this subsection.

(c) The commissioner may reinstate coverage if the Indian tribe or tribal unit has made required payments, including assessments of interest and penalties. This reinstatement of coverage may begin on the first day of the first calendar quarter after these payments are made.

(3)(a) The commissioner shall immediately notify the United States internal revenue service and the United States department of labor if an Indian tribe or tribal unit does not make required payments, including assessments of interest and penalties, within ninety days of receipt of statement.

(b) The commissioner shall immediately notify the United States internal revenue service and the United States department of labor of any revocation or reinstatement of the option to make payments in lieu of contributions under subsection (1) of this section or any revocation or reinstatement of coverage under subsection (2) of this section. [2001 1st sp.s. c 11 § 6.]

50.50.050 Notices—Contents. Notices of payment and reporting delinquency to Indian tribes or their tribal units must include information that failure to make full payment within the prescribed time frames: (1) Causes the Indian tribe to be liable for taxes under the federal unemployment tax act; (2) causes the Indian tribe to lose the option to make payments in lieu of contributions; and (3) causes the Indian tribe to be excepted from the definition of "employing unit," as provided in RCW 50.04.090, and services in the employ of the Indian tribe, as provided in RCW 50.04.265 and 50.50.010, to be excepted from "employment." [2001 1st sp.s. c 11 § 7.]

50.50.060 Extended benefits—Financing by Indian tribe. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government must be financed in their entirety by such Indian tribe. [2001 1st sp.s. c 11 § 8.]

50.50.070 Indian tribes subject to same terms and conditions as other employers. Unless specifically

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addressed in this chapter, Indian tribes or their tribal units are subject to the same terms and conditions as are other employers subject to contributions under RCW 50.29.020 or other units of government under RCW 50.44.030 that make payments in lieu of contributions. [2001 1st sp.s. c 11 § 9.]

50.50.900 Conflict with federal requirements—2001 1st sp.s. c 11. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [2001 1st sp.s. c 11 § 10.]

50.50.901 Severability—2001 1st sp.s. c 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 1st sp.s. c 11 § 11.]

50.50.902 Effective date—2001 1st sp.s. c 11. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 11, 2001]. [2001 1st sp.s. c 11 § 12.]

50.50.903 Retroactive application—2001 1st sp.s. c 11. This act applies retroactively to services performed on or after December 21, 2000. Indian tribes or tribal units may elect to make payments in lieu of contributions effective December 21, 2000, or a subsequent date. [2001 1st sp.s. c 11 § 13.]

Chapter 50.60 RCW SHARED WORK COMPENSATION PLANS—BENEFITS

Sections

50.60.010	Legislative intent.
50.60.020	Definitions.
50.60.030	Compensation plan—Criteria for approval.
50.60.040	Compensation plan—Approval or rejection—Resubmission.
50.60.050	Approved plan—Misrepresentation—Penalties.
50.60.060	Approved plan—Effective date—Expiration.
50.60.070	Approved plan—Revocation—Review of plans.
50.60.080	Approved plan—Modification.
50.60.090	Shared work benefits—Eligibility.
50.60.100	Benefits—Weekly amount—Maximum entitlement— Claims—Conditions.
50.60.110	Benefits—Charge to employers' experience rating accounts.
50.60.120	Benefits—Exhaustee.
50.60.900	Title and rules to apply to shared work benefits—Conflict with federal requirements.
50.60.901	Rules.
50.60.902	Effective date—1983 c 207.

50.60.010 Legislative intent. In order to provide an economic climate conducive to the retention of skilled workers in industries adversely affected by general economic

downturns and to supplement depressed buying power of employees affected by such downturns, the legislature finds that the public interest would be served by the enactment of laws providing greater flexibility in the payment of unemployment compensation benefits in situations where qualified employers elect to retain employees at reduced hours rather than instituting layoffs. [1983 c 207 § 1.]

50.60.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affected unit" means a specified plant, department, shift, or other definable unit consisting of one or more employees, to which an approved shared work compensation plan applies.

(2) "Fringe benefits" include health insurance, retirement benefits under benefit pension plans as defined in section 3(35) of the employee retirement income security act of 1974, paid vacation and holidays, and sick leave, which are incidents of employment in addition to cash remuneration.

(3) "Shared work benefits" means the benefits payable to employees in an affected unit under an approved shared work compensation plan as distinguished from the benefits otherwise payable under this title.

(4) "Shared work compensation plan" means a plan of an employer, or of an employers' association, under which there is a reduction in the number of hours worked by employees rather than temporary layoffs.

(5) "Shared work employer" means an employer, one or more of whose employees are covered by a shared work compensation plan.

(6) "Usual weekly hours of work" means the normal number of hours of work for full-time employees in the affected unit when that unit is operating on a full-time basis, not to exceed forty hours and not including overtime.

(7) "Unemployment compensation" means the benefits payable under this title other than shared work benefits and includes any amounts payable pursuant to an agreement under federal law providing for compensation, assistance, or allowances with respect to unemployment.

(8) "Employers' association" means an association which is a party to a collective bargaining agreement under which there is a shared work compensation plan. [1983 c 207 § 2.]

50.60.030 Compensation plan—Criteria for approval. An employer or employers' association wishing to participate in a shared work compensation program shall submit a written and signed shared work compensation plan to the commissioner for approval. The commissioner shall approve a shared work compensation plan only if the following criteria are met:

(1) The plan identifies the affected units to which it applies;

(2) An employee in an affected unit are identified by name, social security number, and by any other information required by the commissioner;

(3) The usual weekly hours of work for an employee in an affected unit are reduced by not less than ten percent and not more than fifty percent;

(4) Fringe benefits will continue to be provided on the same basis as before the reduction in work hours. In no event shall the level of health benefits be reduced due to a reduction in hours;

(5) The plan certifies that the aggregate reduction in work hours is in lieu of temporary layoffs which would have affected at least ten percent of the employees in the affected units to which the plan applies and which would have resulted in an equivalent reduction in work hours;

(6) The plan applies to at least ten percent of the employees in the affected unit;

(7) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any employee in the affected unit;

(8) The plan will not subsidize seasonal employers during the off season nor subsidize employers who have traditionally used part-time employees; and

(9) The employer agrees to furnish reports necessary for the proper administration of the plan and to permit access by the commissioner to all records necessary to verify the plan before approval and after approval to evaluate the application of the plan.

In addition to subsections (1) through (9) of this section, the commissioner shall take into account any other factors which may be pertinent. [1985 c 43 § 1; 1983 c 207 § 3.]

Conflict with federal requirements—1985 c 43: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 43 § 2.]

Severability—1985 c 43: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 43 § 3.]

50.60.040 Compensation plan—Approval or rejection—Resubmission. The commissioner shall approve or reject a shared work compensation plan in writing within fifteen days of its receipt. The reasons for the rejection shall be final and nonappealable, but the rejection shall not prevent an employer from submitting another plan for approval not earlier than fifteen days after the date of a previous written rejection. [1983 c 207 § 4.]

50.60.050 Approved plan—Misrepresentation—Penalties. If an approved plan or any representation for implementation of the plan is intentionally and substantially misleading or false, any individual who participated in any such misrepresentation shall be subject to criminal prosecution as well as personal liability for any amount of benefits deemed by the commissioner to have been improperly paid from the fund as a result thereof. This provision for personal liability is in addition to any remedy against individual claimants for collection of overpayment of benefits if such claimants participated in or were otherwise at fault in the overpayment. [1983 c 207 § 5.]

50.60.060 Approved plan—Effective date—Expiration. A shared work compensation plan shall be effective on the date specified in the plan or on the first day of the second calendar week after the date of the commissioner's approval, whichever is later. The plan shall expire at the end of the twelfth full calendar month after its effective date, or on the date specified in the plan if that date is earlier, unless the plan is revoked before that date by the commissioner. If a plan is revoked by the commissioner, it shall terminate on the date specified in the commissioner's order of revocation. [1983 c 207 § 6.]

50.60.070 Approved plan—Revocation—Review of plans. The commissioner may revoke approval of a shared work compensation plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons for the revocation. Good cause for revocation shall include failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of the criteria on which approval of the plan was based.

Such action may be initiated at any time by the commissioner on his or her own motion, on the motion of any of the affected unit employees, or on the motion of the appropriate collective bargaining agents. The commissioner shall review each plan at least once within the twelve month period the plan is in effect to assure that it continues to meet the requirements of this chapter. [1983 c 207 § 7.]

50.60.080 Approved plan—Modification. An approved shared work compensation plan in effect may be modified with the approval of the commissioner. If the hours of work are increased or decreased beyond the level in the original plan, or any other condition is changed, the employer shall promptly notify the commissioner. If the changes meet the requirements for approval of a plan, the commissioner shall approve the modifications. This approval shall not change the expiration date of the original plan. If the modifications do not meet the requirements for approval, the commissioner shall revoke the plan as specified in RCW 50.60.060. [1983 c 207 § 8.]

50.60.090 Shared work benefits—Eligibility. An individual is eligible to receive shared work benefits with respect to any week only if, in addition to meeting the conditions of eligibility for other benefits under this title, the commissioner finds that:

(1) The individual was employed during that week as a member of an affected unit under an approved shared work compensation plan which was in effect for that week;

(2) The individual was able to work and was available for additional hours of work and for full-time work with the shared work employer; and

(3) Notwithstanding any other provision of this chapter, an individual is deemed to have been unemployed in any week for which remuneration is payable to him or her as an employee in an affected unit for less than his or her normal weekly hours of work as specified under the approved shared

work compensation plan in effect for that week. [1983 c 207 § 9.]

50.60.100 Benefits—Weekly amount—Maximum entitlement—Claims—Conditions. (1) The shared work weekly benefit amount shall be the product of the regular weekly unemployment compensation benefit amount multiplied by the percentage of reduction in the individual's usual weekly hours of work;

(2) No individual is eligible in any benefit year for more than the maximum entitlement established for benefits under this title, including benefits under this chapter, nor may an individual be paid shared work benefits for more than a total of twenty-six weeks in any twelve-month period under a shared work compensation plan;

(3) The shared work benefits paid an individual shall be deducted from the total benefit amount established for that individual's benefit year;

(4) Claims for shared work benefits shall be filed in the same manner as claims for other benefits under this title or as prescribed by the commissioner by rule;

(5) Provisions otherwise applicable to unemployment compensation claimants under this title apply to shared work claimants to the extent that they are not inconsistent with this chapter;

(6)(a) If an individual works in the same week for an employer other than the shared work employer and his or her combined hours of work for both employers are equal to or greater than the usual weekly hours of work with the shared work employer, the individual shall not be entitled to benefits under this chapter or title;

(b) If an individual works in the same week for both the shared work employer and another employer and his or her combined hours of work for both employers are less than his or her usual weekly hours of work, the benefit amount payable for that week shall be the weekly unemployment compensation benefit amount reduced by the same percentage that the combined hours are of the usual weekly hours of work. A week for which benefits are paid under this subsection shall count as a week of shared work benefits;

(7) An individual who does not work during a week for the shared work employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount. Such a week shall not be counted as a week for which shared work benefits were received;

(8) An individual who does not work for the shared work employer during a week but works for another employer, and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of this title. Such a week shall not be counted as a week for which shared work benefits were received. [1983 c 207 § 10.]

50.60.110 Benefits—Charge to employers' experience rating accounts. Shared work benefits shall be charged to employers' experience rating accounts in the same manner as other benefits under this title are charged. Employers liable for payments in lieu of contributions shall have shared work benefits attributed to their accounts in the same manner as

other benefits under this title are attributed. [1983 c 207 § 11.]

50.60.120 Benefits—Exhaustee. An individual who has received all of the shared work benefits, or all of the combined unemployment compensation and shared work benefits, available in a benefit year shall be considered an exhaustee for purposes of the extended benefits program under chapter 50.22 RCW, and, if otherwise eligible under that chapter, shall be eligible to receive extended benefits. [1983 c 207 § 12.]

50.60.900 Title and rules to apply to shared work benefits—Conflict with federal requirements. Unless inconsistent with or otherwise provided by this section, this title and rules adopted under this title apply to shared work benefits. To the extent permitted by federal law, those rules may make such distinctions and requirements as may be necessary with respect to unemployed individuals to carry out the purposes of this chapter, including rules defining usual hours, days, work week, wages, and the duration of plans adopted under this chapter. To the extent that any portion of this chapter may be inconsistent with the requirements of federal law relating to the payment of unemployment insurance benefits, the conflicting provisions or interpretations of this chapter shall be deemed inoperative, but only to the extent of the conflict. If the commissioner determines that such a conflict exists, a statement to that effect shall be filed with the governor's office for transmission to both houses of the legislature. [1983 c 207 § 13.]

50.60.901 Rules. The department shall adopt such rules as are necessary to carry out the purposes of chapter 207, Laws of 1983. [1998 c 245 § 101; 1983 c 207 § 14.]

50.60.902 Effective date—1983 c 207. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect with the weeks beginning after July 31, 1983. [1983 c 207 § 16.]

Chapter 50.62 RCW

SPECIAL EMPLOYMENT ASSISTANCE

Sections

50.62.010	Legislative findings.
50.62.020	Definitions.
50.62.030	Job service program or activity.
50.62.040	Annual report—Wage and benefit history.

50.62.010 Legislative findings. The legislature finds and declares that:

- (1) The number of persons unemployed in the state is significantly above the national average.
- (2) Persons who are unemployed represent a skilled resource to the economy and the quality of life for all persons in the state.
- (3) There are jobs available in the state that can be filled by unemployed persons.
- (4) A public labor exchange can appreciably expedite the employment of unemployed job seekers and filling employer

vacancies thereby contributing to the overall health of the state and national economies.

(5) The Washington state job service of the employment security department has provided a proven service of assisting persons to find employment for the past fifty years.

(6) Expediting the reemployment of unemployment insurance claimants will reduce payment of claims drawn from the state unemployment insurance trust fund.

(7) Increased emphasis on assisting in the reemployment of claimants and monitoring claimants' work search efforts will positively impact employer tax rates resulting from the recently enacted experience rating legislation, chapter 205, Laws of 1984.

(8) Special employment service efforts are necessary to adequately serve agricultural employers who have unique needs in the type of workers, recruitment efforts, and the urgency of obtaining sufficient workers.

(9) Study and research of issues related to employment and unemployment provides economic information vital to the decision-making process.

(10) Older workers and the long-term unemployed experience greater difficulty finding new employment at wages comparable to their prelayoff earnings relative to all unemployment insurance claimants who return to work.

(11) After a layoff, older unemployed workers and the long-term unemployed workers fail to find unemployment insurance-covered employment at a much higher rate than other groups of unemployment insurance claimants.

The legislature finds it necessary and in the public interest to have a program of job service to assist persons drawing unemployment insurance claims to find employment, to provide employment assistance to the agricultural industry, and to conduct research into issues related to employment and unemployment. [1987 c 284 § 1; 1987 c 171 § 1; 1985 ex.s. c 5 § 1.]

Reviser's note: This section was amended by 1987 c 171 § 1 and by 1987 c 284 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—1987 c 171: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1987 c 171 § 7.]

Severability—1987 c 171: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 171 § 8.]

Conflict with federal requirements—1985 ex.s. c 5: "If any part of this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act." [1985 ex.s. c 5 § 16.]

Severability—1985 ex.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 ex.s. c 5 § 17.]

50.62.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Job service" means the employment assistance program of the employment security department;

(2) "Employment assistance" means services to unemployed persons focused on and measured by the obtaining of employment;

(3) "Labor exchange" means those activities which match labor supply and labor demand, including recruitment, screening, and referral of qualified workers to employers;

(4) "Special account of the administrative contingency fund" means that fund under RCW 50.24.014 established within the administrative contingency fund of the employment security department which provides revenue for the purposes of this chapter.

(5) "Continuous wage and benefit history" means an information and research system utilizing a longitudinal data base containing information on both employment and unemployment.

(6) "Long-term unemployed" means demographic groups of unemployment insurance claimants identified by the employment security department pursuant to RCW 50.62.040(1)(e) which have the highest percentages of persons who have drawn at least fifteen weeks of unemployment insurance benefits or have the highest percentage of persons who have exhausted their unemployment insurance benefits.

(7) "Older unemployed workers" means unemployment insurance claimants who are at least fifty years of age. [1987 c 284 § 2; 1985 ex.s. c 5 § 2.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.62.030 Job service program or activity. Job service resources shall be used to assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery. The job service program of the employment security department may undertake any program or activity for which funds are available and which furthers the goals of this chapter. These programs and activities shall include, but are not limited to:

(1) Giving older unemployed workers and the long-term unemployed the highest priority for all services made available under this section. The employment security department shall make the services provided under this chapter available to the older unemployed workers and the long-term unemployed as soon as they register under the employment assistance program;

(2) Supplementing basic employment services, with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(3) Providing employment services, such as recruitment, screening, and referral of qualified workers, to agricultural areas where these services have in the past contributed to positive economic conditions for the agricultural industry; and

(4) Providing otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment. [1995 c 135 § 4. Prior: 1987 c 284 § 3; 1987 c 171 § 2; 1985 ex.s. c 5 § 3.]

Intent—1995 c 135: See note following RCW 29A.08.760.

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Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.62.040 Annual report—Wage and benefit history.

(1) Each year the employment security department may publish an annual report on the unemployed based on research conducted on the continuous wage and benefit history and other sources that identifies:

(a) The demographic groups of unemployment insurance claimants that experience the greatest difficulty finding new employment with wages comparable to their prelayoff earnings;

(b) The demographic groups of unemployment insurance claimants that have the highest rates of failure to find unemployment insurance covered-employment after a layoff;

(c) The demographic, industry, and employment characteristics of the unemployment insurance claimant population most closely associated with the exhaustion of an unemployment claim;

(d) The demographic, industry, and employment characteristics of those locked-out workers who are eligible for unemployment compensation under RCW 50.20.090; and

(e) The demographic groups which are defined as the "long-term unemployed" for purposes of this chapter. This listing shall be updated each year.

(2) The employment security department shall continue to fund the continuing wage and benefit history at a level necessary to produce the annual report described in subsection (1) of this section. [1998 c 245 § 102; 1987 c 284 § 4.]

Chapter 50.65 RCW

WASHINGTON SERVICE CORPS

Sections

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50.65.905	Effective date—1987 c 167.
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50.65.907	Short title—1993 sp.s. c 7.
50.65.908	Severability—1993 sp.s. c 7.

Washington conservation corps: Chapter 43.220 RCW.

50.65.010 Legislative findings. The legislature finds that:

(1) The unemployment rate in the state of Washington is the highest since the great depression, with a significantly higher rate among Washington youth.

(2) The policy of the state is to conserve and protect its natural and urban resources, scenic beauty, and historical and cultural sites.

(3) It is in the public interest to target employment projects to those activities which have the greatest benefit to the local economy.

(4) There are many unemployed young adults without hope or opportunities for entrance into the labor force who are unable to afford higher education and who create a serious strain on tax revenues in community services.

(5) The severe cutbacks in community and human services funding leave many local community service agencies without the resources to provide necessary services to those in need.

(6) The talent and energy of Washington's unemployed young adults are an untapped resource which should be challenged to meet the serious shortage in community services and promote and conserve the valuable resources of the state.

Therefore, the legislature finds it necessary and in the public interest to enact the Washington youth employment and conservation act. As part of this chapter, the Washington service corps is established as an operating program of the employment security department. The legislature desires to facilitate the potential of youth to obtain available job opportunities in both public and private agencies. [1987 c 167 § 1; 1983 1st ex.s. c 50 § 1.]

Reviser's note: Wherever the phrase "this act" occurred in RCW 50.65.010 through 50.65.130, it has been changed to "this chapter." "This act" [1983 1st ex.s. c 50] consists of this chapter and three uncodified sections.

50.65.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commissioner" means the commissioner of the employment security department.

(2) "Department" means the employment security department.

(3) "Enrollees" means those persons who have completed enrollment forms, completed a work agreement, and who have entered into the Washington service corps following the approval of the director of the supervising agency.

(4) "Corps" means the Washington service corps.

(5) "Work agreement" means the written agreement between the department, the enrollee and the supervising agency under this chapter for a period of up to eighteen months.

(6) "Supervising agencies" means those private or public agencies which develop and implement full-time service projects in which enrollees agree to participate.

(7) "Matching funds" means funding that is provided to the employment security department by agencies or individuals as financial support for a portion of the stipend or wage and benefits paid to the enrollee.

(8) "Financial support" means any thing of value contributed by agencies or individuals to the department for a youth employment project which is reasonably calculated to support directly the development and expansion of a particular program under this chapter and which represents an addition to any financial support previously or customarily provided by the individual or agency. "Financial support" includes, but is not limited to funds, equipment, facilities, and training.

(9) "Director" means the individual who shall serve as the director of the exchange. [1987 c 167 § 2; 1983 1st ex.s. c 50 § 2.]

50.65.030 Washington service corps established—Commissioner's duties. The Washington service corps is established within the employment security department. The commissioner shall:

(1) Appoint a director and other personnel as necessary to carry out the purposes of this chapter;

(2) Coordinate youth employment and training efforts under the department's jurisdiction and cooperate with other agencies or departments providing youth services to ensure that funds appropriated for the purposes of this chapter will not be expended to duplicate existing services, but will increase the services of youth to the state;

(3) The employment security department is authorized to place subgrants with other federal, state, and local governmental agencies and private agencies to provide youth employment projects and to increase the numbers of youth employed;

(4) Determine appropriate financial support levels by private business, community groups, foundations, public agencies, and individuals which will provide matching funds for enrollees in service projects under work agreements. The matching funds requirement may be waived for public agencies or reduced for private agencies;

(5) Recruit enrollees who are residents of the state unemployed at the time of application and are at least eighteen years of age but have not reached their twenty-sixth birthday;

(6) Recruit supervising agencies to host the enrollees in full-time service activities which shall not exceed eleven months' duration;

(7) Assist supervising agencies in the development of scholarships and matching funds from private and public

agencies, individuals, and foundations in order to support a portion of the enrollee's stipend and benefits;

(8) Develop general employment guidelines for placement of enrollees in supervising agencies to establish appropriate authority for hiring, firing, grievance procedures, and employment standards which are consistent with state and federal law;

(9) Match enrollees with appropriate public agencies and available service projects;

(10) Monitor enrollee activities for compliance with this chapter and compliance with work agreements;

(11) Assist enrollees in transition to employment upon termination from the programs, including such activities as orientation to the labor market, on-the-job training, and placement in the private sector;

(12) Establish a program for providing incentives to encourage successful completion of terms of enrollment in the service corps and the continuation of educational pursuits. Such incentives shall be in the form of educational assistance equivalent to two years of community or technical college tuition for eleven months of service. Educational assistance funding shall only be used for tuition, fees, and course-related books and supplies. Enrollees who receive educational assistance funding shall start using it within one year of their service completion and shall finish using it within four years of their service completion;

(13) Enter into agreements with the state's community and technical college system and other educational institutions or independent nonprofit agencies to provide special education in basic skills, including reading, writing, and mathematics for those participants who may benefit by participation in such classes. Participation is not mandatory but shall be strongly encouraged. [1993 c 302 § 1; 1987 c 167 § 3; 1983 1st ex.s. c 50 § 3.]

Effective date—1993 c 302: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 302 § 9.]

50.65.040 Washington service corps—Criteria for enrollment. The commissioner may select and enroll in the Washington service corps program any person who is at least eighteen years of age but has not reached their twenty-sixth birthday, is a resident of the state, and who is not for medical, legal, or psychological reasons incapable of service. Efforts shall be made to enroll youths who are economically, socially, physically, or educationally disadvantaged. The commissioner may prescribe such additional standards and procedures in consultation with supervising agencies as may be necessary in conformance with this chapter. In addition, the commissioner may select and enroll youth fourteen to seventeen years of age on special projects during the summer and at other times during the school year that may complement and support their school curriculum or that link and support service with learning. [1993 c 302 § 2; 1987 c 167 § 4; 1983 1st ex.s. c 50 § 4.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.050 Washington service corps—List of local youth employment opportunities. The commissioner shall use existing local offices of the employment security depart-

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ment or contract with independent, private nonprofit agencies in a local community to establish the Washington service corps program and to insure coverage of the program statewide. Each local office shall maintain a list of available youth employment opportunities in the jurisdiction covered by the local office and the appropriate forms or work agreements to enable the youths to apply for employment in private or public supervising agencies. [1987 c 167 § 5; 1983 1st ex.s. c 50 § 5.]

50.65.060 Washington service corps—Placement under work agreements. Placements in the Washington service corps shall be made in supervising agencies under work agreements as provided under this chapter and shall include those assignments which provide for addressing community needs and conservation problems and will assist the community in economic development efforts. Each work agreement shall:

(1) Demonstrate that the service project is appropriate for the enrollee's interests, skills, and abilities and that the project is designed to meet unmet community needs;

(2) Include a requirement of regular performance evaluation. This shall include clear work performance standards set by the supervising agency and procedures for identifying strengths, recommended improvement areas and conditions for probation or dismissal of the enrollee; and

(3) Include a commitment for partial financial support for the enrollee from private industry, public agencies, community groups, or foundations. The commissioner may establish additional standards for the development of placements for enrollees with supervising agencies and assure that the work agreements comply with those standards. This section shall not apply to conservation corps programs established by chapter 43.220 RCW.

Agencies of the state may use the Washington service corps for the purpose of employing youth qualifying under this chapter. [1993 c 302 § 3; 1987 c 167 § 6; 1983 1st ex.s. c 50 § 6.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.065 Work agreements—Requirements. For each enrollee, the work agreements, or combination of work agreements, developed under RCW 50.65.060 shall:

(1) Include a variety of experiences consisting of: Indoor activities; outdoor activities; and volunteer activities;

(2) Provide time for participation in a core training program common to all participants. [1993 c 302 § 4.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.070 Enrollees not to displace current workers. The assignment of enrollees shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits. Supervising agencies that participate in the program may not terminate, lay-off, or reduce the working hours of any employee for the purpose of utilizing an enrollee with funds available. In circumstances where substantial efficiencies or a public purpose may result, supervising agencies may utilize enrollees to carry out essen-

tial agency work or contractual functions without displacing current employees. [1983 1st ex.s. c 50 § 7.]

50.65.080 Commissioner to seek assistance for Washington service corps. The commissioner shall seek and may accept, on behalf of the Washington service corps, charitable donations of cash and other assistance including, but not limited to, equipment and materials if the donations are available for appropriate use for the purposes set forth in this chapter. [1993 c 302 § 6; 1983 1st ex.s. c 50 § 8.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.090 Authority for income-generating projects—Disposition of income. The commissioner may enter into income-generating projects with public or private organizations to further the purposes of this chapter. Moneys received from contractual projects qualifying under this chapter shall be deposited in the state general fund. This section does not apply to conservation corps programs established by chapter 43.220 RCW. [1983 1st ex.s. c 50 § 9.]

50.65.100 Work agreements—Nondiscrimination. All parties entering into work agreements under this chapter shall agree that they will not discriminate in the providing of any service on the basis of race, creed, ethnic origin, sex, age, or political affiliation. [1983 1st ex.s. c 50 § 10.]

50.65.110 Enrollees—Training and subsistence allowance—Medical insurance and medical aid—Notice of coverage. The compensation received shall be considered a training and subsistence allowance. Comprehensive medical insurance, and medical aid shall be paid for the enrollees in the service corps by the commissioner in accordance with the standards and limitations of the appropriation provided for this chapter. The department shall give notice of coverage to the director of labor and industries after enrollment. The department shall not be deemed an employer of an enrollee for any other purpose.

Other provisions of law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, old age health and survivor's insurance, state retirement plans, and vacation leave do not apply to enrollees. [1987 c 167 § 7; 1985 c 230 § 6; 1983 1st ex.s. c 50 § 11.]

Severability—1985 c 230: See RCW 43.220.902.

50.65.120 Exemption of enrollees from unemployment compensation coverage. The services of enrollees placed with supervising agencies described in chapter 50.44 RCW are exempt from unemployment compensation coverage under RCW 50.44.040(5) and the enrollees shall be so advised by the department. [1983 1st ex.s. c 50 § 12.]

50.65.130 Federal and private sector funds and grants. In addition to any other power, duty, or function described by law or rule, the employment security department, through the program established under this chapter, may accept federal or private sector funds and grants and implement such programs relating to community services or employment programs and may enter into contracts respect-

ing such funds or grants. The department may also use funds appropriated for the purposes of this chapter as matching funds for federal or private source funds to accomplish the purposes of this chapter. The Washington service corps shall be the sole recipient of federal funds for youth employment and conservation corps programs. [1987 c 167 § 8; 1983 1st ex.s. c 50 § 13.]

50.65.138 Use of funds for enrollees and projects in distressed areas—Service corps. Sixty percent of the general funds available to the service corps program shall be for enrollees from distressed areas and for projects in distressed areas. A distressed area shall mean:

(1) A county which has an unemployment rate which is twenty percent above the state average for the immediately preceding three years;

(2) A community which has experienced sudden and severe loss of employment; or

(3) An area within a county which area:

(a) Is composed of contiguous census tracts;

(b) Has a minimum population of five thousand persons;

(c) The median household income is at least thirty-five percent below the county's median household income, as determined from data collected for the preceding United States ten-year census; and

(d) Has an unemployment rate which is at least forty percent higher than the county's unemployment rate. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations authorizing action grants for economic development and neighborhood revitalization projects. [1987 c 167 § 10.]

50.65.143 Limitation on use of funds for administration—Service corps. (1) Not more than fifteen percent of the funds available for the service corps shall be expended for administrative costs. For the purposes of this chapter, "administrative costs" include, but are not limited to, program planning and evaluation, budget development and monitoring, personnel management, contract administration, administrative payroll, development of program reports, and administrative office space costs and utilities.

(2) The fifteen percent limitation does not include costs for any of the following: Program support activities such as direct supervision of enrollees and corpsmembers, counseling, education and job training, equipment, advisory board expenses, and extraordinary recruitment and placement procedures necessary to fill project positions.

(3) The total for all items included under subsection (1) of this section and excluded under subsection (2) of this section shall not: (a) Exceed thirty percent of the appropriated funds available during a fiscal biennium for the service and conservation corps programs; or (b) result in an average cost per enrollee or corpsmember from general funds exceeding seven thousand dollars in the 1987-89 biennium and in succeeding biennia as adjusted by inflation factors established by the office of financial management for state budgeting purposes. The test included in (a) and (b) of this subsection are in the alternative, and it is only required that one of the tests be satisfied. [1987 c 167 § 11.]

50.65.150 Washington service corps scholarship account—Created—Use. The Washington service corps scholarship account is created in the custody of the state treasurer. The account shall consist of a portion of Washington service corps funding, deposited by the commissioner, in an amount sufficient to provide for the future awarding of educational assistance grants described in RCW 50.65.030. Expenditures from the account may be used only for educational assistance grants described in RCW 50.65.030. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. All earnings of investments of surplus balances in the account shall be deposited to the treasury income account created in RCW 43.84.092. [1993 c 302 § 5.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.200 Washington serves—Findings—Declaration. The legislature finds that:

(1) Budget constraints are causing severe gaps and reductions in vital services to local communities and citizens. Some of these gaps in services can be filled by citizen volunteers through an organized program to recruit and place volunteers and to expand opportunities for volunteers to serve their communities;

(2) The federal government is proposing expansion of national services programs. These programs may require significant matching resources from states. State funds supporting the Washington serves program can serve as a required matching source to leverage additional federal national service resources;

(3) Washington state has, through the Washington service corps, successfully offered service opportunities and meaningful work experience to young adults between the ages of eighteen and twenty-five years;

(4) The need exists to expand full-time volunteer opportunities to citizens age twenty-one and over, to encourage senior citizens, college graduates, professional and technically skilled persons, and other adult citizens, to contribute their critical expertise, experience, labor, and commitment to meeting the needs of their communities;

(5) It is appropriate and in the public's interest for Washington state to create opportunities for citizens to engage in full-time, meaningful volunteer service in governmental or private nonprofit agencies, institutions, programs, or activities that address the social, economic, educational, civic, cultural, or environmental needs of local communities;

(6) Through volunteer service, citizens apply their skills and knowledge to the resolution of critical problems or meeting unmet needs, gain valuable experience, refine or develop new skills, and instill a sense of civic pride and commitment to their community;

(7) There is a need to coordinate state and federally funded volunteer service programs that provide living allowances and other benefits to volunteers to maximize the benefits to volunteers and the organizations in which they serve.

It is therefore the legislature's desire to expand full-time volunteer opportunities for citizens age twenty-one and over and to provide appropriate incentives to those who serve.

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Such a program should be implemented statewide and coordinated across programs. [1993 sp.s. c 7 § 1.]

50.65.210 Washington serves—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commissioner" means the commissioner of the employment security department.

(2) "*Council" means the Washington council on volunteerism and citizen service authorized by chapter 43.150 RCW.

(3) "Department" means the employment security department.

(4) "Volunteer" means a person at least twenty-one years of age who, upon application and acceptance into the program, is placed in a governmental or private, nonprofit organization to perform full-time service for the benefit of the community, and who receives a living allowance and other benefits as authorized under this chapter. [1993 sp.s. c 7 § 2.]

***Reviser's note:** RCW 43.150.060, which created the Washington state council on volunteerism and citizen service, was repealed by 1995 c 269 § 2302, effective July 1, 1995.

50.65.220 Washington serves—Program—Created—Procedure—Intent. There is hereby created within the employment security department a program for full-time community service that shall be known and referred to as the Washington serves program. The department shall recruit, train, place, and evaluate applicants to the program. The department may accept applications and enter into agreements or contracts with any governmental or private nonprofit organization appropriate for placement of volunteers under this program. The commissioner, after consultation with the council, may adopt rules as needed to carry out the intent and purposes of this program. It is the intent of the legislature that the commissioner coordinate this program with all volunteer service programs, whether funded with state or federal dollars, in order to maximize the benefits to volunteers and the communities served under the program. It is also the legislature's intent that to the extent that state funds are paid directly to persons that participate in the program, whether to reimburse, support, assist, or provide other direct payment, no volunteer may have such reimbursement, support, assistance, or other payment reduced or withheld for having served in the program. [1993 sp.s. c 7 § 3.]

50.65.230 Washington serves—Applicants—Eligibility. (1) Applicants to the Washington serves program shall be at least twenty-one years of age and a resident of Washington state.

(2) Applicants may apply to serve for a period of service of one year, except that volunteers may serve for periods of service of less than one year if it is determined by the commissioner, on an individual basis, that a period of service of less than one year is necessary to meet a critical scarce skill or necessary to enable a person or organization to participate in the program.

(3) Volunteers may reapply for periods of service totaling not more than two additional years.

(4) Applicants to the program shall be committed to providing full-time service to the community. [1993 sp.s. c 7 § 4.]

50.65.240 Washington serves—Disqualification for Washington service corps participation. No individual may participate in the Washington serves program created by chapter 7, Laws of 1993 sp. sess., if the person has previously participated for six months or longer in the Washington service corps within the last three years. [1993 c 302 § 10.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.250 Washington serves—Volunteers—Selection—Placement. (1) Program volunteers shall be selected from among qualified individuals submitting applications for full-time service at such time, in such form, and containing such information as may be necessary to evaluate the suitability of each individual for service, and available placements. The commissioner or the commissioner's designee shall review the application of each individual who applies in conformance with selection criteria established by the commissioner after consultation with the council, and who, on the basis of the information provided in the application, is determined to be suitable to serve as a volunteer under the Washington serves program.

(2) Within available funds, volunteers may be placed with any public or private nonprofit organization, program, or project that qualifies to accept program volunteers according to the rules and application procedures established by the commissioner. Work shall benefit the community or state at-large and may include but is not limited to programs, projects, or activities that:

(a) Address the problems of jobless, homeless, hungry, illiterate, or functionally illiterate persons, and low-income youths;

(b) Provide support and a special focus on those project activities that address the needs of the unemployed and those in need of job training or retraining;

(c) Address significant health care problems, including services to homeless individuals and other low-income persons, especially children, through prevention and treatment;

(d) Meet the health, education, welfare, or related needs of low-income persons, particularly children and low-income minority communities;

(e) Provide care or rehabilitation services to the mentally ill, developmentally disabled, or other persons with disabilities;

(f) Address the educational and education-related needs of children, youth, families, and young adults within public educational institutions or related programs;

(g) Address alcohol and drug abuse prevention, education, and related activities; and

(h) Seek to enhance, improve, or restore the environment or that educate or advocate for a sustainable environment.

(3) Every reasonable effort shall be made to place participants in programs, projects, or activities of their choice if the agencies, programs, or activities are consistent with the intent and purposes of the Washington serves program, if there is mutual agreement between the agency, program, or activity and the volunteer, and if the volunteer's service is consistent

with the intent and purpose of the program and would benefit the community or the state as a whole. [1993 sp.s. c 7 § 5.]

50.65.260 Washington serves—Volunteers—Support. (1) Volunteers accepted into the Washington serves program and placed in an approved agency, program, or activity, shall be provided a monthly subsistence allowance in an amount determined by the commissioner taking into consideration the allowance given to VISTA, Washington service corps, and other similar service programs. For those persons who qualify and are granted a deferment of federal student loan payments while serving in the program, the rate of compensation shall be equal to but not greater than the monthly subsistence allowance granted Volunteers In Service To America (VISTA) serving in this state, as determined by the national ACTION agency or its successor, in accordance with section 105(b)(2) of the Domestic Volunteer Service Act of 1973, P.L. 93-113, as amended.

(2) The commissioner or the commissioner's designee shall, within available funds, ensure that each volunteer has available support to enable the volunteer to perform the work to which the volunteer is assigned. Such support may include, but is not limited to, reimbursement for travel expenses, payment for education and training expenses, including preservice and on-the-job training necessary for the performance of duties, technical assistance, and other support deemed necessary and appropriate.

(3) At the end of each volunteer's period of service of not less than one year, each volunteer may receive a postservice stipend for each month of completed service in an amount determined by the commissioner. The postservice stipend for those persons who qualify and are granted a deferment of federal student loan payments while serving in this program shall be an amount equal to but not greater than the amount or rate determined by the national ACTION agency or its successor, in accordance with section 105(b)(2) of the Domestic Volunteer Service Act of 1973, P.L. 93-113 as amended, for Volunteers In Service To America (VISTA), who are providing services in this state. Volunteers under the Washington serves program may accrue the stipend for each month of their service period of not less than one year, including any month during which they were in training. The commissioner or the commissioner's designee may, on an individual basis, make an exception to provide a stipend to a volunteer who has served less than one year.

(4) Stipends shall be payable to the volunteer only upon completion of the period of service. Under circumstances determined by the commissioner, the stipend may be paid on behalf of the volunteer to members of the volunteer's family or others designated by the volunteer. [1993 sp.s. c 7 § 6.]

50.65.270 Washington serves—Volunteers—Medical benefits—Benefit limits. Within available funds, medical aid coverage under chapter 51.36 RCW and medical insurance shall be provided to all volunteers under this program. The department shall give notice of medical aid coverage to the director of labor and industries upon acceptance of the volunteer into the program. The department shall not be deemed an employer of any volunteer under the Washington serves program for any other purpose. Other provisions of

law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, old age, health and survivor's insurance, state retirement plans, and vacation leave do not apply to volunteers under this program. [1993 sp.s. c 7 § 7.]

50.65.280 Washington serves—Displacement of current workers prohibited. The assignment of volunteers under the Washington serves program shall not result in the displacement of currently employed workers, including partial displacement such as would result from a reduction in hours of nonovertime work, wages, or other employment benefits. Participating agencies, programs, or activities may not terminate, lay off, or reduce the working hours of any employee for the purpose of using volunteers under the Washington serves program. In circumstances where substantial efficiencies or a public purpose may result, participating agencies may use volunteers to carry out essential agency work or contractual functions without displacing current employees. [1993 sp.s. c 7 § 8.]

50.65.290 Washington serves—Volunteers—Unemployment compensation coverage limited. The services of volunteers placed with participating agencies described in chapter 50.44 RCW are not eligible for unemployment compensation coverage. Each volunteer shall be so advised by the commissioner or the commissioner's designee. [1993 sp.s. c 7 § 9.]

50.65.300 Washington serves—Volunteers—Assistance to defer student loan payments. The commissioner or the commissioner's designee may assist any volunteer serving full-time under the Washington serves program in obtaining a service deferment of federally funded student loan payments during his or her period of service. [1993 sp.s. c 7 § 10.]

50.65.310 Washington serves—Volunteers—Subsequent development of skills and experience—Recognition. The commissioner or the commissioner's designee may provide or arrange for educational, vocational, or job counseling for program volunteers at the end of their period of service to (1) encourage volunteers to use the skills and experience which they have derived from their training and service, and (2) promote the development of appropriate opportunities for the use of such skills and experience, and the placement therein of such volunteers. The commissioner or the commissioner's designee may also assist volunteers in developing a plan for gainful employment.

The commissioner shall provide for an appropriate means of recognition or certification of volunteer service. [1993 sp.s. c 7 § 11.]

50.65.320 Washington serves—Service placement—Work agreements—Contracts—Rules for agencies—Financial support for organizations. The executive administrator of the Washington serves program shall recruit and develop service placements and may enter into work agreements or contracts as needed to implement the Washington serves program. The commissioner, after consultation with

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the council, may adopt rules for participating agencies which rules may include, but are not limited to: Supervision of volunteers, reasonable work space or other working environment conditions, ongoing training, the handling of grievances or disputes, performance evaluations, frequency of agency contacts, and liability insurance coverage. The commissioner shall determine financial support levels for organizations receiving volunteer placements that will provide matching funds for enrollees in service projects under work agreements. [1993 sp.s. c 7 § 12.]

50.65.330 Washington serves—Gifts, grants, endowments—Matching funds. The department may receive such gifts, grants, and endowments from private or public sources that may be made from time to time, in trust or otherwise, for the use and benefit of the Washington serves program and spend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

The department may also use funds appropriated for the purposes of this chapter as matching funds for federal or private source funds to accomplish the purposes of this chapter. [1993 sp.s. c 7 § 13.]

50.65.901 Conflict with federal requirements—1983 1st ex.s. c 50. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1983 1st ex.s. c 50 § 16.]

50.65.902 Severability—1983 1st ex.s. c 50. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 50 § 17.]

50.65.903 Conflict with federal requirements—1987 c 167. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this chapter is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1987 c 167 § 12.]

50.65.904 Severability—1987 c 167. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 167 § 13.]

50.65.905 Effective date—1987 c 167. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its

existing public institutions, and shall take effect June 30, 1987. [1987 c 167 § 15.]

50.65.906 Conflict with federal requirements—1993 sp.s. c 7. If any part of this act is found to be in conflict with federal requirements which are prescribed conditions to the receipt of federal funds or participation in any federal program, such conflicting part of this act is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of the act. Rules adopted pursuant to this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1993 sp.s. c 7 § 14.]

50.65.907 Short title—1993 sp.s. c 7. Sections 1 through 13 of this act may be known and cited as the Washington serves act. [1993 sp.s. c 7 § 15.]

50.65.908 Severability—1993 sp.s. c 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 sp.s. c 7 § 18.]

Chapter 50.70 RCW

PROGRAMS FOR DISLOCATED FOREST PRODUCTS WORKERS

Sections

50.70.030	Employment opportunities—Benefits.
50.70.040	Recruitment—Career orientation services—Career counseling.
50.70.050	Department of natural resources duties.
50.70.900	Severability—1991 c 315.
50.70.901	Conflict with federal requirements—1991 c 315.
50.70.902	Effective date—1991 c 315.

Community college program for dislocated forest products workers: RCW 28B.50.259.

Emergency mortgage and rental assistance program—Rural natural resources impact areas—Grants and loans: RCW 43.63A.610 through 43.63A.640.

Enrollment of persons in timber impact areas in basic health plan: RCW 70.47.115.

Skagit river salmon recovery plan: RCW 77.95.140.

50.70.030 Employment opportunities—Benefits. (1) Employment opportunities under the program shall consist of activities that improve the value of state lands and waters. These activities may include, but are not limited to, thinning and precommercial thinning, pruning, slash removal, reforestation, fire suppression, trail maintenance, maintenance of recreational facilities, dike repair, development and maintenance of tourist facilities, and stream enhancement.

(2) Enrollees in the program shall receive medical and dental benefits as provided under chapter 41.05 RCW, but are exempt from the provisions of chapter 41.06 RCW. Each week, enrollees shall not work more than thirty-two hours in this program and must participate in eight hours of career orientation as established in RCW 50.70.040. Participation in the program is limited to six months. [1991 c 315 § 7.]

Intent—1991 c 315: See note following RCW 28B.50.030.

50.70.040 Recruitment—Career orientation services—Career counseling. (1) The department shall recruit program applicants and provide employment opportunities by:

(a) Notifying dislocated forest products workers who are receiving unemployment benefits, or dislocated forest products workers who have exhausted unemployment benefits, of their eligibility for the program.

(b) Establishing procedures for dislocated forest products workers to apply to the program.

(c) Developing a pool of workers eligible to enroll in the program.

(d) Contracting with the department of natural resources to provide employment opportunities for not less than two hundred eligible enrollees.

(2) The department shall provide career orientation services to enrollees in the program. The career orientation services shall include, but are not limited to, counseling on employment options and assistance in accessing retraining programs, and assistance in accessing social service programs.

(3) The department shall provide at least eight hours of career counseling each week for program enrollees. [1991 c 315 § 8.]

Intent—1991 c 315: See note following RCW 28B.50.030.

50.70.050 Department of natural resources duties. (1) The department of natural resources shall enroll candidates in the program from a pool of eligible workers developed by the department.

(2) The department of natural resources shall provide compensation for enrollees. [1991 c 315 § 9.]

Intent—1991 c 315: See note following RCW 28B.50.030.

50.70.900 Severability—1991 c 315. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 315 § 31.]

50.70.901 Conflict with federal requirements—1991 c 315. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1991 c 315 § 32.]

50.70.902 Effective date—1991 c 315. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 21, 1991], except for section 4 of this act, which shall take effect July 1, 1991. [1991 c 315 § 33.]

**Chapter 50.72 RCW
YOUTHBUILD PROGRAM**

Sections

50.72.010	Legislative findings.
50.72.020	Definitions.
50.72.030	Commissioner's duties—Education and employment training grants.
50.72.040	Education and employment training grants—Eligible activities.
50.72.050	Participation time limits—Educational services and activities requirement.
50.72.060	Grant applications—Requirements.
50.72.070	Grant applicants—Information required—Evaluation reports.

50.72.010 Legislative findings. (1) The legislature finds that there is a need to:

(a) Expand the supply of permanent affordable housing for homeless individuals, low and very low-income persons, and special need populations by utilizing the energies and talents of economically disadvantaged youth;

(b) Provide economically disadvantaged youth with opportunities for meaningful work and service to their communities in helping to meet the housing needs of homeless individuals, low and very low-income persons, and special need populations;

(c) Enable economically disadvantaged youth to obtain the education and employment skills necessary to achieve economic self-sufficiency; and

(d) Foster the development of leadership skills and commitment to community development among youth in designated community empowerment zones.

(2) The legislature declares that the purpose of the Washington youthbuild program is to:

(a) Help disadvantaged youth who have dropped out of school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in designated community empowerment zones; and

(b) Provide funding assistance to entities implementing programs that provide comprehensive education and skills training programs designed to lead to self-sufficiency for economically disadvantaged youth. [1994 sp.s. c 3 § 1.]

50.72.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a public or private nonprofit organization agency eligible to provide education and employment training under federal or state employment training programs.

(2) "Commissioner" means the commissioner of employment security.

(3) "Department" means the employment security department.

(4) "Low income" has the same meaning as in RCW 43.185A.010.

(5) "Participant" means an individual that:

(a) Is sixteen to twenty-four years of age, inclusive;

(b) Is or is a member of a very low-income household; and

(c) Is neither attending any school nor subject to a compulsory attendance law and who has not received a secondary

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school diploma or a certificate of equivalency for such diploma.

(6) "Very low income" means a person or household whose income is at or below fifty percent of the median family income, adjusted for household size, for the county where the household is located.

(7) "Youthbuild" means any program that provides disadvantaged youth with opportunities for employment, education, leadership development, entrepreneurial skills development, and training in the construction or rehabilitation of housing for special need populations, very low-income households, or low-income households. [1994 sp.s. c 3 § 2.]

50.72.030 Commissioner's duties—Education and employment training grants. The Washington youthbuild program is established within the department. The commissioner, in cooperation and consultation with the director of the department of community, trade, and economic development, shall:

(1) Make grants, up to the lesser of three hundred thousand dollars or twenty-five percent of the total costs of the youthbuild activities, to applicants eligible to provide education and employment training under federal or state employment training programs, for the purpose of carrying out a wide range of multidisciplinary activities and services to assist economically disadvantaged youth under the federal opportunities for youth: Youthbuild program (106 Stat. 3723; 42 U.S.C. Sec. 8011), or locally developed youthbuild-type programs for economically disadvantaged youth; and

(2) Coordinate youth employment and training efforts under the department's jurisdiction and cooperate with other agencies and departments providing youth services to ensure that funds appropriated for the purposes of this chapter will be used to supplement funding from federal, state, local, or private sources. [1994 sp.s. c 3 § 3.]

50.72.040 Education and employment training grants—Eligible activities. (1) Grants made under this chapter shall be used to fund an applicant's activities to implement a comprehensive education and employment skills training program.

(2) Activities eligible for assistance under this chapter include:

(a) Education and job skills training services and activities that include:

(i) Work experience and skills training, coordinated to the maximum extent feasible, with preapprenticeship and apprenticeship programs in construction and rehabilitation trades;

(ii) Services and activities designed to meet the educational needs of participants, including basic skills instruction and remedial education, bilingual education for participants with limited-English proficiency, secondary education services and activities designed to lead to the attainment of a high school diploma or its equivalent, and counseling and assistance in attaining postsecondary education and required financial aid;

(b) Counseling services and related activities;

(c) Activities designed to develop employment and leadership skills;

(d) Support services and need-based stipends necessary to enable the participant to participate in the program and to assist participants through support services in retaining employment;

(e) Wage stipends and benefits provided to participants; and

(f) Administrative costs of the applicant, not to exceed five percent of the amount of assistance provided under this chapter. [1994 sp.s. c 3 § 4.]

50.72.050 Participation time limits—Educational services and activities requirement. (1) An individual selected as a participant in the youthbuild program under this chapter may be offered full-time participation for a period of not less than six months and not more than twenty-four months.

(2) An applicant's program that is selected for funding under this chapter shall be structured so that fifty percent of the time spent by the participants in the youthbuild program is devoted to educational services and activities, such as those outlined in RCW 50.72.040. [1994 sp.s. c 3 § 5.]

50.72.060 Grant applications—Requirements. (1) An application for a grant under this chapter shall be submitted by the applicant in such form and in accordance with the requirements as determined by the commissioner.

(2) The application for a grant under this chapter shall contain at a minimum:

(a) The amount of the grant request and its proposed use;

(b) A description of the applicant and a statement of its qualifications, including a description of the applicant's past experience with housing rehabilitation or construction with youth and youth education and employment training programs, and its relationship with local unions and apprenticeship programs and other community groups;

(c) A description of the proposed site for the program;

(d) A description of the educational and job training activities, work opportunities, and other services that will be provided to participants;

(e) A description of the proposed construction or rehabilitation activities to be undertaken and the anticipated schedule for carrying out such activities;

(f) A description of the manner in which eligible participants will be recruited and selected, including a description of arrangements which will be made with federal or state agencies, community-based organizations, local school districts, the courts of jurisdiction for status and youth offenders, shelters for homeless individuals and other agencies that serve homeless youth, foster care agencies, and other appropriate public and private agencies;

(g) A description of the special outreach efforts that will be undertaken to recruit eligible young women, including young women with dependent children;

(h) A description of how the proposed program will be coordinated with other federal, state, local, and private resources and programs, including vocational, adult, and bilingual education programs, and job training programs;

(i) Assurances that there will be a sufficient number of adequately trained supervisory personnel in the program who have attained the level of journeyman or have served an

apprenticeship through the Washington state apprenticeship training council;

(j) A description of the applicant's relationship with building contractor groups and trade unions regarding their involvement in training, and the relationship of the youth-build program with established apprenticeship and training programs;

(k) A description of activities that will be undertaken to develop the leadership skills of the participants;

(l) A description of the commitments for any additional resources to be made available to the local program from the applicant, from recipients of other federal, state, local, or private sources; and

(m) Other factors the commissioner deems necessary. [1994 sp.s. c 3 § 6.]

50.72.070 Grant applicants—Information required—Evaluation reports. (1) An applicant selected for funding under this chapter shall provide the department information on program and participant accomplishments. The information shall be provided in progress and final reports as requested by the department.

(2) A final evaluation report shall be prepared on individual programs at the time of their completion. The final evaluation report shall include, but is not limited to, information on the effectiveness of the program, the status of program participants, and recommendations on program administration at the state and local level. [1998 c 245 § 103; 1994 sp.s. c 3 § 7.]

Chapter 50.98 RCW CONSTRUCTION

Sections

50.98.010	Saving clause—1945 c 35.
50.98.020	Appointments and regulations continued.
50.98.030	Actions commenced under prior laws.
50.98.040	Acts repealed.
50.98.050	Conflicting acts repealed.
50.98.060	Repealed acts not reenacted.
50.98.070	Separability of provisions—1945 c 35.
50.98.080	Effective date—1945 c 35.
50.98.100	Base year wages to include remuneration paid for previously uncovered services.
50.98.110	Compliance with federal unemployment tax act—Internal references—Interpretation.

50.98.010 Saving clause—1945 c 35. If any provisions of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby. [1945 c 35 § 184; no RRS.]

50.98.020 Appointments and regulations continued. The repeal of any acts or parts of acts by this act shall not affect the appointment or employment of any individual or salary, wages, compensation, powers or duties relating to such individual which would continue in effect except for such repeal. Rules and regulations adopted pursuant to the provisions of any acts or parts of acts repealed by this act consistent with the provisions of this act are not affected by such repeal and are hereby continued in full force and effect. [1945 c 35 § 185; no RRS.]

50.98.030 Actions commenced under prior laws. Any action or proceeding had or commenced in any civil or criminal cause prior to the effective date of this act may be prosecuted and continued with the same effect and under the same provisions of the law in effect at the time the action or proceeding was had or commenced: PROVIDED, That no appeal taken subsequent to the effective date of this act will be effective or valid unless there is compliance with the requirements of this act relating to appeals. [1945 c 35 § 186; no RRS.]

50.98.040 Acts repealed. The following acts and parts of acts relating to unemployment compensation are hereby repealed: Chapter 162, Session Laws of 1937; chapter 12, Session Laws of 1939; chapter 214, Session Laws of 1939; section 6 of chapter 201, Session Laws of 1941; chapter 253, Session Laws of 1941; chapter 65, Session Laws of 1943; chapter 127, Session Laws of 1943; chapter 226, Session Laws of 1943. [1945 c 35 § 188; no RRS.]

50.98.050 Conflicting acts repealed. All acts or parts of acts in conflict with or in derogation of this act or any part of this act are hereby repealed insofar as the same are in conflict with or in derogation of this act or any part thereof. [1945 c 35 § 189; no RRS.]

50.98.060 Repealed acts not reenacted. The repeal of any acts or parts of acts hereby shall not be construed to reenact or revive any act or parts of acts repealed or superseded by the acts or parts of acts hereby repealed. [1945 c 35 § 190; no RRS.]

50.98.070 Separability of provisions—1945 c 35. If any section, sentence, clause or phrase of this act should be held to be invalid or unconstitutional the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1945 c 35 § 191; no RRS.]

Severability—1951 c 265: "If any section, sentence, clause or word of this act shall be held unconstitutional, the invalidity of such section, sentence, clause or word shall not affect the validity of any other portion of this act, it being the intent of this legislative assembly to enact the remainder of this act notwithstanding such part so declared unconstitutional should or may be so declared." [1951 c 265 § 14.]

50.98.080 Effective date—1945 c 35. An emergency exists and this act is necessary for the preservation of the public peace, health, safety, and welfare and shall take effect on the first day of July, 1945. [1945 c 35 § 192; no RRS.]

50.98.100 Base year wages to include remuneration paid for previously uncovered services. (1) Effective with benefit years beginning on and after January 1, 1978, base year wages shall include remuneration paid for previously uncovered services: PROVIDED, That the maximum benefits payable to an individual as computed for the benefit year will be reduced to the extent that benefits were paid on the basis of identical calendar quarters of the previously uncovered services with respect to a claim filed by the individual under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974. Benefits will be paid, subject to the

provisions of this title, based upon the previously uncovered services to the extent that the unemployment compensation trust fund will be reimbursed for the cost thereof by the federal government under section 121 of PL 94-566 and regulations published by the secretary of labor relating thereto.

(2) For the purposes of this section, the term "previously uncovered services" means services performed before January 1, 1978, which are not employment as defined in Title 50 RCW at any time during the one year period ending December 31, 1975, and which:

(a) Is agricultural labor as defined in RCW 50.04.150 and covered by RCW 50.04.155 or domestic services as defined in and covered by RCW 50.04.160; or

(b) Is service performed by an employee of this state or a political subdivision of this state newly covered by chapter 292, Laws of 1977 ex. sess. or by an employee of a nonprofit educational institution which is not an institution of higher education as provided in RCW 50.44.040(3).

(3) Any nonprofit organization or governmental entity electing to make payments in lieu of contributions shall not be liable to make payments with respect to benefits paid any individual whose base year wages include wages for previously uncovered services as defined in subsection (2)(a) and (b) of this section to the extent that the unemployment compensation fund is reimbursed for the benefits under section 121 of PL 94-566.

(4) Benefits paid any individual whose base year wages include wages for previously uncovered services as defined in subsection (2)(a) and (b) of this section shall not be charged to the experience rating account of any contribution paying employer to the extent that the unemployment compensation fund is reimbursed for the benefits under section 121 of PL 94-566. [1977 ex.s. c 292 § 20.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.98.110 Compliance with federal unemployment tax act—Internal references—Interpretation. Chapter 292, Laws of 1977 ex. sess. has been enacted to meet the requirements imposed by the federal unemployment tax act as amended by PL 94-566. Internal references in any section of chapter 292, Laws of 1977 ex. sess. to the provisions of that act are intended only to apply to those provisions as they existed as of the effective date of chapter 292, Laws of 1977 ex. sess.

In view of the importance of compliance of chapter 292, Laws of 1977 ex. sess. with the federal unemployment tax act, any ambiguities contained herein should be resolved in a manner consistent with the provisions of that act. Considerable weight has been given to the commentary contained in that document entitled "Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976 PL 94-566", published by the United States department of labor, employment and training administration, and that commentary should be referred to when interpreting the provisions of chapter 292, Laws of 1977 ex. sess. [1977 ex.s. c 292 § 21.]

***Reviser's note:** For the effective dates of 1977 ex.s. c 292, see note following RCW 50.04.116.

Title 51

INDUSTRIAL INSURANCE

Chapters

- 51.04** General provisions.
- 51.08** Definitions.
- 51.12** Employments and occupations covered.
- 51.14** Self-insurers.
- 51.16** Assessment and collection of premiums—Pay-rolls and records.
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Autopsies in industrial deaths: RCW 68.50.103.

Civil defense workers, compensation for: Chapter 38.52 RCW.

Constitutional protection of employees: State Constitution Art. 2 § 35.

Department of labor and industries: Chapter 43.22 RCW.

Ferry system employees in extrahazardous employment: RCW 47.64.070.

Fisheries patrol officers, compensation insurance and medical aid: RCW 77.12.262.

Labor regulations, generally: Title 49 RCW.

Lien of employees for contributions to benefit plans: Chapter 60.76 RCW.

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Supervisor of industrial insurance: RCW 43.22.020.

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Chapter 51.04 RCW

GENERAL PROVISIONS

Sections

- 51.04.010 Declaration of police power—Jurisdiction of courts abolished.
- 51.04.020 Powers and duties.
- 51.04.030 Medical aid—Rules—Maximum fees—Records and bill payment.
- 51.04.040 Subpoena power of director—Enforcement by superior court.
- 51.04.050 Physician or licensed advanced registered nurse practitioner's testimony not privileged.
- 51.04.060 No evasion of benefits or burdens.
- 51.04.070 Minor worker is sui juris—Guardianship expense.
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51.04.010 Declaration of police power—Jurisdiction of courts abolished. The common law system governing the remedy of workers against employers for injuries received in employment is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the worker and that little only at large expense to the public. The remedy of the worker has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker. The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this title; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided. [1977 ex.s. c 350 § 1; 1972 ex.s. c 43 § 1; 1961 c 23 § 51.04.010. Prior: 1911 c 74 § 1; RRS § 7673.]

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

enter into similar agreements with the provinces of Canada; and

(10) Designate a medical director who is licensed under chapter 18.57 or 18.71 RCW. [2000 c 5 § 14; 1994 c 164 § 24; 1977 c 75 § 77; 1963 c 29 § 1; 1961 c 23 § 51.04.020. Prior: 1957 c 70 § 3; prior: (i) 1921 c 182 § 9; 1911 c 74 § 24; RRS § 7703. (ii) 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

Intent—Purpose—2000 c 5: See RCW 48.43.005.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

Severability—1963 c 29: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 29 § 2.]

Assignment of wage claims: RCW 49.48.040.

Electricians, installations: Chapters 19.28, 19.29 RCW.

Farm labor contractors: Chapter 19.30 RCW.

Health and safety, underground workers: Chapter 49.24 RCW.

Minimum wage act: Chapter 49.46 RCW.

Seasonal labor disputes: Chapter 49.40 RCW.

Washington Industrial Safety and Health Act: Chapter 49.17 RCW.

51.04.030 Medical aid—Rules—Maximum fees—Records and bill payment. (Expires June 30, 2007.) (1)

The director shall supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, including chiropractic care, and including care provided by licensed advanced registered nurse practitioners, to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: PROVIDED, That the medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule after consultation with the workers' compensation advisory committee established in RCW 51.04.110: PROVIDED FURTHER, That the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: AND PROVIDED FURTHER, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as statewide access to quality service is maintained for injured workers.

(2) The director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, physicians' assistants as defined

in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to injured workers, whether aliens or other injured workers, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(16).

(3) The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it. [2004 c 65 § 1; 1998 c 230 § 1; 1997 c 325 § 2; 1994 c 164 § 25. Prior: 1993 c 515 § 1; 1993 c 159 § 1; 1989 c 189 § 1; 1986 c 200 § 8; 1980 c 14 § 1; prior: 1977 ex.s. c 350 § 2; 1977 ex.s. c 239 § 1; 1971 ex.s. c 289 § 74; 1961 c 23 § 51.04.030; prior: (i) 1917 c 28 § 6; RRS § 7715. (ii) 1919 c 129 § 3; 1917 c 29 § 7; RRS § 7716. (iii) 1923 c 136 § 10; RRS § 7719.]

Report to legislature—2004 c 65: "By December 1, 2006, the department of labor and industries shall report to the senate committee on commerce and trade and the house committee on commerce and labor, or successor committees, on the implementation of this act, including but not limited to the effects of this act on injured worker outcomes, claim costs, and disputed claims." [2004 c 65 § 17.]

Effective date—2004 c 65: "This act takes effect July 1, 2004." [2004 c 65 § 18.]

Expiration date—2004 c 65: "This act expires June 30, 2007." [2004 c 65 § 19.]

Severability—2004 c 65: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 65 § 20.]

51.04.030 Medical aid—Rules—Maximum fees—Records and bill payment. (Effective June 30, 2007.) (1)

The director shall supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, and including chiropractic care, to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such

care and treatment: PROVIDED, That the medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule after consultation with the workers' compensation advisory committee established in RCW 51.04.110: PROVIDED FURTHER, That the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: AND PROVIDED FURTHER, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as statewide access to quality service is maintained for injured workers.

(2) The director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to injured workers, whether aliens or other injured workers, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(16).

(3) The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it. [1998 c 230 § 1; 1997 c 325 § 2; 1994 c 164 § 25. Prior: 1993 c 515 § 1; 1993 c 159 § 1; 1989 c 189 § 1; 1986 c 200 § 8; 1980 c 14 § 1; prior: 1977 ex.s. c 350 § 2; 1977 ex.s. c 239 § 1; 1971 ex.s. c 289 § 74; 1961 c 23 § 51.04.030; prior: (i) 1917 c 28 § 6; RRS § 7715. (ii) 1919 c 129 § 3; 1917 c 29 § 7; RRS § 7716. (iii) 1923 c 136 § 10; RRS § 7719.]

51.04.040 Subpoena power of director—Enforcement by superior court. The director and his or her authorized assistants shall have power to issue subpoenas to enforce the attendance and testimony of witnesses and the production and examination of books, papers, photographs, tapes, and records before the department in connection with

any claim made to the department, any billing submitted to the department, or the assessment or collection of premiums. The superior court shall have the power to enforce any such subpoena by proper proceedings. [1987 c 316 § 1; 1986 c 200 § 9; 1977 ex.s. c 323 § 1; 1961 c 23 § 51.04.040. Prior: 1915 c 188 § 7; RRS § 7699.]

Severability—1977 ex.s. c 323: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 323 § 29.]

Effective date—1977 ex.s. c 323: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977." [1977 ex.s. c 323 § 30.]

51.04.050 Physician or licensed advanced registered nurse practitioner's testimony not privileged. (Expires June 30, 2007.) In all hearings, actions or proceedings before the department or the board of industrial insurance appeals, or before any court on appeal from the board, any physician or licensed advanced registered nurse practitioner having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of the physician or licensed advanced registered nurse practitioner to patient. [2004 c 65 § 2; 1961 c 23 § 51.04.050. Prior: 1915 c 188 § 4; RRS § 7687.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

Nurse-patient privilege subject to RCW 51.04.050: RCW 5.62.030.

51.04.050 Physician's testimony not privileged. (Effective June 30, 2007.) In all hearings, actions or proceedings before the department or the board of industrial insurance appeals, or before any court on appeal from the board, any physician having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of physician to patient. [1961 c 23 § 51.04.050. Prior: 1915 c 188 § 4; RRS § 7687.]

Nurse-patient privilege subject to RCW 51.04.050: RCW 5.62.030.

51.04.060 No evasion of benefits or burdens. No employer or worker shall exempt himself or herself from the burden or waive the benefits of this title by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void. [1977 ex.s. c 350 § 3; 1961 c 23 § 51.04.060. Prior: 1911 c 74 § 11; RRS § 7685.]

51.04.070 Minor worker is sui juris—Guardianship expense. A minor shall be deemed sui juris for the purpose of this title, and no other person shall have any cause of action or right to compensation for an injury to such minor worker, except as expressly provided in this title, but in the event of any disability payments becoming due under this title to a minor worker, under the age of eighteen, such disability payments shall be paid to his or her parent, guardian or other person having legal custody of his or her person until he or she reaches the age of eighteen. Upon the submission of written authorization by any such parent, guardian, or other

person, any such disability payments may be paid directly to such injured worker under the age of eighteen years. If it is necessary to appoint a legal guardian to receive such disability payments, there shall be paid from the accident fund or by the self-insurer, as the case may be, toward the expenses of such guardianship a sum not to exceed three hundred dollars. [1980 c 14 § 2. Prior: 1977 ex.s. c 350 § 4; 1977 ex.s. c 323 § 2; 1961 c 23 § 51.04.070; prior: 1959 c 308 § 1; 1957 c 70 § 4; prior: 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.04.080 Sending notices, orders, warrants to claimants. On all claims under this title, claimants' written notices, orders, or warrants shall not be forwarded to, or in care of, any representative of the claimant, but shall be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the board of industrial insurance appeals. [1972 ex.s. c 43 § 2; 1961 c 23 § 51.04.080. Prior: 1959 c 308 § 2; 1957 c 70 § 5; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

51.04.082 Notices and orders—Mail or personal service. Any notice or order required by this title to be mailed to any employer may be served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state, but if the notice or order is mailed, it shall be addressed to the address of the employer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax or any increases or penalties thereon. [1986 c 9 § 2.]

51.04.085 Transmission of amounts payable. The department may, at any time, on receipt of written authorization, transmit amounts payable to a claimant, beneficiary, or any supplier of goods or services to the account of such person in a bank or other financial institution regulated by state or federal authority. [1977 ex.s. c 323 § 26.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.04.090 Effect of adjudication of applicability. If any employer shall be adjudicated to be outside the lawful scope of this title, the title shall not apply to him or her or his or her worker, or if any worker shall be adjudicated to be outside the lawful scope of this title because of remoteness of his or her work from the hazard of his or her employer's work, any such adjudication shall not impair the validity of this title in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions for the creation of the accident fund, or the provisions of this title making the compensation to the worker provided in it exclusive of any other remedy on the part of the worker shall be held invalid the entire title shall be thereby invalidated. In other respects an adjudication of

invalidity of any part of this title shall not affect the validity of the title as a whole or any other part thereof. [1977 ex.s. c 350 § 5; 1961 c 23 § 51.04.090. Prior: 1911 c 74 § 27; RRS § 7706.]

51.04.100 Statutes of limitation saved. If the provisions of this title relative to compensation for injuries to or death of workers become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: PROVIDED, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the worker on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by this title, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed. [1977 ex.s. c 350 § 6; 1961 c 23 § 51.04.100. Prior: 1911 c 74 § 28; RRS § 7707.]

51.04.105 Continuation of medical aid contracts. The obligations of all medical aid contracts approved by the supervisor prior to the repeal of any section of this title pertaining to medical aid contracts shall continue until the expiration of such contracts notwithstanding any such repeal and all provisions of this title pertaining to the operation of medical aid contracts and the control and supervision of such contracts which were in effect at the time of such approval shall, notwithstanding any other provision of law, remain in full force and effect. [1977 ex.s. c 323 § 25.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.04.110 Workers' compensation advisory committee. The director shall appoint a workers' compensation advisory committee composed of ten members: Three representing subject workers, three representing subject employers, one representing self-insurers, one representing workers of self-insurers, and two ex officio members, without a vote, one of whom shall be the chairman of the board of industrial appeals and the other the representative of the department. The member representing the department shall be chairman. This committee shall conduct a continuing study of any aspects of workers' compensation as the committee shall determine require their consideration. The committee shall report its findings to the department or the board of industrial insurance appeals for such action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1971 and the terms of the members representing the workers and employers shall be staggered so that the director shall designate one member from each such group initially appointed whose term shall

expire on June 30, 1972 and one member from each such group whose term shall expire on June 30, 1973. The members shall serve without compensation, but shall be entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The committee may hire such experts, if any, as it shall require to discharge its duties, and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it shall need without charge. All expenses of this committee shall be paid by the department. [1982 c 109 § 2; 1980 c 14 § 3. Prior: 1977 ex.s. c 350 § 7; 1977 c 75 § 78; 1975-'76 2nd ex.s. c 34 § 150; 1975 ex.s. c 224 § 1; 1972 ex.s. c 43 § 37; 1971 ex.s. c 289 § 67.]

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

Effective date—1975 1st ex.s. c 224: "This 1975 amendatory act shall take effect on July 1, 1975." [1975 1st ex.s. c 224 § 20.]

Managed care pilot projects: RCW 43.72.860.

51.04.120 Certificate of coverage required—Contents. Any employer other than a self-insurer subject to this title shall, under such rules as the department shall prescribe, apply for and obtain from the department a certificate of coverage. The certificate shall be personal and nontransferable and shall be valid as long as the employer continues in business and pays the taxes due the state. In case the employer maintains more than one place of business, a separate certificate of coverage for each place at which business is transacted shall be required. Each certificate shall be numbered and shall show the name, residence, and place and character of business of the employer and such other information as the department deems necessary and shall be posted conspicuously at the place of business for which it is issued. Where a place of business of the employer is changed, the employer must notify the department within thirty days of the new address and a new certificate shall be issued for the new place of business. No employer may engage in any business for which taxes are due under this title without having a certificate of coverage in compliance with this section, except that the department, by general rule, may provide for the issuance of a certificate of coverage to employers with temporary places of business. [1986 c 9 § 1.]

Engaging in business without certificate of coverage: RCW 51.48.103.

51.04.130 Industrial insurance coverage for Hanford workers—Special agreements. The department of labor and industries upon the request of the secretary of defense of the United States or the secretary of the United States department of energy, may in its discretion approve special insuring agreements providing industrial insurance coverage for workers engaged in the performance of work, either directly or indirectly, for the United States, regarding projects and contracts at the Hanford Nuclear Reservation. The agreements need not conform to the requirements specified in the industrial insurance law of this state if the department finds that the application of the plan will effectively aid the national interest. The department may also approve or direct changes or modifications of the agreements as it deems necessary.

An agreement entered into under this section remains in full force and effect for as long as the department deems it

(2004 Ed.)

necessary to accomplish the purposes of this section. [1997 c 109 § 1; 1951 c 144 § 1.]

Severability—1997 c 109: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 109 § 4.]

51.04.140 Year 2000 failure—No interest or penalties for failure to pay premium. (Expires December 31, 2006.)

(1) No interest or penalties shall be imposed on any employer because of the failure to pay any premium required by this title to be made to the state treasury for the accident fund, the medical aid fund, the supplemental pension fund, or any other fund created under this title if the employer establishes that:

(a) The failure to pay was caused, in whole or in part, by a year 2000 failure associated with an electronic computing device;

(b) The year 2000 failure being asserted was not proximately caused by a failure of the employer to update an electronic computing device, that is under his or her dominion or control, to be year 2000 compliant; and

(c) If it were not for the year 2000 failure, the employer would have been able to satisfy the payment of premiums in a timely manner.

Payment of such premiums shall be made within thirty days after the year 2000 failure has been corrected or reasonably should have been corrected.

(2)(a) The definitions in RCW 4.22.080 apply to this section unless the context clearly requires otherwise.

(b) As used in this section, unless the context clearly requires otherwise, "employer" means a natural person or a small business as defined in RCW 19.85.020.

(3) This section does not affect those transactions upon which a default has occurred before any disruption of financial or data transfer operations attributable to a year 2000 failure.

(4) This section does not apply to any claim or cause of action filed after December 31, 2003.

(5) This section expires December 31, 2006. [1999 c 369 § 4.]

Effective date—1999 c 369: See note following RCW 4.22.080.

Chapter 51.08 RCW

DEFINITIONS

Sections

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51.08.013	"Acting in the course of employment."
51.08.014	"Agriculture."
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51.08.070	"Employer"—Exception.
51.08.095	"Health services provider"—"Provider."
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51.08.150	"Permanent partial disability."
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51.08.175	"State fund"—"State of Washington industrial insurance fund."
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51.08.180	"Worker"—Exceptions.
51.08.185	"Employee."
51.08.195	Employer and worker—Alternative exception.

51.08.010 Meaning of words. Unless the context indicates otherwise, words used in this title shall have the meaning given in this chapter. [1961 c 23 § 51.08.010. Prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.012 "Accredited school." For the purposes of this title, "accredited school" means a school or course of instruction which is:

(1) Approved by the state superintendent of public instruction, the state board of education, the *state board for community college education, or the state division of vocational education of the **coordinating council for occupational education; or

(2) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under an agreement registered with the apprenticeship council pursuant to chapter 49.04 RCW. [1975 1st ex.s. c 224 § 2; 1969 ex.s. c 77 § 3.]

Reviser's note: *(1) The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

***(2) The coordinating council for occupational education was abolished by 1975 1st ex.s. c 174 § 9.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.08.013 "Acting in the course of employment." (1) "Acting in the course of employment" means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area. It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.

(2) "Acting in the course of employment" does not include:

(a) Time spent going to or coming from the employer's place of business in an alternative commute mode, notwithstanding that the employer (i) paid directly or indirectly, in whole or in part, the cost of a fare, pass, or other expense associated with the alternative commute mode; (ii) promoted and encouraged employee use of one or more alternative commute modes; or (iii) otherwise participated in the provision of the alternative commute mode.

(b) An employee's participation in social activities, recreational or athletic activities, events, or competitions, and parties or picnics, whether or not the employer pays some or all of the costs thereof, unless: (i) The participation is during the employee's working hours, not including paid leave; (ii) the employee was paid monetary compensation by the employer to participate; or (iii) the employee was ordered or directed by the employer to participate or reasonably believed the employee was ordered or directed to participate.

(3) "Alternative commute mode" means (a) a carpool or vanpool arrangement whereby a group of at least two but not more than fifteen persons including passengers and driver, is transported between their places of abode or termini near those places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution; (b) a bus, ferry, or other public transportation service; or (c) a nonmotorized means of commuting such as bicycling or walking. [1997 c 250 § 10; 1995 c 179 § 1; 1993 c 138 § 1; 1979 c 111 § 15; 1977 ex.s. c 350 § 8; 1961 c 107 § 3.]

Severability—1979 c 111: See note following RCW 46.74.010.

51.08.014 "Agriculture." "Agriculture" means the business of growing or producing any agricultural or horticultural produce or crop, including the raising of any animal, bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. [1971 ex.s. c 289 § 75.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.015 "Amount," "payment," "premium," "contribution," "assessment." Wherever and whenever in any of the provisions of this title relating to any payments by an employer or worker the words "amount" and/or "amounts," "payment" and/or "payments," "premium" and/or "premiums," "contribution" and/or "contributions," and "assessment" and/or "assessments" appear said words shall be construed to mean taxes, which are the money payments by an employer or worker which are required by this title to be made to the state treasury for the accident fund, the medical aid fund, the supplemental pension fund, or any other fund created by this title. [1977 ex.s. c 350 § 9; 1972 ex.s. c 43 § 3; 1961 c 23 § 51.08.015. Prior: 1959 c 308 § 25.]

51.08.018 "Average monthly wage." For purposes of this title, the average monthly wage in the state shall be the average annual wage as determined under RCW 50.04.355 as now or hereafter amended divided by twelve. [1977 ex.s. c 323 § 3; 1971 ex.s. c 289 § 15.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.020 "Beneficiary." "Beneficiary" means a husband, wife, child, or dependent of a worker in whom shall vest a right to receive payment under this title: PROVIDED, That a husband or wife of an injured worker, living separate and apart in a state of abandonment, regardless of the party responsible therefor, for more than one year at the time of the

injury or subsequently, shall not be a beneficiary. A spouse who has lived separate and apart from the other spouse for the period of two years and who has not, during that time, received, or attempted by process of law to collect, funds for maintenance, shall be deemed living in a state of abandonment. [1977 ex.s. c 350 § 10; 1973 1st ex.s. c 154 § 91; 1961 c 23 § 51.08.020. Prior: 1957 c 70 § 6; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

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

51.08.030 "Child." "Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the worker, all while under the age of eighteen years, or under the age of twenty-three years while permanently enrolled at a full time course in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap. [1986 c 293 § 1; 1980 c 14 § 4. Prior: 1977 ex.s. c 323 § 4; 1977 ex.s. c 80 § 36; 1975-'76 2nd ex.s. c 42 § 37; 1972 ex.s. c 65 § 1; 1969 ex.s. c 77 § 1; 1961 c 23 § 51.08.030; prior: 1957 c 70 § 7; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1941 c 209 § 3, part; Rem. Supp. 1941 § 7679, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

51.08.040 "Department." "Department" means department of labor and industries. [1961 c 23 § 51.08.040.]

Department of labor and industries: Chapter 43.22 RCW.

51.08.050 "Dependent." "Dependent" means any of the following named relatives of a worker whose death results from any injury and who leaves surviving no widow, widower, or child, viz: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident are actually and necessarily dependent in whole or in part for their support upon the earnings of the worker. [1997 c 325 § 6; 1977 ex.s. c 350 § 11; 1961 c 23 § 51.08.050. Prior: 1957 c 70 § 8; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.060 "Director." "Director" means the director of labor and industries. [1961 c 23 § 51.08.060.]

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51.08.070 "Employer"—Exception. "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers. Or as a separate alternative, persons or entities are not employers when they contract or agree to remunerate the services performed by an individual who meets the tests set forth in subsections (1) through (6) of RCW 51.08.195.

For the purposes of this title, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an employer when:

(1) Contracting with any other person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(3) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(4) The work which the person, firm, or corporation has contracted to perform is:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW. [1991 c 246 § 2; 1981 c 128 § 1; 1977 ex.s. c 350 § 12; 1971 ex.s. c 289 § 1; 1961 c 23 § 51.08.070. Prior: 1957 c 70 § 9; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.095 "Health services provider"—"Provider." "Health services provider" or "provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. [1986 c 200 § 12.]

51.08.100 "Injury." "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom. [1961 c 23 § 51.08.100. Prior: 1959 c 308 § 3; 1957 c 70 § 12; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921

c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.110 "Invalid." "Invalid" means one who is physically or mentally incapacitated from earning. [1961 c 23 § 51.08.110. Prior: 1957 c 70 § 13; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.140 "Occupational disease." "Occupational disease" means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title. [1961 c 23 § 51.08.140. Prior: 1959 c 308 § 4; 1957 c 70 § 16; prior: 1951 c 236 § 1; 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

51.08.142 "Occupational disease"—Exclusion of mental conditions caused by stress. The department shall adopt a rule pursuant to chapter 34.05 RCW that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease in RCW 51.08.140. [1988 c 161 § 16.]

51.08.150 "Permanent partial disability." "Permanent partial disability" means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known in surgery to be permanent partial disability. [1961 c 23 § 51.08.150. Prior: 1957 c 70 § 17; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.08.160 "Permanent total disability." "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful occupation. [1977 ex.s. c 350 § 13; 1961 c 23 § 51.08.160. Prior: 1957 c 70 § 18; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.08.173 "Self-insurer." "Self-insurer" means an employer or group of employers which has been authorized under this title to carry its own liability to its employees covered by this title. [1983 c 174 § 1; 1971 ex.s. c 289 § 80.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.175 "State fund"—"State of Washington industrial insurance fund." "State fund" means those funds held by the state or any agency thereof for the purposes of this title. The "state of Washington industrial insurance fund" means the department when acting as the agency to insure the

industrial insurance obligation of employers. The terms "state fund" and "state of Washington industrial insurance fund" shall be deemed synonymous when applied to the functions of the department connected with the insuring of employers who secure the payment of industrial insurance benefits through the state. The director shall manage the state fund and the state of Washington industrial insurance fund and shall have such powers as are necessary to carry out its functions and may reinsure any risk insured by the state fund. [1977 ex.s. c 323 § 5; 1972 ex.s. c 43 § 5; 1971 ex.s. c 289 § 88.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.177 "Successor." "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, a major part of the property, whether real or personal, tangible or intangible, of the taxpayer. [2004 c 243 § 1; 1986 c 9 § 3.]

Adoption of rules—2004 c 243: "The department shall adopt rules to implement this act." [2004 c 243 § 10.]

51.08.178 "Wages"—Monthly wages as basis of compensation—Computation thereof. (1) For the purposes of this title, the monthly wages the worker was receiving from all employment at the time of injury shall be the basis upon which compensation is computed unless otherwise provided specifically in the statute concerned. In cases where the worker's wages are not fixed by the month, they shall be determined by multiplying the daily wage the worker was receiving at the time of the injury:

(a) By five, if the worker was normally employed one day a week;

(b) By nine, if the worker was normally employed two days a week;

(c) By thirteen, if the worker was normally employed three days a week;

(d) By eighteen, if the worker was normally employed four days a week;

(e) By twenty-two, if the worker was normally employed five days a week;

(f) By twenty-six, if the worker was normally employed six days a week;

(g) By thirty, if the worker was normally employed seven days a week.

The term "wages" shall include the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer as part of the contract of hire, but shall not include overtime pay except in cases under subsection (2) of this section. However, tips shall also be considered wages only to the extent such tips are reported to the employer for federal income tax purposes. The daily wage shall be the hourly wage multiplied by the number of hours the worker is normally employed. The number of hours the worker is normally employed shall be determined by the department in a fair and reasonable manner, which may include averaging the number of hours worked per day.

(2) In cases where (a) the worker's employment is exclusively seasonal in nature or (b) the worker's current employment or his or her relation to his or her employment is essentially part-time or intermittent, the monthly wage shall be determined by dividing by twelve the total wages earned, including overtime, from all employment in any twelve successive calendar months preceding the injury which fairly represent the claimant's employment pattern.

(3) If, within the twelve months immediately preceding the injury, the worker has received from the employer at the time of injury a bonus as part of the contract of hire, the average monthly value of such bonus shall be included in determining the worker's monthly wages.

(4) In cases where a wage has not been fixed or cannot be reasonably and fairly determined, the monthly wage shall be computed on the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed. [1988 c 161 § 12; 1980 c 14 § 5. Prior: 1977 ex.s. c 350 § 14; 1977 ex.s. c 323 § 6; 1971 ex.s. c 289 § 14.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.180 "Worker"—Exceptions. (1) "Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as a separate alternative, a person is not a worker if he or she meets the tests set forth in subsections (1) through (6) of RCW 51.08.195: PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

(2) For the purposes of this title, any person, firm, or corporation currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not a worker when:

(a) Contracting to perform work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(b) The person, firm, or corporation has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(c) The person, firm, or corporation maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(d) The work which the person, firm, or corporation has contracted to perform is:

(i) The work of a contractor as defined in RCW 18.27.010; or

(ii) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such

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current as it pertains to the electrical industry as described in chapter 19.28 RCW.

(3) Any person, firm, or corporation registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW including those performing work for any contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is a worker when the contractor supervises or controls the means by which the result is accomplished or the manner in which the work is performed.

(4) For the purposes of this title, any person participating as a driver or back-up driver in commuter ride sharing, as defined in RCW 46.74.010(1), is not a worker while driving a ride-sharing vehicle on behalf of the owner or lessee of the vehicle. [1991 c 246 § 3; 1987 c 175 § 3; 1983 c 97 § 1; 1982 c 80 § 1; 1981 c 128 § 2; 1977 ex.s. c 350 § 15; 1961 c 23 § 51.08.180. Prior: 1957 c 70 § 20; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1937 c 211 § 2; RRS § 7674-1.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

51.08.185 "Employee." "Employee" shall have the same meaning as "worker" when the context would so indicate, and shall include all officers of the state, state agencies, counties, municipal corporations, or other public corporations, or political subdivisions. [1977 ex.s. c 350 § 16; 1972 ex.s. c 43 § 4.]

51.08.195 Employer and worker—Alternative exception. As a separate alternative to the definition of "employer" under RCW 51.08.070 and the definition of "worker" under RCW 51.08.180, services performed by an individual for remuneration shall not constitute employment subject to this title if it is shown that:

(1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact; and

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has established an account with the department of revenue, and other state agencies as required

by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting. [1991 c 246 § 1.]

Effective date—1991 c 246: "This act shall take effect January 1, 1992." [1991 c 246 § 10.]

Conflict with federal requirements—1991 c 246: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1991 c 246 § 9.]

Chapter 51.12 RCW

EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

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51.12.170	Student volunteers.

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Health and safety of underground workers: Chapter 49.24 RCW.

51.12.010 Employments included—Declaration of policy. There is a hazard in all employment and it is the purpose of this title to embrace all employments which are within the legislative jurisdiction of the state.

This title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment. [1972 ex.s. c 43 § 6; 1971 ex.s. c 289 § 2; 1961 c 23 § 51.12.010. Prior: 1959 c 55 § 1; 1955 c 74 § 2; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

51.12.020 Employments excluded. The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in *RCW 23B.01.400(21) may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper carrier selling or distributing newspapers on the street or from house to house.

(11) Services performed by an insurance agent, insurance broker, or insurance solicitor, as defined in RCW 48.17.010, 48.17.020, and 48.17.030, respectively.

(12) Services performed by a booth renter as defined in **RCW 18.16.020. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation. [1999 c 68 § 1; 1997 c 314 § 18. Prior: 1991 c 324 § 18; 1991 c 246 § 4; 1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020; prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

Reviser's note: *(1) RCW 23B.01.400 was amended by 2000 c 168 § 1, changing subsection (21) to subsection (22); and was subsequently amended by 2002 c 297 § 9, changing subsection (22) to subsection (24).

** (2) RCW 18.16.020 was amended by 2002 c 111 § 2, deleting the definition of "booth renter."

Severability—1991 c 324: See RCW 18.16.910.

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.12.025 Persons working on parents' family farms—Optional exclusion from coverage. (1) The parent or parents of a person at least eighteen years of age but under twenty-one years of age may elect to exclude from mandatory coverage under this title the parent's employment of that person in agricultural activities on their family farm if:

(a) The person resides with his or her parent or parents or resides on their family farm; and

(b) The parent or parents file a written notice with the department electing exclusion from coverage.

(2) A parent or parents who have elected to exclude a person under this subsection may subsequently obtain coverage for that person under RCW 51.12.110. [1996 c 8 § 1.]

51.12.035 Volunteers. (1) Volunteers shall be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under chapter 51.36 RCW.

A "volunteer" shall mean a person who performs any assigned or authorized duties for the state or any agency thereof, except emergency services workers as described by chapter 38.52 RCW, brought about by one's own free choice, receives no wages, and is registered and accepted as a volunteer by the state or any agency thereof, prior to the occurrence of the injury or the contraction of an occupational disease, for the purpose of engaging in authorized volunteer service: PROVIDED, That such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties.

Any and all premiums or assessments due under this title on account of such volunteer service shall be the obligation of and be paid by the state or any agency thereof which has registered and accepted the services of volunteers.

(2) Except as provided in RCW 51.12.050, volunteers may be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under chapter 51.36 RCW at the option of any city, county, town, special district, municipal corporation, or political subdivision of any type, or any private nonprofit charitable organization, when any such unit of local government or any such nonprofit organization has given notice of covering all of its volunteers to the director prior to the occurrence of the injury or contraction of an occupational disease.

A "volunteer" shall mean a person who performs any assigned or authorized duties for any such unit of local government, or any such organization, except emergency services workers as described by chapter 38.52 RCW, or fire fighters covered by chapter 41.24 RCW, brought about by one's own free choice, receives no wages, and is registered and accepted as a volunteer by any such unit of local government, or any such organization which has given such notice, for the purpose of engaging in authorized volunteer services: PROVIDED, That such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties: PROVIDED FURTHER, That juveniles performing community restitution under chapter 13.40 RCW may not be granted coverage as volunteers under this section.

Any and all premiums or assessments due under this title on account of such volunteer service for any such unit of local government, or any such organization shall be the obligation of and be paid by such organization which has registered and accepted the services of volunteers and exercised its option to secure the medical aid benefits under chapter 51.36 RCW for such volunteers. [2002 c 175 § 39; 2001 c 138 § 3; 1981 c 266 § 3; 1977 ex.s. c 350 § 17; 1975 1st ex.s. c 79 § 1; 1974 ex.s. c 171 § 44; 1971 c 20 § 1.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Purpose—2001 c 138: See note following RCW 51.12.050.

51.12.045 Offenders performing community restitution. Offenders performing community restitution pursuant to court order or under RCW 13.40.080 may be deemed employees and/or workers under this title at the option of the state, county, city, town, or nonprofit organization under whose authorization the community restitution is performed. Any premiums or assessments due under this title for community restitution work shall be the obligation of and be paid for by the state agency, county, city, town, or nonprofit organization for which the offender performed the community restitution. Coverage commences when a state agency, county, city, town, or nonprofit organization has given notice to the director that it wishes to cover offenders performing community restitution before the occurrence of an injury or contraction of an occupational disease. [2002 c 175 § 40; 1986 c 193 § 1; 1984 c 24 § 4; 1981 c 266 § 1.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Offenders treated as employees or workers by local governments: RCW 35.21.209, 35A.21.220, 36.16.139.

51.12.050 Public entity work—Partnerships with volunteer groups and businesses for community improvement projects. (1) Whenever a public entity engages in any work, or let a contract therefor, in which workers are employed for wages, this title shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the public entity. If the work is being done by contract, the payroll of the contractor and the subcontractor shall be the basis of computation and, in the case of contract work consuming less than one year in performance, the required payment into the accident fund shall be based upon the total payroll. The contractor and any subcontractor shall be subject to the provisions of this title, and the state for its general fund, the county, municipal corporation, or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund and the contractor, in turn, shall be entitled to collect from the subcontractor his or her proportionate amount of the payment.

(2)(a) A public entity may seek partnerships with volunteer groups and businesses to engage in community improvement projects to benefit the public entity. In administering a project, the public entity must:

(i) Provide prospective donors and participants written notice of the risks and responsibilities to be assumed by the public entity and the donors or participants. A volunteer donating labor on the project must, before beginning work, document in writing that he or she has received the notice and that he or she is donating labor as a result of his or her own free choice; and

(ii) Pay premiums and assessments required under this title to secure medical aid benefits under chapter 51.36 RCW for volunteers donating labor on the project.

(b) A contractor or employer donating equipment or materials for use on a community improvement project shall not, for the purposes of this title, be considered the employer of an individual donating labor unless the contractor or employer pays the individual wages for working on the

project or makes working on the project a condition of employment. This subsection applies regardless of whether:

(i) The contractor or employer informs the individual about the community improvement project or encourages the individual to donate labor on the project;

(ii) The individual uses equipment or materials on the project that are donated by the contractor or the individual's employer; or

(iii) The individual is granted maintenance or reimbursement for actual expenses necessarily incurred in performing labor for the project.

(3) Whenever and so long as, by state law, city charter, or municipal ordinance, provision is made for employees or peace officers injured in the course of employment, such employees shall not be entitled to the benefits of this title and shall not be included in the payroll of the municipality under this title: PROVIDED, That whenever any state law, city charter, or municipal ordinance only provides for payment to the employee of the difference between his or her actual wages and that received under this title such employees shall be entitled to the benefits of this title and may be included in the payroll of the municipality.

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

(a) "Community improvement project" means a project sponsored by a public entity that uses donated labor, materials, or equipment and includes, but is not limited to, projects to repair, restore, or preserve historic property.

(b) "Historic property" means real property owned by a public entity including, but not limited to, barns, schools, military structures, and cemeteries.

(c) "Public entity" means the state, county, any municipal corporation, or other taxing district. [2001 c 138 § 2; 1977 ex.s. c 350 § 18; 1972 ex.s. c 43 § 8; 1961 c 23 § 51.12.050. Prior: 1955 c 74 § 6; prior: (i) 1923 c 136 § 5, part; 1921 c 182 § 8, part; 1915 c 188 § 6, part; 1911 c 74 § 17, part; RRS § 7692, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

Finding—Purpose—2001 c 138: "The legislature finds that government and business partnerships on projects for community improvement can assist communities to preserve historic property and create opportunities for volunteer service. The legislature also recognizes that uncertainty about risks and obligations may deter employers who would otherwise be willing to donate materials and equipment to a community project. The purpose of this act is to encourage participation by establishing clear criteria for determining industrial insurance obligations with respect to donated labor on certain community projects." [2001 c 138 § 1.]

51.12.060 Federal projects. The application of this title and related safety laws is hereby extended to all lands and premises owned or held by the United States of America, by deed or act of cession, by purchase or otherwise, which are within the exterior boundaries of the state of Washington, and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which are within the exterior boundaries of the state, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the state, and as fully as is permitted under the provisions of that act of the congress of the United States approved June 25, 1936, granting to the several states jurisdiction and authority to apply their state workers' compensation laws on all property and premises belonging to the

United States of America, being 49 United States Statutes at large 1938, title 40, section 290 United States code, 1958 edition: PROVIDED, That this title shall not apply to employes of the United States of America. [1977 ex.s. c 350 § 19; 1961 c 23 § 51.12.060. Prior: 1937 c 147 § 1; RRS § 7676-2.]

51.12.070 Work done by contract—Subcontractors.

The provisions of this title apply to all work done by contract; the person, firm, or corporation who lets a contract for such work is responsible primarily and directly for all premiums upon the work. The contractor and any subcontractor are subject to the provisions of this title and the person, firm, or corporation letting the contract is entitled to collect from the contractor the full amount payable in premiums and the contractor in turn is entitled to collect from the subcontractor his or her proportionate amount of the payment.

For the purposes of this section, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not responsible for any premiums upon the work of any subcontractor if:

(1) The subcontractor is currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) The subcontractor has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(3) The subcontractor maintains a separate set of books or records that reflect all items of income and expenses of the business;

(4) The subcontractor has contracted to perform:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW; and

(5) The subcontractor has an industrial insurance account in good standing with the department or is a self-insurer. For the purposes of this subsection, a contractor may consider a subcontractor's account to be in good standing if, within a year prior to letting the contract or master service agreement, and at least once a year thereafter, the contractor has verified with the department that the account is in good standing and the contractor has not received written notice from the department that the subcontractor's account status has changed. Acceptable documentation of verification includes a department document which includes an issued date or a dated printout of information from the department's internet web site showing a subcontractor's good standing. The department shall develop an approach to provide contractors with verification of the date of inquiries validating that the subcontractor's account is in good standing.

It is unlawful for any county, city, or town to issue a construction building permit to any person who has not submitted to the department an estimate of payroll and paid premium thereon as provided by chapter 51.16 RCW of this title or proof of qualification as a self-insurer. [2004 c 243 § 2; 1981 c 128 § 4; 1971 ex.s. c 289 § 81; 1965 ex.s. c 20 § 1; 1961 c 23 § 51.12.070. Prior: 1955 c 74 § 7; prior: 1923 c

136 § 5, part; 1921 c 182 § 8, part; 1915 c 188 § 6, part; 1911 c 74 § 17, part; RRS § 7692, part.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.12.080 Railway employees. Inasmuch as it has proved impossible in the case of employees of common carriers by railroad, engaged in maintenance and operation of railways doing interstate, foreign and intrastate commerce, and in maintenance and construction of their equipment, to separate and distinguish the connection of such employees with interstate or foreign commerce from their connection with intrastate commerce, and such employees have, in fact, received no compensation under this title, the provisions of this title shall not apply to work performed by such employees in the maintenance and operation of such railroads or performed in the maintenance or construction of their equipment, or to the employees of such common carriers by railroad engaged therein, but nothing herein shall be construed as excluding from the operation of this title railroad construction work, or the employees engaged thereon: PROVIDED, That common carriers by railroad engaged in such interstate or foreign commerce and in intrastate commerce shall, in all cases where liability does not exist under the laws of the United States, be liable in damages to any person suffering injury while employed by such carrier, or in case of the death of such employee, to the surviving spouse and child, or children, and if no surviving spouse or child or children, then to the parents, minor sisters, or minor brothers, residents of the United States at the time of such death, and who were dependent upon such deceased for support, to the same extent and subject to the same limitations as the liability now existing, or hereafter created, by the laws of the United States governing recoveries by railroad employees injured while engaged in interstate commerce: PROVIDED FURTHER, That if any interstate common carrier by railroad shall also be engaged in one or more intrastate enterprises or industries (including street railways and power plants) other than its railroad, the foregoing provisions of this section shall not exclude from the operation of the other sections of this title or bring under the foregoing proviso of this section any work of such other enterprise or industry, the payroll of which may be clearly separable and distinguishable from the payroll of the maintenance or operation of such railroad, or of the maintenance or construction of its equipment: PROVIDED FURTHER, That nothing in this section shall be construed as relieving an independent contractor engaged through or by his employees in performing work for a common carrier by railroad, from the duty of complying with the terms of this title, nor as depriving any employee of such independent contractor of the benefits of this title. [1973 1st ex.s. c 154 § 92; 1972 ex.s. c 43 § 9; 1961 c 23 § 51.12.080. Prior: 1925 ex.s. c 84 § 1; 1919 c 67 § 1; 1917 c 29 § 19; 1911 c 74 § 18; RRS § 7693.]

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

51.12.090 Intrastate and interstate commerce. The provisions of this title shall apply to employers and workers (other than railways and their workers) engaged in intrastate and also in interstate or foreign commerce, for whom a rule of

liability or method of compensation now exists under or may hereafter be established by the congress of the United States, only to the extent that the payroll of such workers may and shall be clearly separable and distinguishable from the payroll of workers engaged in interstate or foreign commerce: PROVIDED, That as to workers whose payroll is not so clearly separable and distinguishable the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of RCW 51.12.080: PROVIDED FURTHER, That nothing in this title shall be construed to exclude goods or materials and/or workers brought into this state for the purpose of engaging in work. [1983 c 170 § 1; 1982 c 63 § 16; 1977 ex.s. c 350 § 20; 1972 ex.s. c 43 § 10; 1961 c 23 § 51.12.090. Prior: 1959 c 308 § 10; 1919 c 67 § 3; RRS § 7695.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.12.095 Common carrier employees—Owners and operators of trucks. (1) Common or contract carriers doing business in this state that are engaged exclusively in interstate or foreign commerce, or any combination thereof, shall provide coverage under this title for their Washington employees, unless the employer has furnished workers' compensation insurance coverage under the laws of another state for the coverage of employees in this state: PROVIDED, That any common or contract carrier or its successor that formerly had coverage under this title and by virtue of being exclusively engaged in interstate or foreign commerce, or any combination thereof, withdrew its acceptance of liability under this title by filing written notice with the director of the withdrawal of its acceptance prior to January 2, 1987, shall be governed by the provisions of this section that were in effect as of that date.

(2) A person who is domiciled in this state and who owns and operates a truck engaged in intrastate, interstate, or foreign commerce, or any combination thereof, may elect coverage under this title in the manner provided by RCW 51.32.030, whether or not the truck is leased to a common or contract carrier. [1989 c 368 § 1; 1983 c 170 § 2.]

Effective date—1989 c 368: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 368 § 2.]

51.12.100 Maritime occupations—Segregation of payrolls—Common enterprise. (1) The provisions of this title shall not apply to a master or member of a crew of any vessel, or to employers and workers for whom a right or obligation exists under the maritime laws or federal employees' compensation act for personal injuries or death of such workers.

(2) If an accurate segregation of payrolls of workers for whom such a right or obligation exists under the maritime laws cannot be made by the employer, the director is hereby authorized and directed to fix from time to time a basis for the approximate segregation of the payrolls of employees to cover the part of their work for which no right or obligation exists under the maritime laws for injuries or death occurring in such work, and the employer, if not a self-insurer, shall pay

premiums on that basis for the time such workers are engaged in their work.

(3) Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workers, such site or place shall be deemed for the purposes of this title to be the common plant of such employers.

(4) In the event payments are made under this title prior to the final determination under the maritime laws or federal employees' compensation act, such benefits shall be repaid by the worker or beneficiary if recovery is subsequently made under the maritime laws or federal employees' compensation act. [1991 c 88 § 3; 1988 c 271 § 2; 1977 ex.s. c 350 § 21; 1975 1st ex.s. c 224 § 3; 1972 ex.s. c 43 § 11; 1961 c 23 § 51.12.100. Prior: 1931 c 79 § 1; 1925 ex.s. c 111 § 1; RRS § 7693a.]

Effective date—Applicability—1988 c 271 §§ 1-4: See note following RCW 51.12.102.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Ferry system employees in extrahazardous employment: RCW 47.64.070.

51.12.102 Maritime workers—Asbestos-related disease. (1) The department shall furnish the benefits provided under this title to any worker or beneficiary who may have a right or claim for benefits under the maritime laws of the United States resulting from an asbestos-related disease if (a) there are objective clinical findings to substantiate that the worker has an asbestos-related claim for occupational disease and (b) the worker's employment history has a prima facie indicia of injurious exposure to asbestos fibers while employed in the state of Washington in employment covered under this title. The department shall render a decision as to the liable insurer and shall continue to pay benefits until the liable insurer initiates payments or benefits are otherwise properly terminated under this title.

(2) The benefits authorized under subsection (1) of this section shall be paid from the medical aid fund, with the self-insurers and the state fund each paying a pro rata share, based on number of worker hours, of the costs necessary to fund the payments. For the purposes of this subsection only, the employees of self-insured employers shall pay an amount equal to one-half of the share charged to the self-insured employer.

(3) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a self-insurer or the state fund, then the self-insurer or state fund shall reimburse the medical aid fund for all benefits paid and costs incurred by the fund.

(4) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program other than the federal social security, old age survivors, and disability insurance act, 42 U.S.C. or an insurer under the maritime laws of the United States:

(a) The department shall pursue the federal program insurer on behalf of the worker or beneficiary to recover from the federal program insurer the benefits due the worker or

beneficiary and on its own behalf to recover the benefits previously paid to the worker or beneficiary and costs incurred;

(b) For the purpose of pursuing recovery under this subsection, the department shall be subrogated to all of the rights of the worker or beneficiary receiving compensation under subsection (1) of this section; and

(c) The department shall not pursue the worker or beneficiary for the recovery of benefits paid under subsection (1) of this section unless the worker or beneficiary receives recovery from the federal program insurer, in addition to receiving benefits authorized under this section. The director may exercise his or her discretion to waive, in whole or in part, the recovery of any such benefits where the recovery would be against equity and good conscience.

(d) Actions pursued against federal program insurers determined by the department to be liable for benefits under this section may be prosecuted by special assistant attorneys general. The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state bar association, shall adopt rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate actions under this subsection. Attorneys' fees and costs shall be paid in conformity with applicable federal and state law. Any legal costs remaining as an obligation of the department shall be paid from the medical aid fund.

(5) The provisions of subsection (1) of this section shall not apply if the worker or beneficiary refuses, for whatever reason, to assist the department in making a proper determination of coverage. If a worker or beneficiary refuses to cooperate with the department, self-insurer, or federal program insurer by failing to provide information that, in the opinion of the department, is relevant in determining the liable insurer, or if a worker refuses to submit to medical examination, or obstructs or fails to cooperate with the examination, or if the worker or beneficiary fails to cooperate with the department in pursuing benefits from the federal program insurer, the department shall reject the application for benefits. No information obtained under this section is subject to release by subpoena or other legal process.

(6) The amount of any third party recovery by the worker or beneficiary shall be subject to a lien by the department to the full extent that the medical aid fund has not been otherwise reimbursed by another insurer. Reimbursement shall be made immediately to the medical aid fund upon recovery from the third party suit. If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program insurer, the department shall not participate in the costs or attorneys' fees incurred in bringing the third party suit. [1993 c 168 § 1; 1988 c 271 § 1.]

Applicability—1993 c 168: "This act applies to all claims without regard to the date of injury or date of filing of the claim." [1993 c 168 § 2.]

Effective date—1993 c 168: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 168 § 3.]

(2004 Ed.)

Report to legislature—1988 c 271 § 1: "The department of labor and industries shall conduct a study of the program established by RCW 51.12.102. The department's study shall include the use of benefits under the program and the cost of the program. The department shall report the results of the study to the economic development and labor committee of the senate and the commerce and labor committee of the house of representatives, or the appropriate successor committees, at the start of the 1993 regular legislative session." [1988 c 271 § 4.]

Effective date—Applicability—1988 c 271 §§ 1-4: "Sections 1 through 4 of this act shall take effect July 1, 1988, and shall apply to all claims filed on or after that date or pending a final determination on that date." [1988 c 271 § 5.]

51.12.110 Elective adoption—Withdrawal—Cancellation. Any employer who has in his or her employment any person or persons excluded from mandatory coverage pursuant to RCW 51.12.020 may file notice in writing with the director, on such forms as the department may provide, of his or her election to make such persons otherwise excluded subject to this title. The employer shall forthwith display in a conspicuous manner about his or her works, and in a sufficient number of places to reasonably inform his or her workers of the fact, printed notices furnished by the department stating that he or she has so elected. Said election shall become effective upon the filing of said notice in writing. The employer and his or her workers shall be subject to all the provisions of this title and entitled to all of the benefits thereof: PROVIDED, That those who have heretofore complied with the foregoing conditions and are carried and considered by the department as within the purview of this title shall be deemed and considered as having fully complied with its terms and shall be continued by the department as entitled to all of the benefits and subject to all of the liabilities without other or further action. Any employer who has complied with this section may withdraw his or her acceptance of liability under this title by filing written notice with the director of the withdrawal of his or her acceptance. Such withdrawal shall become effective thirty days after the filing of such notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The employer shall, at least thirty days before the effective date of the withdrawal, post reasonable notice of such withdrawal where the affected worker or workers work and shall otherwise notify personally the affected workers. Withdrawal of acceptance of this title shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period of acceptance.

The department shall have the power to cancel the elective adoption coverage if any required payments or reports have not been made. Cancellation by the department shall be no later than thirty days from the date of notice in writing by the department advising of cancellation being made. [1991 c 246 § 5; 1982 c 63 § 17; 1980 c 14 § 6. Prior: 1977 ex.s. c 350 § 22; 1977 ex.s. c 323 § 8; 1971 ex.s. c 289 § 85; 1961 c 23 § 51.12.110; prior: 1959 c 308 § 11; 1929 c 132 § 5; 1923 c 136 § 6; 1911 c 74 § 19; RRS § 7696.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.12.120 Extraterritorial coverage. (1) If a worker, while working outside the territorial limits of this state, suffers an injury on account of which he or she, or his or her beneficiaries, would have been entitled to compensation under this title had the injury occurred within this state, the worker, or his or her beneficiaries, shall be entitled to compensation under this title if at the time of the injury:

(a) His or her employment is principally localized in this state; or

(b) He or she is working under a contract of hire made in this state for employment not principally localized in any state; or

(c) He or she is working under a contract of hire made in this state for employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or

(d) He or she is working under a contract of hire made in this state for employment outside the United States and Canada.

(2) The payment or award of compensation or other recoveries, including settlement proceeds, under the workers' compensation law of another state, territory, province, or foreign nation to a worker or his or her beneficiaries otherwise entitled on account of such injury to compensation under this title shall not be a bar to a claim for compensation under this title if that claim under this title is timely filed. If compensation is paid or awarded under this title, the total amount of compensation or other recoveries, including settlement proceeds, paid or awarded the worker or beneficiary under such other workers' compensation law shall be credited against the compensation due the worker or beneficiary under this title.

(3)(a) An employer not domiciled in this state who is employing workers in this state in work for which the employer must be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or prequalified under RCW 47.28.070, must secure the payment of compensation under this title by:

(i) Insuring the employer's workers' compensation obligation under this title with the department;

(ii) Being qualified as a self-insurer under this title; or

(iii) For employers domiciled in a state or province of Canada subject to an agreement entered into under subsection (7) of this section, as permitted by the agreement, filing with the department a certificate of coverage issued by the agency that administers the workers' compensation law in the employer's state or province of domicile certifying that the employer has secured the payment of compensation under the other state's or province's workers' compensation law.

(b) The department shall adopt rules to implement this subsection.

(4) If a worker or beneficiary is entitled to compensation under this title by reason of an injury sustained in this state while in the employ of an employer who is domiciled in another state or province of Canada and the employer:

(a) Is not subject to subsection (3) of this section and has neither opened an account with the department nor qualified as a self-insurer under this title, the employer or his or her insurance carrier shall file with the director a certificate

issued by the agency that administers the workers' compensation law in the state of the employer's domicile, certifying that the employer has secured the payment of compensation under the workers' compensation law of the other state and that with respect to the injury the worker or beneficiary is entitled to the benefits provided under the other state's law.

(b) Has filed a certificate under subsection (3)(a)(iii) of this section or (a) of this subsection (4):

(i) The filing of the certificate constitutes appointment by the employer or his or her insurance carrier of the director as its agent for acceptance of the service of process in any proceeding brought by any claimant to enforce rights under this title;

(ii) The director shall send to such employer or his or her insurance carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the director by the claimant in any proceeding brought to enforce rights under this title;

(iii) If the employer is a self-insurer under the workers' compensation law of the other state or province of Canada, the employer shall, upon submission of evidence or security, satisfactory to the director, of his or her ability to meet his or her liability to the claimant under this title, be deemed to be a qualified self-insurer under this title; and

(iv) If the employer's liability under the workers' compensation law of the other state or province of Canada is insured:

(A) The employer's carrier, as to such claimant only, shall be deemed to be subject to this title. However, unless the insurer's contract with the employer requires the insurer to pay an amount equivalent to the compensation benefits provided by this title, the insurer's liability for compensation shall not exceed the insurer's liability under the workers' compensation law of the other state or province; and

(B) If the total amount for which the employer's insurer is liable under (b)(iv)(A) of this subsection is less than the total of the compensation to which the claimant is entitled under this title, the director may require the employer to file security satisfactory to the director to secure the payment of compensation under this title.

(c) If subject to subsection (3) of this section, has not complied with subsection (3) of this section or, if not subject to subsection (3) of this section, has neither qualified as a self-insurer nor secured insurance coverage under the workers' compensation law of another state or province of Canada, the claimant shall be paid compensation by the department and the employer shall have the same rights and obligations, and is subject to the same penalties, as other employers subject to this title.

(5) As used in this section:

(a) A person's employment is principally localized in this or another state when: (i) His or her employer has a place of business in this or the other state and he or she regularly works at or from the place of business; or (ii) if (a)(i) of this subsection is not applicable, he or she is domiciled in and spends a substantial part of his or her working time in the service of his or her employer in this or the other state;

(b) "Workers' compensation law" includes "occupational disease law" for the purposes of this section.

(6) A worker whose duties require him or her to travel regularly in the service of his or her employer in this and one or more other states may agree in writing with his or her employer that his or her employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall govern as to any injury occurring after the effective date of the agreement.

(7) The director is authorized to enter into agreements with the appropriate agencies of other states and provinces of Canada that administer their workers' compensation law with respect to conflicts of jurisdiction and the assumption of jurisdiction in cases where the contract of employment arises in one state or province and the injury occurs in another. If the other state's or province's law requires Washington employers to secure the payment of compensation under the other state's or province's workers' compensation laws for work performed in that state or province, then employers domiciled in that state or province must purchase compensation covering their workers engaged in that work in this state under this state's industrial insurance law. When an agreement under this subsection has been executed and adopted as a rule of the department under chapter 34.05 RCW, it binds all employers and workers subject to this title and the jurisdiction of this title is governed by this rule. [1999 c 394 § 1; 1998 c 279 § 2; 1995 c 199 § 1; 1977 ex.s. c 350 § 23; 1972 ex.s. c 43 § 12; 1971 ex.s. c 289 § 82.]

Finding—Intent—1998 c 279: "The legislature finds that a competitive disadvantage exists in the construction industry because of a disparity in workers' compensation coverage requirements among the states. The intent of this act is (1) to provide an equal footing for all contractors bidding on or engaging in construction work in this state, (2) to ensure that all workers injured while in the course of employment in this state receive the benefits to which they are entitled, and (3) to not create disincentives for employers to hire workers in this state." [1998 c 279 § 1.]

Severability—1995 c 199: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 199 § 8.]

51.12.130 Registered apprentices or trainees. (1) All persons registered as apprentices or trainees with the state apprenticeship council and participating in supplemental and related instruction classes conducted by a school district, a community college, a vocational school, or a local joint apprenticeship committee, shall be considered as workers of the state apprenticeship council and subject to the provisions of Title 51 RCW, for the time spent in actual attendance at such supplemental and related instruction classes.

(2) The assumed wage rate for all apprentices or trainees during the hours they are participating in supplemental and related instruction classes, shall be three dollars per hour. This amount shall be used for purposes of computations of premiums. For purposes of computing disability compensation payments, the actual wage rate during employment shall be used.

(3) Only those apprentices or trainees who are registered with the state apprenticeship council prior to their injury or death and who incur such injury or death while participating in supplemental and related instruction classes shall be entitled to benefits under the provisions of Title 51 RCW.

(4) The filing of claims for benefits under the authority of this section shall be the exclusive remedy of apprentices or

trainees and their beneficiaries for injuries or death compensable under the provisions of Title 51 RCW against the state, its political subdivisions, the school district, community college, or vocational school and their members, officers or employees or any employer regardless of negligence.

(5) This section shall not apply to any apprentice or trainee who has earned wages for the time spent in participating in supplemental and related instruction classes. [1988 c 140 § 1; 1987 c 185 § 31; 1973 c 110 § 1.]

Intent—1987 c 185: "In 1977, in two separate pieces of legislation relating to industrial insurance, the Washington legislature changed certain references from "workmen's" or "workman's" compensation to "workers'" compensation. The purpose of this act is to correct remaining obsolete references to "workmen's compensation" and "workmen."" [1987 c 185 § 1.]

Severability—1987 c 185: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 185 § 41.]

51.12.140 Volunteer law enforcement officers. (1) As used in this section:

(a) "Municipal corporation" means any city, town, or county authorized by law to maintain and operate a law enforcement department;

(b) "Law enforcement department" means any regularly organized police department, sheriff's department, department of public safety, or other similar organization which has as its primary purpose the enforcement of state or local penal laws and the preservation of public order, which consists wholly of volunteer law enforcement officers or a combination of volunteer and paid law enforcement officers, and which is duly organized and maintained by a municipal corporation;

(c) "Volunteer law enforcement officer" means a person who is a member of a law enforcement department and who (i) performs assigned or authorized duties for the law enforcement department by his or her own free choice; (ii) serves in a position that is not basically clerical or secretarial in nature; (iii) is registered and accepted as a volunteer by the law enforcement department; and (iv) receives no monetary remuneration other than maintenance and reimbursement for actual expenses necessarily incurred in performing assigned duties; and

(d) "Performance of duty" includes any work in and about the volunteer law enforcement officers' quarters, police station, or any other place under the direction or general orders of the officer having the authority to order a volunteer law enforcement officer to perform the work; providing law enforcement assistance; patrol; drill; and any work of an emergency nature performed in accordance with the rules of the law enforcement department.

(2) Any municipal corporation maintaining and operating a law enforcement department may elect to provide coverage under this title for all of its volunteer law enforcement officers for death or disability occurring in the performance of their duties as volunteer law enforcement officers. Any municipal corporation electing to provide the coverage shall file a written notice of coverage with the director.

(3) Coverage under this section shall be for all the applicable death, disability, and medical aid benefits of this title and shall be effective only for injuries which occur and occur

pational diseases which are contracted after the notice of coverage has been filed with the director.

Nothing in this subsection shall be construed to prohibit a municipal corporation from covering its volunteer law enforcement officers and other volunteers under RCW 51.12.035(2), as now or hereafter amended, for medical aid benefits only.

(4) Volunteer law enforcement officers for whom municipal corporations have given notice of coverage under this section shall be deemed workers or employees, as the case may be, and the performance of their duties shall be deemed employment or in the course of employment, as the case may be, for all purposes of this title except where expressly excluded or where the context clearly requires otherwise.

(5) All premiums, assessments, contributions, and penalties due under this title because coverage is provided under this section shall be the obligation of and be paid by the municipal corporation giving the notice of coverage to the director.

(6) Any municipal corporation electing coverage under this section shall maintain a time log in which the number of hours worked by each of its volunteer law enforcement officers is recorded. The log shall be made available for inspection upon the request of any authorized employee of the department.

(7) Any municipal corporation electing coverage under this section may withdraw the coverage by filing a written notice of the withdrawal with the director. The withdrawal shall become effective thirty days after filing the notice or on the date of the termination of the security for payment of compensation, whichever occurs later. At least thirty days before the effective date of the withdrawal, the municipal corporation shall notify each of its volunteer law enforcement officers of the withdrawal. Withdrawal of coverage under this section shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period in which coverage was provided. [1977 ex.s. c 113 § 1.]

Severability—1977 ex.s. c 113: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 113 § 2.]

51.12.150 Musicians and entertainers. Any musician or entertainer who performs as a member of a group or recognized entity is deemed an employee of the group or entity and the leader of the group or entity shall be required to properly register as an employer with the department and pay industrial insurance premiums on behalf of his or her employees. If a musician or entertainer is a sole performer or performs as a partner in a group or entity, or performs on a casual basis, the musician or entertainer shall be exempted from mandatory coverage of this title. However, any such sole performer, partner, or casual performer may elect to be covered under this title and shall be subject to all the provisions and entitled to all the benefits under this title. [1983 c 252 § 2.]

Employments excluded—Musicians and entertainers: RCW 51.12.020.

51.12.160 Foreign degree-granting institutions—Employee services in country of domicile. The services of

employees of a foreign degree-granting institution who are nonimmigrant aliens under the immigration laws of the United States, shall, for the purposes of RCW 51.12.120, be considered to be localized or principally localized, in the country of domicile of the foreign degree-granting institution as defined in RCW 28B.90.010 in those instances where the income of those employees would be exempt from taxation by virtue of the terms and provisions of any treaty between the United States and the country of domicile of the foreign degree-granting institution. However, a foreign degree-granting institution is not precluded from otherwise establishing that a nonimmigrant employee's services are, for the purpose of such statutes, principally located in its country of domicile. [1993 c 181 § 9.]

51.12.170 Student volunteers. (1) An employer covered under this title may elect to include student volunteers as employees or workers for all purposes relating to medical aid benefits under chapter 51.36 RCW. The employer shall give notice of its intent to cover all of its student volunteers to the director prior to the occurrence of the injury or contraction of an occupational disease.

(2) A student volunteer is an enrolled student in a public school as defined in RCW 28A.150.010 who is participating as a volunteer under a program authorized by the public school. The student volunteer shall perform duties for the employer without wages. The student volunteer shall be deemed to be a volunteer even if the student is granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties. A person who earns wages for the services performed is not a student volunteer.

(3) Any and all premiums or assessments due under this title on account of service by a student volunteer shall be paid by the employer who has registered and accepted the services of volunteers and has exercised its option to secure the medical aid benefits under chapter 51.36 RCW for the student volunteers. [1994 c 246 § 1.]

Effective date—Implementation—1994 c 246 § 1: "Section 1 of this act shall take effect October 1, 1994. The department of labor and industries may take such steps as are necessary to ensure that this section is implemented on its effective date." [1994 c 246 § 3.]

Chapter 51.14 RCW

SELF-INSURERS

Sections

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51.14.010 Duty to secure payment of compensation—

Options. Every employer under this title shall secure the payment of compensation under this title by:

- (1) Insuring and keeping insured the payment of such benefits with the state fund; or
- (2) Qualifying as a self-insurer under this title. [1971 ex.s. c 289 § 26.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.14.020 Qualification.

(1) An employer may qualify as a self-insurer by establishing to the director's satisfaction that he or she has sufficient financial ability to make certain the prompt payment of all compensation under this title and all assessments which may become due from such employer. Each application for certification as a self-insurer submitted by an employer shall be accompanied by payment of a fee of one hundred fifty dollars or such larger sum as the director shall find necessary for the administrative costs of evaluation of the applicant's qualifications. Any employer who has formerly been certified as a self-insurer and thereafter ceases to be so certified may not apply for certification within three years of ceasing to have been so certified.

(2)(a) A self-insurer may be required by the director to supplement existing financial ability by depositing in an escrow account in a depository designated by the director, money and/or corporate or governmental securities approved by the director, or a surety bond written by any company admitted to transact surety business in this state, or provide an irrevocable letter of credit issued by a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington filed with the department. The money, securities, bond, or letter of credit shall be in an amount reasonably sufficient in the director's discretion to insure payment of reasonably foreseeable compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars. In arriving at the amount of money, securities, bond, or letter of credit required under this subsection, the director shall take into consideration the financial ability of the employer to pay compensation and assessments and his or her probable continuity of operation. However, a letter of credit shall be acceptable only if the self-insurer has a net worth of not less than five hundred million dollars as evidenced in an annual financial statement prepared by a qualified, independent auditor using generally accepted accounting principles. The money, securities, bond, or letter of credit so deposited shall be held by the director solely for the payment of compensation by the self-insurer and his or her assessments. In the event of default the self-insurer loses all right and title to, any interest in, and any right to control the surety. The amount of surety may be increased or decreased from time to time by the director. The income from any securities deposited may be distributed currently to the self-insurer.

(2004 Ed.)

(b) The letter of credit option authorized in (a) of this subsection shall not apply to self-insurers authorized under RCW 51.14.150 or to self-insurers who are counties, cities, or municipal corporations.

(3) Securities or money deposited by an employer pursuant to subsection (2) of this section shall be returned to him or her upon his or her written request provided the employer files the bond required by such subsection.

(4) If the employer seeking to qualify as a self-insurer has previously insured with the state fund, the director shall require the employer to make up his or her proper share of any deficit or insufficiency in the state fund as a condition to certification as a self-insurer.

(5) A self-insurer may reinsure a portion of his or her liability under this title with any reinsurer authorized to transact such reinsurance in this state: PROVIDED, That the reinsurer may not participate in the administration of the responsibilities of the self-insurer under this title. Such reinsurance may not exceed eighty percent of the liabilities under this title.

(6) For purposes of the application of this section, the department may adopt separate rules establishing the security requirements applicable to units of local government. In setting such requirements, the department shall take into consideration the ability of the governmental unit to meet its self-insured obligations, such as but not limited to source of funds, permanency, and right of default.

(7) The director shall adopt rules to carry out the purposes of this section including, but not limited to, rules respecting the terms and conditions of letters of credit and the establishment of the appropriate level of net worth of the self-insurer to qualify for use of the letter of credit. Only letters of credit issued in strict compliance with the rules shall be deemed acceptable. [1995 c 31 § 1; 1990 c 209 § 1; 1986 c 57 § 1; 1977 ex.s. c 323 § 9; 1972 ex.s. c 43 § 16; 1971 ex.s. c 289 § 27.]

Effective date—1990 c 209 § 1: "Section 1 of this act shall take effect January 1, 1991." [1990 c 209 § 3.]

Intent—1986 c 57: See note following RCW 51.14.077.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.14.030 Certification of employer as self-insurer.

The director may issue a certification that an employer is qualified as a self-insurer when such employer meets the following requirements:

(1) He or she has fulfilled the requirements of RCW 51.14.020.

(2) He or she has submitted to the department a payroll report for the preceding consecutive twelve month period.

(3) He or she has submitted to the department a sworn itemized statement accompanied by an independent audit of the employer's books demonstrating to the director's satisfaction that the employer has sufficient liquid assets to meet his or her estimated liabilities as a self-insurer.

(4) He or she has demonstrated to the department the existence of the safety organization maintained by him or her within his or her establishment that indicates a record of accident prevention.

(5) He or she has submitted to the department a description of the administrative organization to be maintained by him or her to manage industrial insurance matters including:

- (a) The reporting of injuries;
- (b) The authorization of medical care;
- (c) The payment of compensation;
- (d) The handling of claims for compensation;
- (e) The name and location of each business location of the employer; and
- (f) The qualifications of the personnel of the employer to perform this service.

Such certification shall remain in effect until withdrawn by the director or surrendered by the employer with the approval of the director. An employer's qualification as a self-insurer shall become effective on the date of certification or any date specified in the certificate after the date of certification. [1977 ex.s. c 323 § 10; 1971 ex.s. c 289 § 28.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.14.040 Surety liability—Termination. (1) The surety on a bond filed by a self-insurer pursuant to this title may terminate its liability thereon by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective.

(2) In case of such termination, the surety shall remain liable, in accordance with the terms of the bond, with respect to future compensation for injuries to employees of the self-insurer occurring prior to the termination of the surety's liability.

(3) If the bond is terminated for any reason other than the employer's terminating his status as a self-insurer, the employer shall, prior to the date of termination of the surety's liability, otherwise comply with the requirements of this title.

(4) The liability of a surety on any bond filed pursuant to this section shall be released and extinguished and the bond returned to the employer or surety provided either such liability is secured by another bond filed, or money or securities deposited as required by this title. [1971 ex.s. c 289 § 29.]

51.14.050 Termination of status—Notice—Financial requirements. (1) Any employer may at any time terminate his status as a self-insurer by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective, provided such termination shall not be effective until the employer either shall have ceased to be an employer or shall have filed with the director for state industrial insurance coverage under this title.

(2) An employer who ceases to be a self-insurer, and who so files with the director, must maintain money, securities or surety bonds deemed sufficient in the director's discretion to cover the entire liability of such employer for injuries or occupational diseases to his employees which occurred during the period of self-insurance: PROVIDED, That the director may agree for the medical aid and accident funds to assume the obligation of such claims, in whole or in part, and shall adjust the employer's premium rate to provide for the payment of such obligations on behalf of the employer. [1971 ex.s. c 289 § 30.]

51.14.060 Default by self-insurer—Authority of director—Liability for reimbursement. (1) The director may, in cases of default upon any obligation under this title by the self-insurer, after ten days notice by certified mail to the defaulting self-insurer of the intention to do so, bring suit upon such bond or collect the interest and principal of any of the securities as they may become due or sell the securities or any of them as may be required or apply the money deposited, all in order to pay compensation and discharge the obligations of the defaulting self-insurer under this title.

(2) The director shall be authorized to fulfill the defaulting self-insured employer's obligations under this title from the defaulting self-insured employer's deposit or from other funds provided under this title for the satisfaction of claims against the defaulting self-insured employer. The defaulting self-insured employer is liable to and shall reimburse the director for the amounts necessary to fulfill the obligations of the defaulting self-insured employer that are in excess of the amounts received by the director from any bond filed, or securities or money deposited, by the defaulting self-insured employer pursuant to chapter 51.14 RCW. The amounts to be reimbursed shall include all amounts paid or payable as compensation under this title together with administrative costs, including attorneys' fees, and shall be considered taxes due the state of Washington. [1986 c 57 § 2; 1971 ex.s. c 289 § 31.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.070 Payments upon default. Whenever compensation due under this title is not paid because of an uncorrected default of a self-insurer, such compensation shall be paid from the medical aid and accidents funds, and any moneys obtained by the director from the bonds or other security provided under RCW 51.14.020 shall be deposited to the appropriate fund for the payment of compensation and administrative costs, including attorneys' fees. [1986 c 57 § 3; 1971 ex.s. c 289 § 36.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.073 Default lien. (1) In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the amounts necessary to fulfill the obligations of a defaulting self-insured employer together with administrative costs and attorneys' fees is a lien prior to all other liens or claims and on a parity with prior tax liens and the mere existence of a default by a self-insured employer is sufficient to create the lien without any prior or subsequent action by the state. All administrators, receivers, and assignees for the benefit of creditors shall notify the director of such administration, receivership, or assignment within thirty days of their appointment or qualification.

(2) Separate and apart and in addition to the lien established by this section, the department may issue an assessment, as provided for in RCW 51.48.120, for the amount necessary to fulfill the defaulting self-insured employer's obligations, including all amounts paid and payable as compensation under this title and administrative costs, including attorneys' fees. [1986 c 57 § 4.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.077 Self-insurers' insolvency trust—Assessments—Rules. (1) A self-insurers' insolvency trust is established to provide for the unsecured benefits paid to the injured workers of self-insured employers under this title for insolvent or defaulting self-insured employers and for the department's associated administrative costs, including attorneys' fees. The self-insurers' insolvency trust shall be funded by an insolvency assessment which shall be levied on a post-insolvency basis and after the defaulting self-insured employer's security deposit, assets, and reinsurance, if any, have been exhausted. Insolvency assessments shall be imposed on all self-insured employers, except school districts, cities, and counties. The manner of imposing and collecting assessments to the insolvency fund shall be set forth in rules adopted by the department to ensure that self-insured employers pay into the fund in proportion to their claim costs. The department's rules shall provide that self-insured employers who have surrendered their certification shall be assessed for a period of not more than three calendar years following the termination date of their certification.

(2) The director shall adopt rules to carry out the purposes of this section, including but not limited to:

(a) Governing the formation of the self-insurers' insolvency trust for the purpose of this chapter;

(b) Governing the organization and operation of the self-insurers' insolvency trust to assure compliance with the requirements of this chapter;

(c) Requiring adequate accountability of the collection and disbursement of funds in the self-insurers' insolvency trust; and

(d) Any other provisions necessary to carry out the requirements of this chapter. [1986 c 57 § 6.]

Intent—1986 c 57: "It is the intent of the legislature to provide for the continuation of workers' compensation benefits in the event of the failure of a self-insured employer to meet its compensation obligations when the employer's security deposit, assets, and reinsurance are inadequate. The legislature finds and declares that the establishment of a self-insurers' insolvency trust is necessary to assure that benefit payments to injured workers of self-insured employers will not become the responsibility of the state fund." [1986 c 57 § 5.]

51.14.080 Withdrawal of certification—Grounds. Certification of a self-insurer shall be withdrawn by the director upon one or more of the following grounds:

(1) The employer no longer meets the requirements of a self-insurer; or

(2) The self-insurer's deposit is insufficient; or

(3) The self-insurer intentionally or repeatedly induces employees to fail to report injuries, induces claimants to treat injuries in the course of employment as off-the-job injuries, persuades claimants to accept less than the compensation due, or unreasonably makes it necessary for claimants to resort to proceedings against the employer to obtain compensation; or

(4) The self-insurer habitually fails to comply with rules and regulations of the director regarding reports or other requirements necessary to carry out the purposes of this title; or

(5) The self-insurer habitually engages in a practice of arbitrarily or unreasonably refusing employment to applicants for employment or discharging employees because of nondisabling bodily conditions; or

(6) The self-insurer fails to pay an insolvency assessment under the procedures established pursuant to RCW 51.14.077. [1986 c 57 § 7; 1971 ex.s. c 289 § 32.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.090 Withdrawal of certification, corrective action upon employees' petition. (1) Upon the petition of any employee or union or association having a substantial number of employees in the employ of the self-insurer the director or the director's designee may, in the director or designee's sole discretion, hold a hearing to determine whether or not there are grounds for the withdrawal of certification of a self-insurer or for corrective action by the department.

(2) The director shall serve upon the self-insurer and upon any employee or union or association having a substantial number of employees in the employ of said self-insurer, personally or by certified mail, a notice of intention to withdraw, or not to withdraw, certification of the self-insurer, which notice shall describe the nature and location or locations of the plants or operations involved; and the specific nature of the reasons for the decision. Similar notice shall be provided for decisions regarding corrective actions. The corrective action notice shall also include a directive to the self-insurer specifying the program deficiencies to be eliminated.

(3) If the decision is to withdraw certification, it shall include: The period of time within which the ground or grounds therefor existed or arose; and the date, not less than ninety days after the self-insurer's receipt of the notice, when the certification will be withdrawn.

(4) An appeal of any action taken by the director under this section may be taken by the self-insurer, or by any employee or union or association having a substantial number of employees in the employ of the self-insurer. Proceedings on the appeal shall be as prescribed in this title. Appeal by a self-insurer of notice of intention to withdraw certification or to take corrective action shall not act as a stay of the withdrawal or corrective action, unless the board or court, for good cause shown, orders otherwise.

(5) The director may adopt rules to carry out the purposes of this section. [1996 c 58 § 1; 1983 c 21 § 1; 1971 ex.s. c 289 § 33.]

51.14.095 Corrective action—Appeal. (1) The director shall take corrective action against a self-insured employer if the director determines that:

(a) The employer is not following proper industrial insurance claims procedures;

(b) The employer's accident prevention program is inadequate; or

(c) Any condition described in RCW 51.14.080 (1) through (5) exists.

(2) Corrective actions may be taken upon the director's initiative or in response to a petition filed under RCW 51.14.090. Corrective actions which may be taken by the director shall include:

(a) Probationary certification for a period of time determined by the director;

(b) Mandatory training for employers in areas including claims management, safety procedures, and administrative reporting requirements; and

(c) Monitoring of the activities of the employer to determine progress towards compliance.

The director shall adopt rules defining the corrective actions which may be taken in response to a given condition.

Corrective actions shall be limited to those described in (a), (b), and (c) of this subsection.

(3) Upon the termination of the corrective action, the director shall review the employer's program for compliance with state statutes and regulations. A written report regarding the employer's compliance shall be provided to the employer and to any party to a petition filed under RCW 51.14.090. If the director determines that compliance has been attained, no further action shall be taken. If compliance has not been attained, the director may take additional corrective action as defined in this section, or proceed toward decertification as described in RCW 51.14.080.

(4) An employer may appeal any action taken by the director under this section. Proceedings during the appeal shall be as prescribed in this title. An appeal by a self-insurer shall not act as a stay of the corrective action, unless the board or court, for good cause shown, orders otherwise.

(5) This section shall not be construed to limit the responsibilities or authority of the department under RCW 51.14.080 or 51.14.090. [1983 c 21 § 2.]

51.14.100 Notice of compliance to be posted—Penalty. (1) Every employer subject to the provisions of this title shall post and keep posted in a conspicuous place or places in and about his place or places of business a reasonable number of typewritten or printed notices of compliance substantially identical to a form prescribed by the director, stating that such employer is subject to the provisions of this title. Such notice shall advise whether the employer is self-insured or has insured with the department, and shall designate a person or persons on the premises to whom report of injury shall be made.

(2) Any employer who has failed to open an account with the department or qualify as a self-insurer shall not post or permit to be posted on or about his place of business or premises any notice of compliance with this title and any willful violation of this subsection by any officer or supervisory employee of an employer shall be a misdemeanor. [1971 ex.s. c 289 § 34.]

51.14.110 Employer's duty to maintain records, furnish information. Every self-insurer shall maintain a record of all payments of compensation made under this title. The self-insurer shall furnish to the director all information he has in his possession as to any disputed claim, upon forms approved by the director. [1971 ex.s. c 289 § 35.]

51.14.120 Copy of claim file—Notice of protest or appeal—Medical report. (1) The self-insurer shall provide, when authorized under RCW 51.28.070, a copy of the employee's claim file at no cost within fifteen days of receipt of a request by the employee or the employee's representative, and shall provide the physician performing an examination with all relevant medical records from the worker's claim file, but only to the extent required of the department under RCW 51.36.070. If the self-insured employer determines that

release of the claim file to an unrepresented worker in whole or in part, may not be in the worker's best interests, the employer must submit a request for denial with an explanation along with a copy of that portion of the claim file not previously provided within twenty days after the request from the worker. In the case of second or subsequent requests, a reasonable charge for copying may be made. The self-insurer shall provide the entire contents of the claim file unless the request is for only a particular portion of the file. Any new material added to the claim file after the initial request shall be provided under the same terms and conditions as the initial request.

(2) The self-insurer shall transmit notice to the department of any protest or appeal by an employee relating to the administration of an industrial injury or occupational disease claim under this chapter within five working days of receipt. The date that the protest or appeal is received by the self-insurer shall be deemed to be the date the protest is received by the department for the purpose of RCW 51.52.050.

(3) The self-insurer shall submit a medical report with the request for closure of a claim under this chapter. [2001 c 152 § 1; 1993 c 122 § 2.]

51.14.130 Request for claim resolution—Time. The self-insurer shall request allowance or denial of a claim within sixty days from the date that the claim is filed. If the self-insurer fails to act within sixty days, the department shall promptly intervene and adjudicate the claim. [1993 c 122 § 3.]

51.14.140 Violations of disclosure or request for resolution—Order by director. Failure of a self-insurer to comply with RCW 51.14.120 and 51.14.130 shall subject the self-insurer to a penalty under RCW 51.48.080, which shall accrue for the benefit of the employee. The director shall issue an order conforming with RCW 51.52.050 determining whether a violation has occurred within thirty days of a request by an employee. [1993 c 122 § 4.]

51.14.150 School districts, ESDs, public hospital districts, or hospitals as self-insurers—Authorized—Organization—Qualifications. (1) For the purposes of this section, "hospital" means a hospital as defined in *RCW 70.41.020(2) or a psychiatric hospital regulated under chapter 71.12 RCW, but does not include beds utilized by a comprehensive cancer center for cancer research.

(2)(a) Any two or more employers which are school districts or educational service districts, or (b) any two or more employers which are public hospital districts or hospitals, and are owned or operated by a state agency or municipal corporation of this state, or (c) any two or more employers which are hospitals, no one of which is owned or operated by a state agency or municipal corporation of this state, may enter into agreements to form self-insurance groups for the purposes of this chapter.

(3) No more than one group may be formed under subsection (2)(b) of this section and no more than one group may be formed under subsection (2)(c) of this section.

(4) The self-insurance groups shall be organized and operated under rules promulgated by the director under RCW

51.14.160. Such a self-insurance group shall be deemed an employer for the purposes of this chapter, and may qualify as a self-insurer if it meets all the other requirements of this chapter. [1997 c 35 § 1; 1993 c 158 § 1; 1983 c 174 § 2; 1982 c 191 § 7.]

*Reviser's note: RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

Severability—1982 c 191: See note following RCW 28A.335.210.

Educational service district as self-insurer—Authority: RCW 28A.310.440.

School district as self-insurer—Authority: RCW 28A.320.070.

51.14.160 School districts, ESDs, or hospitals as self-insurers—Rules—Scope. The director shall promulgate rules to carry out the purposes of RCW 51.14.150:

(1) Governing the formation of self-insurance groups for the purposes of this chapter;

(2) Governing the organization and operation of the groups to assure their compliance with the requirements of this chapter;

(3) Requiring adequate monetary reserves, determined under accepted actuarial practices, to be maintained by each group to assure financial solvency of the group; and

(4) Requiring each group to carry adequate reinsurance. [1983 c 174 § 3; 1982 c 191 § 8.]

Severability—1982 c 191: See note following RCW 28A.335.210.

Chapter 51.16 RCW

ASSESSMENT AND COLLECTION OF PREMIUMS—PAYROLLS AND RECORDS

Sections

51.16.035	Classifications—Premiums—Rules.
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51.16.200	Payment of tax by employer quitting business—Liability of successor.
51.16.210	Horse racing employment—Premiums.

51.16.035 Classifications—Premiums—Rules. (1) The department shall classify all occupations or industries in accordance with their degree of hazard and fix therefor basic rates of premium which shall be the lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles. The department shall formulate and adopt rules and regulations governing the method of premium calculation and collection and providing for a rating system consistent with rec-

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ognized principles of workers' compensation insurance which shall be designed to stimulate and encourage accident prevention and to facilitate collection. The department may annually, or at such other times as it deems necessary to maintain solvency of the funds, readjust rates in accordance with the rating system to become effective on such dates as the department may designate.

(2) In providing a retrospective rating plan under RCW 51.18.010, the department may consider each individual retrospective rating group as a single employing entity for purposes of dividends or premium discounts. [1999 c 7 § 8; 1989 c 49 § 1; 1980 c 129 § 4; 1977 ex.s. c 350 § 24; 1971 ex.s. c 289 § 16.]

Severability—1999 c 7: See RCW 51.18.900.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.040 Occupational diseases. The compensation and benefits provided for occupational diseases shall be paid and in the same manner as compensation and benefits for injuries under this title. [1971 ex.s. c 289 § 83; 1961 c 23 § 51.16.040. Prior: 1959 c 308 § 12; 1941 c 235 § 2; Rem. Supp. 1941 7679-1.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.042 Occupational and environmental research facility. Inasmuch as business, industry and labor desire to provide for testing, research, training and teaching facilities and consulting services at the University of Washington for industrial and occupational health for workers in the environmental research facility thereat, all employers shall bear their proportionate share of the cost therefor. The director may require payments to the department from all employers under this title and may make rules and regulations in connection therewith, which costs shall be paid from the department, in lieu of the previous provisions of RCW 28B.20.458. [1977 ex.s. c 350 § 25; 1971 ex.s. c 289 § 84; 1963 c 151 § 2.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Occupational and environmental research facility at University of Washington: RCW 28B.20.450 through 28B.20.458.

51.16.060 Quarterly report of payrolls. Every employer not qualifying as a self-insurer, shall insure with the state and shall, on or before the last day of January, April, July and October of each year thereafter, furnish the department with a true and accurate payroll for the period in which workers were employed by it during the preceding calendar quarter, the total amount paid to such workers during such preceding calendar quarter, and a segregation of employment in the different classes established pursuant to this title, and shall pay its premium thereon to the appropriate fund. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter. The sufficiency of such statement shall be subject to the approval of the director: PROVIDED, That the director may in his or her discretion and for the effective administration of this title require an employer in individual instances to furnish a supplementary report containing the name of each

individual worker, his or her hours worked, his or her rate of pay and the class or classes in which such work was performed: PROVIDED FURTHER, That in the event an employer shall furnish the department with four consecutive quarterly reports wherein each such quarterly report indicates that no premium is due the department may close the account: PROVIDED FURTHER, That the department may promulgate rules and regulations in accordance with chapter 34.05 RCW to establish other reporting periods and payment due dates in lieu of reports and payments following each calendar quarter, and may also establish terms and conditions for payment of premiums and assessments based on estimated payrolls, with such payments being subject to approval as to sufficiency of the estimated payroll by the department, and also subject to appropriate periodic adjustments made by the department based on actual payroll: AND PROVIDED FURTHER, That a temporary help company which provides workers on a temporary basis to its customers shall be considered the employer for purposes of reporting and paying premiums and assessments under this title according to the appropriate rate classifications as determined by the department: PROVIDED, That the employer shall be liable for paying premiums and assessments, should the temporary help company fail to pay the premiums and assessments under this title. [1985 c 315 § 1; 1981 c 260 § 13. Prior: 1977 ex.s. c 350 § 26; 1977 ex.s. c 323 § 11; 1973 1st ex.s. c 32 § 1; 1971 ex.s. c 289 § 76; 1965 ex.s. c 80 § 1; 1961 c 23 § 51.16.060; prior: 1959 c 308 § 14; 1957 c 70 § 47; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.070 Employer's records—Unified business identifier—Confidentiality. (1)(a) Every employer shall keep at his place of business a record of his employment from which the information needed by the department may be obtained and such record shall at all times be open to the inspection of the director, supervisor of industrial insurance, or the traveling auditors, agents, or assistants of the department, as provided in RCW 51.48.040.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty under RCW 51.48.030.

(2) Information obtained from employing unit records under the provisions of this title shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but any interested party shall be supplied with information from such records to the extent necessary for the proper presentation of the case in question: PROVIDED, That any employing unit may authorize inspection of its records by written consent. [1997 c 54 § 3; 1961 c 23 § 51.16.070. Prior: 1957 c 70 § 48; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

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51.16.090 Continuity of cost experience. To the end that no employer shall evade the burdens imposed by an unfavorable or high cost experience, the director may determine whether or not an increase, decrease, or change (1) of operating property; (2) of interest in operating property; (3) of employer; (4) of personnel or interest in employer is sufficient to show a bona fide change which would make inoperative any high cost experience: PROVIDED, That where an employer is now or has prior to January 1, 1958, been covered under the provisions of this title for a period of at least two years and subsequent thereto the legal structure of the employer changes by way of incorporation, disincorporation, merger, consolidation, transfer of stock ownership, or by any other means, such person or entity as legally reconstituted shall be entitled to a continuation of the experience rating which existed prior to such change in the employer's legal structure unless there has been such a substantial change as provided in subdivisions (1), (2), (3) or (4) of this section as would warrant making inoperative any high cost experience. [1961 c 23 § 51.16.090. Prior: 1959 c 179 § 1; 1957 c 70 § 49; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

51.16.100 Classification changes. It is the intent that the accident fund shall ultimately become neither more nor less than self-supporting, except as provided in RCW 51.16.105 and, if in the adjustment of premium rates by the director the moneys paid into the fund by any class or classes shall be insufficient to properly and safely distribute the burden of accidents occurring therein, the department may divide, rearrange, or consolidate such class or classes, making such adjustment or transfer of funds as it may deem proper. The director shall make corrections of classifications or subclassifications or changes in rates, classes and subclasses when the best interest of such classes or subclasses will be served thereby. [1961 c 23 § 51.16.100. Prior: 1953 c 218 § 1; prior: (i) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part. (ii) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

51.16.105 Departmental expenses, financing. All department expenses relating to industrial safety and health services of the department pertaining to workers' compensation shall be paid by the department and financed by premiums and by assessments collected from a self-insurer as provided in this title. [1994 c 164 § 26; 1977 ex.s. c 350 § 27; 1973 1st ex.s. c 52 § 8; 1971 ex.s. c 289 § 86; 1961 c 23 § 51.16.105. Prior: 1953 c 218 § 2.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.107 Information and training on premium liability. The department shall, working with business associations and other employer and employee groups when practical, publish information and provide training to promote understanding of the premium liability that may be incurred under this chapter. [2004 c 243 § 4.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

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51.16.110 New businesses or resumed or continued operations. Every employer who shall enter into any business, or who shall resume operations in any work or plant after the final adjustment of his or her payroll in connection therewith, or who was formerly a self-insurer and wishes to continue his or her operations subject to this title, shall, before so commencing or resuming or continuing operations, as the case may be, notify the department of such fact. [1991 c 88 § 4; 1977 ex.s. c 323 § 12; 1971 ex.s. c 289 § 4; 1961 c 23 § 51.16.110. Prior: 1959 c 179 § 2; 1959 c 308 § 15; prior: 1957 c 70 § 50; 1951 c 236 § 4; 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.120 Distribution of further accident cost. (1) Whenever a worker has a previous bodily disability from any previous injury or disease, whether known or unknown to the employer, and shall suffer a further disability from injury or occupational disease in employment covered by this title and become totally and permanently disabled from the combined effects thereof or die when death was substantially accelerated by the combined effects thereof, then the experience record of an employer insured with the state fund at the time of said further injury or disease shall be charged and a self-insured employer shall pay directly into the reserve fund only the accident cost which would have resulted solely from said further injury or disease, had there been no preexisting disability, and which accident cost shall be based upon an evaluation of the disability by medical experts. The difference between the charge thus assessed to such employer at the time of said further injury or disease and the total cost of the pension reserve shall be assessed against the second injury fund. The department shall pass upon the application of this section in all cases where benefits are paid for total permanent disability or death and issue an order thereon appealable by the employer. Pending outcome of such appeal the transfer or payment shall be made as required by such order.

(2) The department shall, in cases of claims of workers sustaining injuries or occupational diseases in the employ of state fund employers, recompute the experience record of such employers when the claims of workers injured in their employ have been found to qualify for payments from the second injury fund after the regular time for computation of such experience records and the department may make appropriate adjustments in such cases including cash refunds or credits to such employers.

(3) To encourage employment of injured workers who are not reemployed by the employer at the time of injury, the department may adopt rules providing for the reduction or elimination of premiums or assessments from subsequent employers of such workers and may also adopt rules for the reduction or elimination of charges against such employers in the event of further injury to such workers in their employ.

(4) To encourage employment of injured workers who have a developmental disability as defined in RCW 71A.10.020, the department may adopt rules providing for the reduction or elimination of premiums or assessments from employers of such workers and may also adopt rules for

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the reduction or elimination of charges against their employers in the event of further injury to such workers in their employ. [2004 c 258 § 1; 1984 c 63 § 1; 1980 c 14 § 7. Prior: 1977 ex.s. c 350 § 28; 1977 ex.s. c 323 § 13; 1972 ex.s. c 43 § 13; 1961 c 23 § 51.16.120; prior: 1959 c 308 § 16; 1945 c 219 § 1; 1943 c 16 § 1; Rem. Supp. 1945 § 7676-1a.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.16.130 Distribution of catastrophe cost. Whenever there shall occur an accident in which three or more employees of an employer insured with the state fund are fatally injured or sustain permanent total disability, the amount of total cost other than medical aid costs arising out of such accident that shall be charged to the account of the employer, shall be twice the average cost of the pension claims arising out of such accident. The entire cost of such accident, exclusive of medical aid costs, shall be charged against and defrayed by the catastrophe injury account. [1972 ex.s. c 43 § 14; 1961 c 23 § 51.16.130. Prior: 1957 c 70 § 22; prior: 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.16.140 Premium liability of worker. (1) Every employer who is not a self-insurer shall deduct from the pay of each of his or her workers one-half of the amount he or she is required to pay, for medical benefits within each risk classification. Such amount shall be periodically determined by the director and reported by him or her to all employers under this title: PROVIDED, That the state governmental unit shall pay the entire amount into the medical aid fund for volunteers, as defined in RCW 51.12.035, and the state apprenticeship council shall pay the entire amount into the medical aid fund for registered apprentices or trainees, for the purposes of RCW 51.12.130. The deduction under this section is not authorized for premiums assessed under RCW 51.16.210.

(2) It shall be unlawful for the employer, unless specifically authorized by this title, to deduct or obtain any part of the premium or other costs required to be by him or her paid from the wages or earnings of any of his or her workers, and the making of or attempt to make any such deduction shall be a gross misdemeanor. [1989 c 385 § 3; 1977 ex.s. c 350 § 29; 1973 c 110 § 2; 1971 ex.s. c 289 § 77; 1971 c 20 § 2; 1961 c 23 § 51.16.140. Prior: (i) 1923 c 136 § 8, part; 1919 c 129 § 1, part; 1917 c 28 § 4, part; RRS § 7713, part. (ii) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.150 Delinquent employers—Penalty after demand—Injunctive relief. If any employer shall default in any payment to any fund, the sum due may be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default occurs after demand, the director may require from the defaulting employer a bond to the state for the benefit of any fund, with surety to the director's satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, together with any penalty or penalties incurred. In case of refusal or failure

after written demand personally served to furnish such bond, the state shall be entitled to an injunction restraining the delinquent from prosecuting an occupation or work until such bond is furnished, and until all delinquent premiums, penalties, interest and costs are paid, conditioned for the prompt and punctual making of all payments into said funds during such periods, and any sale, transfer, or lease attempted to be made by such delinquent during the period of any of the defaults herein mentioned, of his works, plant, or lease thereto, shall be invalid until all past delinquencies are made good, and such bond furnished. [1986 c 9 § 4; 1985 c 315 § 2; 1972 ex.s. c 43 § 15; 1961 c 23 § 51.16.150. Prior: 1959 c 308 § 22; prior: 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

51.16.155 Failure or refusal of employer to report or pay premiums due—Collection. In every case where an employer insured with the state fails or refuses to file any report of payroll required by the department and fails or refuses to pay the premiums due on such unreported payroll, the department shall have authority to estimate such payroll and the premiums due thereon and collect premiums on the basis of such estimate.

If the report required and the premiums due thereon are not made within ten days from the mailing of such demand by the department, which shall include the amount of premiums estimated by the department, the employer shall be in default as provided by this title and the department may have and recover judgment, warrant, or file liens for such estimated premium or the actual premium, whichever is greater.

The director or the director's designee may compromise the amount of premiums estimated by the department, whether reduced to judgment or otherwise, arising under this title if collection of the premiums estimated by the department would be against equity and good conscience. [1996 c 60 § 1; 1985 c 315 § 3; 1971 ex.s. c 289 § 87.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.160 Lien for payments due—Priority—Probate, insolvency, etc. In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the payments due shall be a lien prior to all other liens or claims and on a parity with prior tax liens and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and all administrators, receivers, or assignees for the benefit of creditors shall notify the department of such administration, receivership, or assignment within thirty days from date of their appointment and qualification. In any action or proceeding brought for the recovery of payments due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department and the amount of such payroll for the period stated in the certificate shall be prima facie evidence of such fact. [1985 c 315 § 4; 1971 ex.s. c 289 § 78; 1961 c 23 § 51.16.160. Prior: 1959 c 308 § 23; prior: 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.170 Lien for premiums, assessments, contributions, and penalties—Priority—In general—Notice. Separate and apart from and in addition to the foregoing provisions in this chapter, the claims of the state for payments and penalties due under this title shall be a lien prior to all other liens or claims and on a parity with prior tax liens not only against the interest of any employer, in real estate, plant, works, equipment, and buildings improved, operated, or constructed by any employer, and also upon any products or articles manufactured by such employer.

The lien created by this section shall attach from the date of the commencement of the labor upon such property for which such premiums are due. In order to avail itself of the lien hereby created, the department shall, within four months after the employer has made report of his payroll and has defaulted in the payment of his premiums thereupon, file with the county auditor of the county within which such property is then situated, a statement in writing describing in general terms the property upon which a lien is claimed and stating the amount of the lien claimed by the department. If any employer fails or refuses to make report of his payroll, the lien hereby created shall continue in full force and effect, although the amount thereof is undetermined and the four months' time within which the department shall file its claim of lien shall not begin to run until the actual receipt by the department of such payroll report. From and after the filing of such claim of lien, the department shall be entitled to commence suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property, and in such suit the certificate of the department stating the date of the actual receipt by the department of such payroll report shall be prima facie evidence of such fact. [1986 c 9 § 5; 1961 c 23 § 51.16.170. Prior: 1959 c 308 § 24; prior: 1951 c 214 § 1; 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

51.16.180 Property acquired by state on execution. The director shall have the custody of all property acquired by the state at execution sale upon judgments obtained for delinquent payments and penalties therefor and costs, and may sell and dispose of the same at private sales for the sale purchase price, and shall pay the proceeds into the state treasury to the credit of the appropriate fund. In case of the sale of real estate the director shall execute the deed in the name of the state. [1971 ex.s. c 289 § 79; 1961 c 23 § 51.16.180. Prior: 1921 c 7 § 78, subdivision (4); RRS § 10836(4).]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.190 Limitation on collection actions. (1) "Action" means, but is not limited to, a notice of assessment pursuant to RCW 51.48.120, an action at law pursuant to RCW 51.16.150, or any other administrative or civil process authorized by this title for the determination of liability for premiums, assessments, penalties, contributions, or other sums, or the collection of premiums, assessments, penalties, contributions, or other sums.

(2) Any action to collect any delinquent premium, assessment, contribution, penalty, or other sum due to the department from any employer subject to this title shall be brought within three years of the date any such sum became due.

(3) In case of a false or fraudulent report with intent to evade premiums, assessments, contributions, penalties, interest, or other sums, or in the event of a failure to file a report, action may be begun at any time.

(4) Any claim for refund or adjustment by an employer of any premium, assessment, contribution, penalty, or other sum collected by the department shall be made in writing to the department within three years of the date the sum became due. [1987 c 111 § 7; 1985 c 315 § 5; 1977 ex.s. c 323 § 27.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.16.200 Payment of tax by employer quitting business—Liability of successor. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any tax payable hereunder shall become immediately due and payable, and the employer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the employer until such time as the employer shall produce a receipt from the department showing payment in full of any tax due or a certificate that no tax is due and, if such tax is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [1995 c 160 § 1; 1986 c 9 § 6.]

51.16.210 Horse racing employment—Premiums.

(1) The department shall assess premiums, under the provisions of this section, for certain horse racing employments licensed in accordance with chapter 67.16 RCW. This premium assessment shall be for the purpose of providing industrial insurance coverage for employees of trainers licensed under chapter 67.16 RCW, including but not limited to exercise riders, pony riders, and grooms, and including all on or off track employment. For the purposes of RCW 51.16.210, 67.16.300, 51.16.140, 51.32.073, and 67.16.020 a hotwalker shall be considered a groom. The department may adopt rules under chapter 34.05 RCW to carry out the purposes of this section, including rules providing for alternative reporting

periods and payment due dates for coverage under this section. The department rules shall ensure that no licensee licensed prior to May 13, 1989, shall pay more than the assessment fixed at the basic manual rate.

(2) The department shall compute industrial insurance premium rates on a per license basis, which premiums shall be assessed at the time of each issuance or renewal of the license for owners, trainers, and grooms in amounts established by department rule for coverage under this section. Premium assessments shall be determined in accordance with the requirements of this title, except that assessments shall not be experience rated and shall be fixed at the basic manual rate. However, rates may vary according to differences in working conditions at major tracks and fair tracks.

(3) For the purposes of paying premiums and assessments under this section and making reports under this title, individuals licensed as trainers by the Washington horse racing commission shall be considered employers. The premium assessment for a groom's license shall be paid by the trainer responsible for signing the groom's license application and shall be payable at the time of license issuance or renewal.

(4) The fee to be assessed on owner licenses as required by this section shall not exceed one hundred fifty dollars. However, those owners having less than a full ownership in a horse or horses shall pay a percentage of the required license fee that is equal to the total percentage of the ownership that the owner has in the horse or horses. In no event shall an owner having an ownership percentage in more than one horse pay more than a one hundred fifty-dollar license fee. The assessment on each owner's license shall not imply that an owner is an employer, but shall be required as part of the privilege of holding an owner's license.

(5) Premium assessments under this section shall be collected by the Washington horse racing commission and deposited in the industrial insurance trust funds as provided under department rules. [1989 c 385 § 1.]

Chapter 51.18 RCW

RETROSPECTIVE RATING PLAN

Sections

51.18.005	Findings.
51.18.010	Availability—Rules—Coverage period.
51.18.020	Entrance criteria.
51.18.030	Sponsoring entities—New or existing retrospective rating groups.
51.18.040	Retrospective rating groups—Industry and business categories.
51.18.050	Retrospective rating groups—Probationary status—Denial of future enrollment.
51.18.060	Retrospective rating groups—Department approval.
51.18.900	Severability—1999 c 7.

51.18.005 Findings. The legislature finds that the retrospective rating plan provided for in RCW 51.16.035 has proven to be highly effective both in terms of improved workplace safety and injured worker outcomes. As a result, the number of industrial insurance claims of many employers participating in the retrospective rating plan have been reduced through sound risk management strategies and enhanced cooperation with department claims management activities.

The legislature further finds that entrance criteria for the retrospective rating plan under RCW 51.16.035 should be clear and understandable to both the department and potential retrospective rating plan participants.

The legislature therefore declares that a new retrospective rating plan is needed in order to protect and preserve the integrity and welfare of the retrospective rating system. [1999 c 7 § 1.]

51.18.010 Availability—Rules—Coverage period.

(1) The department shall offer a retrospective rating plan to insure the workers' compensation obligations of employers and groups of employers. The plan is to be made available to any employer or group of employers who:

(a) Voluntarily elects to participate in the plan; and

(b) Meets the requirements of this chapter and rules adopted by the department under subsection (2) of this section.

(2) The retrospective rating plan shall be consistent with recognized insurance principles and shall be administered according to rules adopted by the department. Rules adopted under this section shall encourage broad participation by qualified employers and sponsors of retrospective rating groups.

(3) Each retrospective rating group approved by the department under this chapter shall select a coverage period and may be renewed at the end of each coverage period. For the purposes of this section, "coverage period" means a twelve-month period provided by the department by rule. [1999 c 7 § 2.]

51.18.020 Entrance criteria. Prior to allowing initial entrance into the state's retrospective rating plan, the department shall review each proposed retrospective rating group to ensure that the following criteria are met:

(1) The entity sponsoring the retrospective rating group must have been in existence for at least four years;

(2) The entity sponsoring the retrospective rating group must exist primarily for a purpose other than that of obtaining or offering insurance coverage or insurance related services;

(3) The entity sponsoring the retrospective rating group must have a written workplace safety and accident prevention plan in place for the proposed retrospective rating group and must propose methods by which the retrospective rating group will cooperate with department claims management activities;

(4) All employers in the retrospective rating group must be members of the sponsoring entity;

(5) All employers in the retrospective rating group must have an industrial insurance account in good standing with the department;

(6) Fifty percent of the original employers in the retrospective rating group must have been members of the sponsoring entity for one year prior to the group's entrance into the retrospective rating plan;

(7) The retrospective rating group must be composed of employers who are substantially similar considering the services or activities performed by the employees of those employers;

(8) The initial premium level for the retrospective rating group must be at least one million five hundred thousand dollars and shall be based on the standard premium of the proposed group members' most current previous coverage period; and

(9) The formation and operation of the retrospective rating group must seek to substantially improve workplace safety and accident prevention for the employers in the group. [1999 c 7 § 3.]

51.18.030 Sponsoring entities—New or existing retrospective rating groups.

(1) Entities which sponsored retrospective rating groups prior to July 25, 1999, may not sponsor additional retrospective rating groups in a new business or industry category until the coverage period beginning January 1, 2003.

(2) For retrospective rating groups approved by the department on or after July 25, 1999, the sponsoring entity may not propose another retrospective rating group in a new business or industry category until the minimum mandatory adjustment periods required by the department for the first two coverage periods of the last formed retrospective rating group are completed.

(3) Subsections (1) and (2) of this section do not prohibit a sponsoring entity from proposing to:

(a) Divide an existing retrospective rating group into two or more groups provided that the proposed new groups fall within the same business or industry category as the group that is proposed to be divided; or

(b) Merge existing retrospective rating groups into one business or industry category provided that the proposed merged groups fall within the same business or industry category as the groups that are proposed to be merged.

(4) Under no circumstances may a sponsoring entity propose retrospective rating groups in multiple business or industry categories in the same application to the department.

(5) An insurer, insurance broker, agent, or solicitor may not:

(a) Participate in the formation of a retrospective rating group; or

(b) Sponsor a retrospective rating group. [1999 c 7 § 4.]

51.18.040 Retrospective rating groups—Industry and business categories.

(1) In order to ensure that all retrospective rating groups are made up of employers who are substantially similar, considering the services or activities performed by the employees of those employers, the sponsoring entity of a retrospective rating group shall select a single, broad industry or business category for each retrospective rating group. Once an industry or business category is selected, the department shall allow all risk classifications reasonably related to that business or industry category into that retrospective rating group.

(2) The following broad industry and business categories shall be used by the sponsoring entity and the department in establishing retrospective rating groups:

(a) Agriculture and related services;

(b) Automotive, truck and boat manufacturing, sales, repair, and related services;

(c) Construction and related services;

(d) Distillation, chemical production, food, and related services;

(e) Facilities or property management, maintenance, and related services;

(f) Government, utilities, schools, health care, and related services;

(g) Health care, pharmaceutical, laboratories, and related services;

(h) Logging, wood products manufacturing, and related services;

(i) Manufacturing, processing, mining, quarrying, and related services;

(j) Retail stores, wholesale stores, professional services, and related services;

(k) Temporary help and related services; and

(l) Transportation, recycling, warehousing, facility maintenance, and related services.

(3) The industry and business categories in subsection (2) of this section are not exclusive. In response to significant changes in marketplace demographics or the discovery of unique business or industry categories, the department may, by rule, include additional broad industry or business category selections. The department may, by rule, remove an industry covered within an industry or business category in the event that the business or industry is no longer found within this state.

(4) Given the broad nature of the industry and business categories in subsection (2) of this section, the risk classification or classifications assigned to an individual employer may appropriately fall into multiple business or industry categories.

(5) In order to simplify administration and keep the administrative costs associated with devising a different classification system for a retrospective rating plan to a minimum, the state's retrospective rating plan shall follow the same classification procedure established by the department to assign workers' compensation insurance classifications to an employer.

(6) Employers who have been a member of an existing, approved retrospective rating group prior to July 25, 1999, may continue in that group even if they are not substantially similar to the industry or business category selected pursuant to subsection (1) of this section. However, new employers proposed for addition to a retrospective rating group on or after July 25, 1999, must fall within the selected industry or business category. [1999 c 7 § 5.]

51.18.050 Retrospective rating groups—Probationary status—Denial of future enrollment. (1) Any retrospective rating group required to pay additional net premium assessments in two consecutive coverage periods shall be immediately placed on probationary status. Once a group is placed on probationary status, the department shall review the group's workplace safety and accident prevention plan and its methods for cooperation with department claims management activities. Following the review, the department shall make recommendations for corrective steps that may be taken to improve the group's performance.

(2) If the same retrospective rating group is required to pay an additional net premium assessment in the third consecutive coverage period, that group shall be denied future

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enrollment in the state's retrospective rating plan. In addition, the sponsoring entity of the failed group may not sponsor another group in the same business or industry category for five coverage periods from the ending date of the failed group's last coverage period.

(3) This section applies prospectively only and not retroactively. It applies only to net assessments received by a retrospective rating group for plan years beginning after July 25, 1999. [1999 c 7 § 6.]

51.18.060 Retrospective rating groups—Department approval. All retrospective rating groups approved by the department prior to July 25, 1999, under RCW 51.16.035 as it existed prior to July 25, 1999, remain approved and, with the exception of RCW 51.18.020, are subject to the provisions of this chapter. [1999 c 7 § 7.]

51.18.900 Severability—1999 c 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 7 § 10.]

Chapter 51.24 RCW

ACTIONS AT LAW FOR INJURY OR DEATH

Sections

51.24.020	Action against employer for intentional injury.
51.24.030	Action against third person—Election by injured person or beneficiary—Underinsured motorist insurance coverage.
51.24.035	Immunity of design professional and employees.
51.24.040	Election or recovery no bar to compensation or benefits.
51.24.050	Assignment of cause of action—Disposition of recovered amount.
51.24.060	Distribution of amount recovered—Lien.
51.24.070	Required election—Procedures—Right of reelection.
51.24.080	Notice of election or copy of complaint to department or self-insurer—Filing notice.
51.24.090	Compromise or settlement less than benefits.
51.24.100	Right to compensation not pleadable or admissible—Challenge to right to bring action.
51.24.110	Assigned cases—Special assistant attorneys general.
51.24.120	Rules.
51.24.900	Application—1977 ex.s. c 85.
51.24.902	Application—1984 c 218.

51.24.020 Action against employer for intentional injury. If injury results to a worker from the deliberate intention of his or her employer to produce such injury, the worker or beneficiary of the worker shall have the privilege to take under this title and also have cause of action against the employer as if this title had not been enacted, for any damages in excess of compensation and benefits paid or payable under this title. [1984 c 218 § 2; 1977 ex.s. c 350 § 31; 1973 1st ex.s. c 154 § 94; 1961 c 23 § 51.24.020. Prior: 1957 c 70 § 24; prior: 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part.]

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

51.24.030 Action against third person—Election by injured person or beneficiary—Underinsured motorist insurance coverage. (1) If a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compen-

sation are provided under this title, the injured worker or beneficiary may elect to seek damages from the third person.

(2) In every action brought under this section, the plaintiff shall give notice to the department or self-insurer when the action is filed. The department or self-insurer may file a notice of statutory interest in recovery. When such notice has been filed by the department or self-insurer, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department or self-insurer. The department or self-insurer may then intervene as a party in the action to protect its statutory interest in recovery.

(3) For the purposes of this chapter, "injury" shall include any physical or mental condition, disease, ailment or loss, including death, for which compensation and benefits are paid or payable under this title.

(4) Damages recoverable by a worker or beneficiary pursuant to the underinsured motorist coverage of an insurance policy shall be subject to this chapter only if the owner of the policy is the employer of the injured worker.

(5) For the purposes of this chapter, "recovery" includes all damages except loss of consortium. [1995 c 199 § 2; 1987 c 212 § 1701; 1986 c 58 § 1; 1984 c 218 § 3; 1977 ex.s. c 85 § 1.]

Severability—1995 c 199: See note following RCW 51.12.120.

51.24.035 Immunity of design professional and employees. (1) Notwithstanding RCW 51.24.030(1), the injured worker or beneficiary may not seek damages against a design professional who is a third person and who has been retained to perform professional services on a construction project, or any employee of a design professional who is assisting or representing the design professional in the performance of professional services on the site of the construction project, unless responsibility for safety practices is specifically assumed by contract, the provisions of which were mutually negotiated, or the design professional actually exercised control over the portion of the premises where the worker was injured.

(2) The immunity provided by this section does not apply to the negligent preparation of design plans and specifications.

(3) For the purposes of this section, "design professional" means an architect, professional engineer, land surveyor, or landscape architect, who is licensed or authorized by law to practice such profession, or any corporation organized under chapter 18.100 RCW or authorized under RCW 18.08.420 or 18.43.130 to render design services through the practice of one or more of such professions. [1987 c 212 § 1801.]

51.24.040 Election or recovery no bar to compensation or benefits. The injured worker or beneficiary shall be entitled to the full compensation and benefits provided by this title regardless of any election or recovery made under this chapter. [1977 ex.s. c 85 § 2.]

51.24.050 Assignment of cause of action—Disposition of recovered amount. (1) An election not to proceed against the third person operates as an assignment of the cause of action to the department or self-insurer, which may

prosecute or compromise the action in its discretion in the name of the injured worker, beneficiary or legal representative.

(2) If an injury to a worker results in the worker's death, the department or self-insurer to which the cause of action has been assigned may petition a court for the appointment of a special personal representative for the limited purpose of maintaining an action under this chapter and chapter 4.20 RCW.

(3) If a beneficiary is a minor child, an election not to proceed against a third person on such beneficiary's cause of action may be exercised by the beneficiary's legal custodian or guardian.

(4) Any recovery made by the department or self-insurer shall be distributed as follows:

(a) The department or self-insurer shall be paid the expenses incurred in making the recovery including reasonable costs of legal services;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the recovery made, which shall not be subject to subsection (5) of this section: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the compensation and benefits paid to or on behalf of the injured worker or beneficiary by the department and/or self-insurer; and

(d) The injured worker or beneficiary shall be paid any remaining balance.

(5) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(6) When the cause of action has been assigned to the self-insurer and compensation and benefits have been paid and/or are payable from state funds for the same injury:

(a) The prosecution of such cause of action shall also be for the benefit of the department to the extent of compensation and benefits paid and payable from state funds;

(b) Any compromise or settlement of such cause of action which results in less than the entitlement under this title is void unless made with the written approval of the department;

(c) The department shall be reimbursed for compensation and benefits paid from state funds;

(d) The department shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the self-insurer in obtaining the award or settlement; and

(e) Any remaining balance under subsection (4)(d) of this section shall be applied, under subsection (5) of this section, to reduce the obligations of the department and self-insurer to pay further compensation and benefits in proportion to which the obligations of each bear to the remaining entitlement of the worker or beneficiary. [1995 c 199 § 3; 1984 c 218 § 4; 1983 c 211 § 1; 1977 ex.s. c 85 § 3.]

Severability—1995 c 199: See note following RCW 51.12.120.

Applicability—1983 c 211: "Sections 1 and 2 of this act apply to all actions against third persons in which judgment or settlement of the underlying action has not taken place prior to July 24, 1983." [1983 c 211 § 3.] "Sections 1 and 2 of this act" consist of the 1983 amendments of RCW 51.24.050 and 51.24.060.

Severability—1983 c 211: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 211 § 4.]

51.24.060 Distribution of amount recovered—Lien.

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: PROVIDED, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: PROVIDED, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by registered or certified mail, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(7) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property

of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by certified mail, return receipt requested; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [2001 c 146 § 9; 1995 c 199 § 4; 1993 c 496 § 2; 1987 c 442 § 1118; 1986 c 305 § 403; 1984 c 218 § 5; 1983 c 211 § 2; 1977 ex.s. c 85 § 4.]

Severability—1995 c 199: See note following RCW 51.12.120.

Effective date—Application—1993 c 496: See notes following RCW 4.22.070.

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Applicability—Severability—1983 c 211: See notes following RCW 51.24.050.

51.24.070 Required election—Procedures—Right of reelection. (1) The department or self-insurer may require the injured worker or beneficiary to exercise the right of election under this chapter by serving a written demand by registered mail, certified mail, or personal service on the worker or beneficiary.

(2) Unless an election is made within sixty days of the receipt of the demand, and unless an action is instituted or settled within the time granted by the department or self-insurer, the injured worker or beneficiary is deemed to have assigned the action to the department or self-insurer. The department or self-insurer shall allow the worker or beneficiary at least ninety days from the election to institute or settle the action. When a beneficiary is a minor child the demand shall be served upon the legal custodian or guardian of such beneficiary.

(3) If an action which has been filed is not diligently prosecuted, the department or self-insurer may petition the court in which the action is pending for an order assigning the cause of action to the department or self-insurer. Upon a suf-

ficient showing of a lack of diligent prosecution the court in its discretion may issue the order.

(4) If the department or self-insurer has taken an assignment of the third party cause of action under subsection (2) of this section, the injured worker or beneficiary may, at the discretion of the department or self-insurer, exercise a right of reelection and assume the cause of action subject to reimbursement of litigation expenses incurred by the department or self-insurer. [1984 c 218 § 6; 1977 ex.s. c 85 § 5.]

51.24.080 Notice of election or copy of complaint to department or self-insurer—Filing notice. (1) If the injured worker or beneficiary elects to seek damages from the third person, notice of the election must be given to the department or self-insurer. The notice shall be by registered mail, certified mail, or personal service. If an action is filed by the injured worker or beneficiary, a copy of the complaint must be sent by registered mail to the department or self-insurer.

(2) A return showing service of the notice on the department or self-insurer shall be filed with the court but shall not be part of the record except as necessary to give notice to the defendant of the lien imposed by RCW 51.24.060(2). [1977 ex.s. c 85 § 6.]

51.24.090 Compromise or settlement less than benefits. (1) Any compromise or settlement of the third party cause of action by the injured worker or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department or self-insurer: PROVIDED, That for the purposes of this chapter, "entitlement" means benefits and compensation paid and estimated by the department to be paid in the future.

(2) If a compromise or settlement is void because of subsection (1) of this section, the department or self-insurer may petition the court in which the action was filed for an order assigning the cause of action to the department or self-insurer. If an action has not been filed, the department or self-insurer may proceed as provided in chapter 7.24 RCW. [1995 c 199 § 5; 1984 c 218 § 7; 1977 ex.s. c 85 § 7.]

Severability—1995 c 199: See note following RCW 51.12.120.

51.24.100 Right to compensation not pleadable or admissible—Challenge to right to bring action. The fact that the injured worker or beneficiary is entitled to compensation under this title shall not be pleaded or admissible in evidence in any third party action under this chapter. Any challenge of the right to bring such action shall be made by supplemental pleadings only and shall be decided by the court as a matter of law. [1977 ex.s. c 85 § 8.]

51.24.110 Assigned cases—Special assistant attorneys general. (1) Actions against third persons that are assigned by the claimant to the department, voluntarily or by operation of law in accordance with chapter 51.24 RCW, may be prosecuted by special assistant attorneys general.

(2) The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state

bar association, shall promulgate rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate third party actions under subsection (1) of this section. [1984 c 218 § 1.]

51.24.120 Rules. The department may adopt, amend, and rescind under chapter 34.05 RCW such rules as may be necessary to the administration of this chapter. [1984 c 218 § 8.]

51.24.900 Application—1977 ex.s. c 85. This 1977 amendatory act shall apply only to causes of action which arise on or after its effective date. [1977 ex.s. c 85 § 9.]

51.24.902 Application—1984 c 218. This act applies to all causes of action against third persons in which judgment or settlement of the underlying action has not taken place before June 7, 1984. [1984 c 218 § 9.]

Chapter 51.28 RCW

**NOTICE AND REPORT OF ACCIDENT—
APPLICATION FOR COMPENSATION**

Sections

51.28.010	Notice of accident—Notification of worker's rights.
51.28.020	Worker's application for compensation—Physician or licensed advanced registered nurse practitioner to aid in.
51.28.021	Physician assistants aid in applications for compensation—Limitations—Rules.
51.28.025	Duty of employer to report injury or disease—Contents—Penalty.
51.28.030	Beneficiaries' application for compensation—Notification of rights.
51.28.040	Application for change in compensation.
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51.28.055	Time limitation for filing claim for occupational disease—Notice—Hearing loss claims—Rules.
51.28.060	Proof of dependency.
51.28.070	Claim files and records confidential.
51.28.080	Determination of compensation for temporary total disability—Notification of employer.
51.28.090	Notification of availability of basic health plan.

51.28.010 Notice of accident—Notification of worker's rights. (Expires June 30, 2007.) (1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer, superintendent, or supervisor in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department pursuant to RCW 51.28.025 where the worker has received treatment from a physician or a licensed advanced registered nurse practitioner, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury.

(2) Upon receipt of such notice of accident, the department shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title. The notice must specify the worker's right to receive health services from a physician or a licensed advanced registered nurse practitioner of the worker's choice under RCW 51.36.010, including chiropractic

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tic services under RCW 51.36.015, and must list the types of providers authorized to provide these services. [2004 c 65 § 3; 2001 c 231 § 1; 1977 ex.s. c 350 § 32; 1975 1st ex.s. c 224 § 4; 1971 ex.s. c 289 § 5; 1961 c 23 § 51.28.010. Prior: 1915 c 188 § 9; 1911 c 74 § 14; RRS § 7689.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—2001 c 231: "This act takes effect January 1, 2002." [2001 c 231 § 4.]

Effective date—1975 ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.010 Notice of accident—Notification of worker's rights. (Effective June 30, 2007.) (1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer, superintendent, or supervisor in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department pursuant to RCW 51.28.025 where the worker has received treatment from a physician, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury.

(2) Upon receipt of such notice of accident, the department shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title. The notice must specify the worker's right to receive health services from a physician of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and must list the types of providers authorized to provide these services. [2001 c 231 § 1; 1977 ex.s. c 350 § 32; 1975 1st ex.s. c 224 § 4; 1971 ex.s. c 289 § 5; 1961 c 23 § 51.28.010. Prior: 1915 c 188 § 9; 1911 c 74 § 14; RRS § 7689.]

Effective date—2001 c 231: "This act takes effect January 1, 2002." [2001 c 231 § 4.]

Effective date—1975 ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.020 Worker's application for compensation—Physician or licensed advanced registered nurse practitioner to aid in. (Expires June 30, 2007.) (1)(a) Where a worker is entitled to compensation under this title he or she shall file with the department or his or her self-insured employer, as the case may be, his or her application for such, together with the certificate of the physician or licensed advanced registered nurse practitioner who attended him or her. An application form developed by the department shall include a notice specifying the worker's right to receive health services from a physician or licensed advanced registered nurse practitioner of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and listing the types of providers authorized to provide these services.

(b) The physician or licensed advanced registered nurse practitioner who attended the injured worker shall inform the injured worker of his or her rights under this title and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules

of the department without charge to the worker. The department shall provide physicians with a manual which outlines the procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims.

(2) If application for compensation is made to a self-insured employer, he or she shall forthwith send a copy of the application to the department. [2004 c 65 § 4; 2001 c 231 § 2; 1984 c 159 § 3; 1977 ex.s. c 350 § 33; 1971 ex.s. c 289 § 38; 1961 c 23 § 51.28.020. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—2001 c 231: See note following RCW 51.28.010.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.020 Worker's application for compensation—Physician to aid in. (*Effective June 30, 2007.*) (1)(a) Where a worker is entitled to compensation under this title he or she shall file with the department or his or her self-insured employer, as the case may be, his or her application for such, together with the certificate of the physician who attended him or her. An application form developed by the department shall include a notice specifying the worker's right to receive health services from a physician of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and listing the types of providers authorized to provide these services.

(b) The physician who attended the injured worker shall inform the injured worker of his or her rights under this title and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the worker. The department shall provide physicians with a manual which outlines the procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims.

(2) If application for compensation is made to a self-insured employer, he or she shall forthwith send a copy of the application to the department. [2001 c 231 § 2; 1984 c 159 § 3; 1977 ex.s. c 350 § 33; 1971 ex.s. c 289 § 38; 1961 c 23 § 51.28.020. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Effective date—2001 c 231: See note following RCW 51.28.010.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.021 Physician assistants aid in applications for compensation—Limitations—Rules. (*Expires July 1, 2007.*) Physician assistants practicing with physician supervision as required by chapters 18.57A and 18.71A RCW may assist workers who suffer simple industrial injuries in making application for compensation under this title as specified in RCW 51.28.020. Physician assistants may not rate a worker's permanent partial disability under RCW 51.32.055, or determine a worker's entitlement to benefits under chapter 51.32 RCW. The department shall adopt rules necessary to implement this section, including rules identifying simple indus-

trial injuries using diagnosis codes and other relevant criteria. [2004 c 163 § 1.]

Report to legislature—2004 c 163: "By December 1, 2006, the department of labor and industries shall report to the senate committee on commerce and trade and the house committee on commerce and labor, or successor committees, on the implementation of this act, including but not limited to the effects of this act on injured worker outcomes, claim costs, and disputed claims." [2004 c 163 § 2.]

Effective date—2004 c 163: "This act takes effect July 1, 2004." [2004 c 163 § 3.]

Expiration date—2004 c 163: "Sections 1 and 2 of this act expire July 1, 2007." [2004 c 163 § 4.]

51.28.025 Duty of employer to report injury or disease—Contents—Penalty. (*Expires June 30, 2007.*) (1) Whenever an employer has notice or knowledge of an injury or occupational disease sustained by any worker in his or her employment who has received treatment from a physician or a licensed advanced registered nurse practitioner, has been hospitalized, disabled from work or has died as the apparent result of such injury or occupational disease, the employer shall immediately report the same to the department on forms prescribed by it. The report shall include:

- (a) The name, address, and business of the employer;
- (b) The name, address, and occupation of the worker;
- (c) The date, time, cause, and nature of the injury or occupational disease;
- (d) Whether the injury or occupational disease arose in the course of the injured worker's employment;
- (e) All available information pertaining to the nature of the injury or occupational disease including but not limited to any visible signs, any complaints of the worker, any time lost from work, and the observable effect on the worker's bodily functions, so far as is known; and
- (f) Such other pertinent information as the department may prescribe by regulation.

(2) Failure or refusal to file the report required by subsection (1) shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars for each offense, to be collected in a civil action in the name of the department and paid into the supplemental pension fund. [2004 c 65 § 5; 1987 c 185 § 32; 1985 c 347 § 1; 1975 1st ex.s. c 224 § 5; 1971 ex.s. c 289 § 39.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

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

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.025 Duty of employer to report injury or disease—Contents—Penalty. (*Effective June 30, 2007.*) (1) Whenever an employer has notice or knowledge of an injury or occupational disease sustained by any worker in his or her employment who has received treatment from a physician, has been hospitalized, disabled from work or has died as the apparent result of such injury or occupational disease, the employer shall immediately report the same to the department on forms prescribed by it. The report shall include:

- (a) The name, address, and business of the employer;

- (b) The name, address, and occupation of the worker;
- (c) The date, time, cause, and nature of the injury or occupational disease;
- (d) Whether the injury or occupational disease arose in the course of the injured worker's employment;
- (e) All available information pertaining to the nature of the injury or occupational disease including but not limited to any visible signs, any complaints of the worker, any time lost from work, and the observable effect on the worker's bodily functions, so far as is known; and
- (f) Such other pertinent information as the department may prescribe by regulation.

(2) Failure or refusal to file the report required by subsection (1) shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars for each offense, to be collected in a civil action in the name of the department and paid into the supplemental pension fund. [1987 c 185 § 32; 1985 c 347 § 1; 1975 1st ex.s. c 224 § 5; 1971 ex.s. c 289 § 39.]

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

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.030 Beneficiaries' application for compensation—Notification of rights. (Expires June 30, 2007.) Where death results from injury the parties entitled to compensation under this title, or someone in their behalf, shall make application for the same to the department or self-insurer as the case may be, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this title, certificates of attending physician or licensed advanced registered nurse practitioner, if any, and such proof as required by the rules of the department.

Upon receipt of notice of accident under RCW 51.28.010, the director shall immediately forward to the party or parties required to make application for compensation under this section, notification, in nontechnical language, of their rights under this title. [2004 c 65 § 6; 1972 ex.s. c 43 § 17; 1971 ex.s. c 289 § 6; 1961 c 23 § 51.28.030. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

51.28.030 Beneficiaries' application for compensation—Notification of rights. (Effective June 30, 2007.) Where death results from injury the parties entitled to compensation under this title, or someone in their behalf, shall make application for the same to the department or self-insurer as the case may be, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this title, certificates of attending physician, if any, and such proof as required by the rules of the department.

Upon receipt of notice of accident under RCW 51.28.010, the director shall immediately forward to the party or parties required to make application for compensation

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under this section, notification, in nontechnical language, of their rights under this title. [1972 ex.s. c 43 § 17; 1971 ex.s. c 289 § 6; 1961 c 23 § 51.28.030. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.040 Application for change in compensation. If change of circumstances warrants an increase or rearrangement of compensation, like application shall be made therefor. Where the application has been granted, compensation and other benefits if in order shall be allowed for periods of time up to sixty days prior to the receipt of such application. [1977 ex.s. c 199 § 1; 1961 c 23 § 51.28.040. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.050 Time limitation for filing application or enforcing claim for injury. No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued, except as provided in RCW 51.28.055. [1984 c 159 § 1; 1961 c 23 § 51.28.050. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.055 Time limitation for filing claim for occupational disease—Notice—Hearing loss claims—Rules. (Expires June 30, 2007.) (1) Except as provided in subsection (2) of this section for claims filed for occupational hearing loss, claims for occupational disease or infection to be valid and compensable must be filed within two years following the date the worker had written notice from a physician or a licensed advanced registered nurse practitioner: (a) Of the existence of his or her occupational disease, and (b) that a claim for disability benefits may be filed. The notice shall also contain a statement that the worker has two years from the date of the notice to file a claim. The physician or licensed advanced registered nurse practitioner shall file the notice with the department. The department shall send a copy to the worker and to the self-insurer if the worker's employer is self-insured. However, a claim is valid if it is filed within two years from the date of death of the worker suffering from an occupational disease.

(2)(a) Except as provided in (b) of this subsection, to be valid and compensable, claims for hearing loss due to occupational noise exposure must be filed within two years of the date of the worker's last injurious exposure to occupational noise in employment covered under this title or within one year of September 10, 2003, whichever is later.

(b) A claim for hearing loss due to occupational noise exposure that is not timely filed under (a) of this subsection can only be allowed for medical aid benefits under chapter 51.36 RCW.

(3) The department may adopt rules to implement this section. [2004 c 65 § 7; 2003 2nd sp.s. c 2 § 1; 1984 c 159 § 2; 1977 ex.s. c 350 § 34; 1961 c 23 § 51.28.055. Prior: 1959 c 308 § 18; prior: 1957 c 70 § 16, part; 1951 c 236 § 1, part.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

51.28.055 Time limitation for filing claim for occupational disease—Notice—Hearing loss claims—Rules. (*Effective June 30, 2007.*) (1) Except as provided in subsection (2) of this section for claims filed for occupational hearing loss, claims for occupational disease or infection to be valid and compensable must be filed within two years following the date the worker had written notice from a physician: (a) Of the existence of his or her occupational disease, and (b) that a claim for disability benefits may be filed. The notice shall also contain a statement that the worker has two years from the date of the notice to file a claim. The physician shall file the notice with the department. The department shall send a copy to the worker and to the self-insurer if the worker's employer is self-insured. However, a claim is valid if it is filed within two years from the date of death of the worker suffering from an occupational disease.

(2)(a) Except as provided in (b) of this subsection, to be valid and compensable, claims for hearing loss due to occupational noise exposure must be filed within two years of the date of the worker's last injurious exposure to occupational noise in employment covered under this title or within one year of September 10, 2003, whichever is later.

(b) A claim for hearing loss due to occupational noise exposure that is not timely filed under (a) of this subsection can only be allowed for medical aid benefits under chapter 51.36 RCW.

(3) The department may adopt rules to implement this section. [2003 2nd sp.s. c 2 § 1; 1984 c 159 § 2; 1977 ex.s. c 350 § 34; 1961 c 23 § 51.28.055. Prior: 1959 c 308 § 18; prior: 1957 c 70 § 16, part; 1951 c 236 § 1, part.]

51.28.060 Proof of dependency. A dependent shall at all times furnish the department with proof satisfactory to the director of the nature, amount and extent of the contribution made by the deceased worker.

Proof of dependency by any beneficiary residing without the United States shall be made before the nearest United States consul or consular agency, under the seal of such consul or consular agent, and the department may cause any warrant or warrants to which such beneficiary is entitled to be transmitted to the beneficiary through the nearest United States consul or consular agent. [1977 ex.s. c 350 § 35; 1961 c 23 § 51.28.060. Prior: 1957 c 70 § 25; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

51.28.070 Claim files and records confidential. Information contained in the claim files and records of injured workers, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. A claimant may review his or her claim file if the director determines, pursuant to criteria adopted by rule, that the review is in the claimant's interest.

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Employers or their duly authorized representatives may review any files of their own injured workers in connection with any pending claims. Physicians treating or examining workers claiming benefits under this title, or physicians giving medical advice to the department regarding any claim may, at the discretion of the department, inspect the claim files and records of injured workers, and other persons may make such inspection, at the department's discretion, when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this title. [1990 c 209 § 2; 1977 ex.s. c 350 § 36; 1975 1st ex.s. c 224 § 6; 1961 c 23 § 51.28.070. Prior: 1957 c 70 § 51.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.28.080 Determination of compensation for temporary total disability—Notification of employer. An employer shall be promptly notified by the department when it has determined that a worker of that employer is entitled to compensation under RCW 51.32.090. Notification shall include, in nontechnical language, an explanation of the employer's rights under this title. [1985 c 338 § 2.]

51.28.090 Notification of availability of basic health plan. The director shall notify persons receiving time-loss payments under this chapter of the availability of basic health care coverage to qualified enrollees under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the director of closure of enrollment in the plan. The director shall maintain supplies of Washington basic health plan enrollment application forms in all field service offices where the plan is available, which shall be provided in reasonably necessary quantities by the administrator for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 17.]

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

Chapter 51.32 RCW

COMPENSATION—RIGHT TO AND AMOUNT

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- 51.32.380 Injured offenders—Benefits sent in the care of the department of corrections—Exception—Liability.

Victims of crimes, benefits: Chapter 7.68 RCW.

51.32.010 Who entitled to compensation. Each worker injured in the course of his or her employment, or his or her family or dependents in case of death of the worker, shall receive compensation in accordance with this chapter, and, except as in this title otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever: PROVIDED, That if an injured worker, or the surviving spouse of an injured worker shall not have the legal custody of a child for, or on account of whom payments are required to be made under this title, such payment or payments shall be made to the person or persons having the legal custody of such child but only for the periods of time after the department has been notified of the fact of such legal custody, and it shall be the duty of any such person or persons receiving payments because of legal custody of any child immediately to notify the department of any change in such legal custody. [1977 ex.s. c 350 § 37; 1975 1st ex.s. c 224 § 7; 1971 ex.s. c 289 § 40; 1961 c 23 § 51.32.010. Prior: 1957 c 70 § 26; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

(2004 Ed.)

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.015 Time and place of coverage—Lunch period. The benefits of Title 51 RCW shall be provided to each worker receiving an injury, as defined therein, during the course of his or her employment and also during his or her lunch period as established by the employer while on the job-site. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business or work process in which the employer is then engaged: PROVIDED, That if a worker by reason of his or her employment leaves such jobsite under the direction, control or request of the employer and if such worker is injured during his or her lunch period while so away from the jobsite, the worker shall receive the benefits as provided herein: AND PROVIDED FURTHER, That the employer need not consider the lunch period in his or her payroll for the purpose of reporting to the department unless the worker is actually paid for such period of time. [1977 ex.s. c 350 § 38; 1971 ex.s. c 289 § 41; 1961 c 107 § 1.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.020 Who not entitled to compensation. If injury or death results to a worker from the deliberate intention of the worker himself or herself to produce such injury or death, or while the worker is engaged in the attempt to commit, or the commission of, a felony, neither the worker nor the widow, widower, child, or dependent of the worker shall receive any payment under this title.

If injury or death results to a worker from the deliberate intention of a beneficiary of that worker to produce the injury or death, or if injury or death results to a worker as a consequence of a beneficiary of that worker engaging in the attempt to commit, or the commission of, a felony, the beneficiary shall not receive any payment under this title.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased worker and, at the same time, as the stepchild of a deceased worker. [1995 c 160 § 2; 1977 ex.s. c 350 § 39; 1971 ex.s. c 289 § 42; 1961 c 23 § 51.32.020. Prior: 1957 c 70 § 27; prior: (i) 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Application—1995 c 160 §§ 2 and 3: "Sections 2 and 3 of this act shall apply from July 23, 1995, without regard to the date of injury or the date of filing a claim." [1995 c 160 § 8.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.025 Payments for children cease at age eighteen—Exceptions. Any payments to or on account of any child or children of a deceased or temporarily or totally permanently disabled worker pursuant to any of the provisions of chapter 51.32 RCW shall terminate when any such child

reaches the age of eighteen years unless such child is a dependent invalid child or is permanently enrolled at a full time course in an accredited school, in which case such payments after age eighteen shall be made directly to such child. Payments to any dependent invalid child over the age of eighteen years shall continue in the amount previously paid on account of such child until he shall cease to be dependent. Payments to any child over the age of eighteen years permanently enrolled at a full time course in an accredited school shall continue in the amount previously paid on account of such child until the child reaches an age over that provided for in the definition of "child" in this title or ceases to be permanently enrolled whichever occurs first. Where the worker sustains an injury or dies when any of the worker's children is over the age of eighteen years and is either a dependent invalid child or is a child permanently enrolled at a full time course in an accredited school the payment to or on account of any such child shall be made as herein provided. [1987 c 185 § 33; 1975 1st ex.s. c 224 § 11.]

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

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.030 When compensation payable to employer or member of corporate employer. Any sole proprietor, partner, or joint venturer who has requested coverage under this title and who shall thereafter be injured or sustain an occupational disease, shall be entitled to the benefit of this title, as and under the same circumstances and subject to the same obligations as a worker: PROVIDED, That no such person or the beneficiaries thereof shall be entitled to benefits under this title unless the department has received notice in writing of such request on such forms as the department may provide prior to the date of the injury or occupational disease as the result of which claims are made: PROVIDED, That the department shall have the power to cancel the personal coverage of any such person if any required payments or reports have not been made. [1980 c 14 § 8. Prior: 1977 ex.s. c 350 § 40; 1977 ex.s. c 323 § 14; 1961 c 23 § 51.32.030; prior: 1957 c 70 § 28; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.040 Protection of awards—Payment after death—Time limitations for filing—Confinement in institution. (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260, and 51.32.380, no money paid or payable under this title shall, before the issuance and delivery of the check or warrant, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a worker or other beneficiary and made in accordance with RCW 51.32.045.

(2)(a) If any worker suffers (i) a permanent partial injury and dies from some other cause than the accident which pro-

duced the injury before he or she receives payment of the award for the permanent partial injury or (ii) any other injury before he or she receives payment of any monthly installment covering any period of time before his or her death, the amount of the permanent partial disability award or the monthly payment, or both, shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the award or the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(b) If any worker suffers an injury and dies from it before he or she receives payment of any monthly installment covering time loss for any period of time before his or her death, the amount of the monthly payment shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(c) Any application for compensation under this subsection (2) shall be filed with the department or self-insuring employer within one year of the date of death. The department or self-insurer may satisfy its responsibilities under this subsection (2) by sending any payment due in the name of the decedent and to the last known address of the decedent.

(3)(a) Any worker or beneficiary receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible for benefits under this title while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the worker or beneficiary would, except for the provisions of this subsection (3), otherwise be entitled to them.

(b) If any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she is entitled to payments under this title, subject to the requirements of chapter 72.65 RCW, unless his or her participation in the program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence.

(c) If the confined worker has any beneficiaries during the confinement period during which benefits are canceled under (a) or (b) of this subsection, they shall be paid directly the monthly benefits which would have been paid to the worker for himself or herself and the worker's beneficiaries had the worker not been confined.

(4) Any lump sum benefits to which a worker would otherwise be entitled but for the provisions of this section shall be paid on a monthly basis to his or her beneficiaries. [2003 c 379 § 27; 1999 c 185 § 1; 1996 c 47 § 1; 1995 c 160 § 3; 1987 c 75 § 7; 1983 c 2 § 13. Prior: 1982 c 201 § 8; 1982 c 109 § 10; 1979 ex.s. c 171 § 11; 1977 ex.s. c 350 § 41; 1975 1st ex.s. c 224 § 8; 1974 ex.s. c 30 § 1; prior: 1973 1st ex.s. c 154 § 95; 1972 ex.s. c 43 § 18; 1971 ex.s. c 289 § 43; 1965 ex.s. c 165 § 2; 1961 c 23 § 51.32.040; prior: 1957 c 70 § 29;

prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Application—1995 c 160 §§ 2 and 3: See note following RCW 51.32.020.

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

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

51.32.045 Direct deposit of benefits. Any worker or other recipient of benefits under this title may elect to have any payments due transferred to such person's account in a financial institution for either: (1) Credit to the recipient's account in such financial institution; or (2) immediate transfer therefrom to the recipient's account in any other financial institution. A single warrant may be drawn in favor of such financial institution, for the total amount due the recipients involved, and written directions provided to such financial institution of the amount to be credited to the account of a recipient or to be transferred to an account in another financial institution for such recipient. The issuance and delivery by the disbursing officer of a warrant in accordance with the procedure set forth in this section and proper indorsement thereof by the financial institution shall have the same legal effect as payment directly to the recipient.

For the purposes of this section "financial institution" shall have the meaning given in RCW 41.04.240 as now or hereafter amended. [1982 c 109 § 11.]

51.32.050 Death benefits. (1) Where death results from the injury the expenses of burial not to exceed two hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker but not less than one hundred eighty-five dollars;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker but not less than two hundred twenty-two dollars;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker but not less than two hundred fifty-three dollars;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker but not less than two hundred seventy-six dollars;

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(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker but not less than two hundred ninety-nine dollars; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker but not less than three hundred twenty-two dollars.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section exceed the applicable percentage of the average monthly wage in the state as computed under RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(e) In addition to the monthly payments provided for in subsection (2)(a) through (c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased

worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under subsection (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of

sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067. [1995 c 199 § 6; 1993 c 521 § 1; 1991 c 88 § 2; 1988 c 161 § 2; 1986 c 58 § 3; 1982 c 63 § 18; 1977 ex.s. c 350 § 42; 1975-'76 2nd ex.s. c 45 § 2; 1975 1st ex.s. c 179 § 1; 1973 1st ex.s. c 154 § 96; 1972 ex.s. c 43 § 19; 1971 ex.s. c 289 § 7; 1965 ex.s. c 122 § 1; 1961 c 274 § 1; 1961 c 23 § 51.32.050. Prior: 1957 c 70 § 30; 1951 c 115 § 1; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28

§ 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Severability—1995 c 199: See note following RCW 51.12.120.

Effective date—1993 c 521: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 521 § 4.]

Benefit increases—Application to certain retrospective rating agreements—1988 c 161: "The increases in benefits in RCW 51.32.050, 51.32.060, 51.32.090, and 51.32.180, contained in chapter 161, Laws of 1988 do not affect a retrospective rating agreement entered into by any employer with the department before July 1, 1988." [1988 c 161 § 15.]

Effective dates—1988 c 161 §§ 1, 2, 3, 4, and 6: "Section 4 of this act shall take effect on June 30, 1989. Sections 1, 2, 3, and 6 of this act shall take effect on July 1, 1988." [1988 c 161 § 17.]

Effective date—1986 c 58 §§ 2, 3: See note following RCW 51.32.080.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Legislative intent—1975 1st ex. s. c 179: "The legislative intent of chapter 179, Laws of 1975 1st ex. sess. (2nd SSB No. 2241) was in part to offer surviving spouses of eligible workmen two options upon remarriage; such options to be available to any otherwise eligible surviving spouse regardless of the date of death of the injured workman. Accordingly this 1976 amendatory act is required to clarify that intent." [1975-76 2nd ex. s. c 45 § 1.]

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

51.32.055 Determination of permanent disabilities—Closure of claims by self-insurers. (Expires June 30, 2007.) (1) One purpose of this title is to restore the injured worker as nearly as possible to the condition of self-support as an able-bodied worker. Benefits for permanent disability shall be determined under the director's supervision, except as otherwise authorized in subsection (9) of this section, only after the injured worker's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department, except as otherwise authorized in subsection (9) of this section. Either the worker, employer, or self-insurer may make a request or the inquiry may be initiated by the director or, as authorized in subsection (9) of this section, by the self-insurer on the director or the self-insurer's own motion. Determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the employer or, if the self-insurer has made a request to the department, in the possession of or under the control of the self-insurer shall be forwarded to the director with the request.

(3) A request for determination of permanent disability shall be examined by the department or, if authorized in subsection (9) of this section, the self-insurer, and the department shall issue an order in accordance with RCW 51.52.050 or, in the case of a self-insured employer, the self-insurer may: (a) Enter a written order, communicated to the worker and the department self-insurance section in accordance with subsection (9) of this section, or (b) request the department to issue an order in accordance with RCW 51.52.050.

(4) The department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a special medical examination by a physician or physicians selected by the department, and the department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the

worker present himself or herself for a personal interview. The costs of the examination or interview, including payment of any reasonable travel expenses, shall be paid by the department or self-insurer, as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of the medical bureau in a manner to be determined by the department.

(6) Where a dispute arises from the handling of any claim before the condition of the injured worker becomes fixed, the worker, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In these cases, the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

(7)(a) If a claim (i) is accepted by a self-insurer after June 30, 1986, and before August 1, 1997, (ii) involves only medical treatment and the payment of temporary disability compensation under RCW 51.32.090 or only the payment of temporary disability compensation under RCW 51.32.090, (iii) at the time medical treatment is concluded does not involve permanent disability, (iv) is one with respect to which the department has not intervened under subsection (6) of this section, and (v) the injured worker has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) All determinations of permanent disability for claims accepted under this subsection (7) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(c) Upon closure of a claim under (a) of this subsection, the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold face type: "This order constitutes notification that your claim is being closed with medical benefits and temporary disability compensation only as provided, and with the condition you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits or the temporary disability compensation that has been provided, you must protest in writing to the department of labor and industries, self-insurance section, within sixty days of the date you received this order."

(8)(a) If a claim (i) is accepted by a self-insurer after June 30, 1990, and before August 1, 1997, (ii) involves only medical treatment, (iii) does not involve payment of temporary disability compensation under RCW 51.32.090, and (iv) at the time medical treatment is concluded does not involve permanent disability, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall enter a written order, communicated to the worker,

which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with medical benefits only, as provided. If for any reason you disagree with this closure, you must protest in writing to the Department of Labor and Industries, Olympia, within 60 days of the date you received this order. The department will then review your claim and enter a further determinative order."

(b) All determinations of permanent disability for claims accepted under this subsection (8) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(9)(a) If a claim: (i) Is accepted by a self-insurer after July 31, 1997; (ii)(A) involves only medical treatment, or medical treatment and the payment of temporary disability compensation under RCW 51.32.090, and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; or (B) involves only the payment of temporary disability compensation under RCW 51.32.090 and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; (iii) is one with respect to which the department has not intervened under subsection (6) of this section; and (iv) concerns an injured worker who has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) If a physician or licensed advanced registered nurse practitioner submits a report to the self-insurer that concludes that the worker's condition is fixed and stable and supports payment of a permanent partial disability award, and if within fourteen days from the date the self-insurer mailed the report to the attending or treating physician or licensed advanced registered nurse practitioner, the worker's attending or treating physician or licensed advanced registered nurse practitioner disagrees in writing that the worker's condition is fixed and stable, the self-insurer must get a supplemental medical opinion from a provider on the department's approved examiner's list before closing the claim. In the alternative, the self-insurer may forward the claim to the department, which must review the claim and enter a final order as provided for in RCW 51.52.050.

(c) Upon closure of a claim under this subsection (9), the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with such medical benefits and temporary disability compensation as provided to date and with such award for permanent partial disability, if any, as set forth below, and with the condition that you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits, temporary disability compensation provided, or permanent partial disability that has been awarded, you must protest in writing to the Department of Labor and Industries, Self-Insurance Section, within sixty days of the date you

received this order. If you do not protest this order to the department, this order will become final."

(d) All determinations of permanent partial disability for claims accepted by self-insurers under this subsection (9) may be made by the self-insurer or the self-insurer may request a determination by the self-insured section of the department. All determinations shall be made under subsections (1) through (4) of this section.

(10) If the department receives a protest of an order issued by a self-insurer under subsections (7) through (9) of this section, the self-insurer's closure order must be held in abeyance. The department shall review the claim closure action and enter a further determinative order as provided for in RCW 51.52.050. If no protest is timely filed, the closing order issued by the self-insurer shall become final and shall have the same force and effect as a department order that has become final under RCW 51.52.050.

(11) If within two years of claim closure under subsections (7) through (9) of this section, the department determines that the self-insurer has made payment of benefits because of clerical error, mistake of identity, or innocent misrepresentation or the department discovers a violation of the conditions of claim closure, the department may require the self-insurer to correct the benefits paid or payable. This subsection (11) does not limit in any way the application of RCW 51.32.240.

(12) For the purposes of this section, "comparable wages and benefits" means wages and benefits that are at least ninety-five percent of the wages and benefits received by the worker at the time of injury. [2004 c 65 § 8; 1997 c 416 § 1; 1994 c 97 § 1; 1988 c 161 § 13; 1986 c 55 § 1; 1981 c 326 § 1; 1977 ex.s. c 350 § 43; 1971 ex.s. c 289 § 46.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

Report to the legislature—1997 c 416: "The department of labor and industries shall review the permanent partial disability claims closure activity by self-insured employers authorized under RCW 51.32.055(9) through at least June 30, 1999. The department must also review the claims closure activity by the self-insured section of the department for the same period. The review of these activities must include the number and types of claims closed, protested, reconsidered, and appealed, and the results of such activities, including the results of injured worker satisfaction surveys conducted by the department. The department must report on its review to the appropriate committees of the legislature no later than January 1, 2000." [1997 c 416 § 2.]

Effective date—Applicability—1986 c 55 § 1: "Section 1 of this act shall take effect July 1, 1986, and shall apply to claims accepted after June 30, 1986." [1986 c 55 § 4.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.055 Determination of permanent disabilities—Closure of claims by self-insurers. (Effective June 30, 2007.) (1) One purpose of this title is to restore the injured worker as nearly as possible to the condition of self-support as an able-bodied worker. Benefits for permanent disability shall be determined under the director's supervision, except as otherwise authorized in subsection (9) of this section, only after the injured worker's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department, except as otherwise authorized in subsection (9) of this section. Either the worker, employer, or self-insurer may make a request or the inquiry may be initi-

ated by the director or, as authorized in subsection (9) of this section, by the self-insurer on the director or the self-insurer's own motion. Determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the employer or, if the self-insurer has made a request to the department, in the possession of or under the control of the self-insurer shall be forwarded to the director with the request.

(3) A request for determination of permanent disability shall be examined by the department or, if authorized in subsection (9) of this section, the self-insurer, and the department shall issue an order in accordance with RCW 51.52.050 or, in the case of a self-insured employer, the self-insurer may: (a) Enter a written order, communicated to the worker and the department self-insurance section in accordance with subsection (9) of this section, or (b) request the department to issue an order in accordance with RCW 51.52.050.

(4) The department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a special medical examination by a physician or physicians selected by the department, and the department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a personal interview. The costs of the examination or interview, including payment of any reasonable travel expenses, shall be paid by the department or self-insurer, as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of the medical bureau in a manner to be determined by the department.

(6) Where a dispute arises from the handling of any claim before the condition of the injured worker becomes fixed, the worker, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In these cases, the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

(7)(a) If a claim (i) is accepted by a self-insurer after June 30, 1986, and before August 1, 1997, (ii) involves only medical treatment and the payment of temporary disability compensation under RCW 51.32.090 or only the payment of temporary disability compensation under RCW 51.32.090, (iii) at the time medical treatment is concluded does not involve permanent disability, (iv) is one with respect to which the department has not intervened under subsection (6) of this section, and (v) the injured worker has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) All determinations of permanent disability for claims accepted under this subsection (7) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(c) Upon closure of a claim under (a) of this subsection, the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold face type: "This order constitutes notification that your claim is being closed with medical benefits and temporary disability compensation only as provided, and with the condition you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits or the temporary disability compensation that has been provided, you must protest in writing to the department of labor and industries, self-insurance section, within sixty days of the date you received this order."

(8)(a) If a claim (i) is accepted by a self-insurer after June 30, 1990, and before August 1, 1997, (ii) involves only medical treatment, (iii) does not involve payment of temporary disability compensation under RCW 51.32.090, and (iv) at the time medical treatment is concluded does not involve permanent disability, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall enter a written order, communicated to the worker, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with medical benefits only, as provided. If for any reason you disagree with this closure, you must protest in writing to the Department of Labor and Industries, Olympia, within 60 days of the date you received this order. The department will then review your claim and enter a further determinative order."

(b) All determinations of permanent disability for claims accepted under this subsection (8) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(9)(a) If a claim: (i) Is accepted by a self-insurer after July 31, 1997; (ii)(A) involves only medical treatment, or medical treatment and the payment of temporary disability compensation under RCW 51.32.090, and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; or (B) involves only the payment of temporary disability compensation under RCW 51.32.090 and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; (iii) is one with respect to which the department has not intervened under subsection (6) of this section; and (iv) concerns an injured worker who has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) If a physician submits a report to the self-insurer that concludes that the worker's condition is fixed and stable and supports payment of a permanent partial disability award, and if within fourteen days from the date the self-insurer mailed the report to the attending or treating physician, the worker's attending or treating physician disagrees in writing that the worker's condition is fixed and stable, the self-insurer must

get a supplemental medical opinion from a provider on the department's approved examiner's list before closing the claim. In the alternative, the self-insurer may forward the claim to the department, which must review the claim and enter a final order as provided for in RCW 51.52.050.

(c) Upon closure of a claim under this subsection (9), the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with such medical benefits and temporary disability compensation as provided to date and with such award for permanent partial disability, if any, as set forth below, and with the condition that you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits, temporary disability compensation provided, or permanent partial disability that has been awarded, you must protest in writing to the Department of Labor and Industries, Self-Insurance Section, within sixty days of the date you received this order. If you do not protest this order to the department, this order will become final."

(d) All determinations of permanent partial disability for claims accepted by self-insurers under this subsection (9) may be made by the self-insurer or the self-insurer may request a determination by the self-insured section of the department. All determinations shall be made under subsections (1) through (4) of this section.

(10) If the department receives a protest of an order issued by a self-insurer under subsections (7) through (9) of this section, the self-insurer's closure order must be held in abeyance. The department shall review the claim closure action and enter a further determinative order as provided for in RCW 51.52.050. If no protest is timely filed, the closing order issued by the self-insurer shall become final and shall have the same force and effect as a department order that has become final under RCW 51.52.050.

(11) If within two years of claim closure under subsections (7) through (9) of this section, the department determines that the self-insurer has made payment of benefits because of clerical error, mistake of identity, or innocent misrepresentation or the department discovers a violation of the conditions of claim closure, the department may require the self-insurer to correct the benefits paid or payable. This subsection (11) does not limit in any way the application of RCW 51.32.240.

(12) For the purposes of this section, "comparable wages and benefits" means wages and benefits that are at least ninety-five percent of the wages and benefits received by the worker at the time of injury. [1997 c 416 § 1; 1994 c 97 § 1; 1988 c 161 § 13; 1986 c 55 § 1; 1981 c 326 § 1; 1977 ex.s. c 350 § 43; 1971 ex.s. c 289 § 46.]

Report to the legislature—1997 c 416: "The department of labor and industries shall review the permanent partial disability claims closure activity by self-insured employers authorized under RCW 51.32.055(9) through at least June 30, 1999. The department must also review the claims closure activity by the self-insured section of the department for the same period. The review of these activities must include the number and types of claims closed, protested, reconsidered, and appealed, and the results of such activities, including the results of injured worker satisfaction surveys conducted by the department. The department must report on its review to the appropriate committees of the legislature no later than January 1, 2000." [1997 c 416 § 2.]

Effective date—Applicability—1986 c 55 § 1: "Section 1 of this act shall take effect July 1, 1986, and shall apply to claims accepted after June 30, 1986." [1986 c 55 § 4.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.060 Permanent total disability compensation—Personal attendant. (1) When the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the worker shall receive monthly during the period of such disability:

(a) If married at the time of injury, sixty-five percent of his or her wages but not less than two hundred fifteen dollars per month.

(b) If married with one child at the time of injury, sixty-seven percent of his or her wages but not less than two hundred fifty-two dollars per month.

(c) If married with two children at the time of injury, sixty-nine percent of his or her wages but not less than two hundred eighty-three dollars.

(d) If married with three children at the time of injury, seventy-one percent of his or her wages but not less than three hundred six dollars per month.

(e) If married with four children at the time of injury, seventy-three percent of his or her wages but not less than three hundred twenty-nine dollars per month.

(f) If married with five or more children at the time of injury, seventy-five percent of his or her wages but not less than three hundred fifty-two dollars per month.

(g) If unmarried at the time of the injury, sixty percent of his or her wages but not less than one hundred eighty-five dollars per month.

(h) If unmarried with one child at the time of injury, sixty-two percent of his or her wages but not less than two hundred twenty-two dollars per month.

(i) If unmarried with two children at the time of injury, sixty-four percent of his or her wages but not less than two hundred fifty-three dollars per month.

(j) If unmarried with three children at the time of injury, sixty-six percent of his or her wages but not less than two hundred seventy-six dollars per month.

(k) If unmarried with four children at the time of injury, sixty-eight percent of his or her wages but not less than two hundred ninety-nine dollars per month.

(l) If unmarried with five or more children at the time of injury, seventy percent of his or her wages but not less than three hundred twenty-two dollars per month.

(2) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workers, only that spouse having the higher wages of the two shall be entitled to claim their child or children for compensation purposes.

(3) In case of permanent total disability, if the character of the injury is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues, but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

(4) Should any further accident result in the permanent total disability of an injured worker, he or she shall receive the pension to which he or she would be entitled, notwithstanding the payment of a lump sum for his or her prior injury.

(5) In no event shall the monthly payments provided in this section exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

The limitations under this subsection shall not apply to the payments provided for in subsection (3) of this section.

(6) In the case of new or reopened claims, if the supervisor of industrial insurance determines that, at the time of filing or reopening, the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section.

(7) The benefits provided by this section are subject to modification under RCW 51.32.067. [1993 c 521 § 2; 1988 c 161 § 1. Prior: 1986 c 59 § 1; 1986 c 58 § 5; 1983 c 3 § 159; 1977 ex.s. c 350 § 44; 1975 1st ex.s. c 224 § 9; 1973 c 147 § 1; 1972 ex.s. c 43 § 20; 1971 ex.s. c 289 § 8; 1965 ex.s. c 122 § 2; 1961 c 274 § 2; 1961 c 23 § 51.32.060; prior: 1957 c 70 § 31; 1951 c 115 § 2; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—1993 c 521: See note following RCW 51.32.050.

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.067 Permanent total disability—Death benefit options—Election. (1) After a worker elects one of the options in (a), (b), or (c) of this subsection, that option shall apply only if the worker dies during a period of permanent total disability from a cause unrelated to the injury, leaving a surviving spouse, child, children, or other dependent. If, after making an election under this subsection, a worker dies from a cause related to the injury during a period of permanent total disability, his or her beneficiaries shall receive benefits under RCW 51.32.050 (2) through (5).

(a) **Option I.** An injured worker selecting this option shall receive the benefits provided by RCW 51.32.060, with no benefits being paid to the worker's surviving spouse, children, or others.

(b) **Option II.** An injured worker selecting this option shall receive an actuarially reduced benefit which upon death shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(c) **Option III.** An injured worker selecting this option shall receive an actuarially reduced benefit and, upon death, one-half of the reduced benefit shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(2) The worker shall make the election in writing and the worker's spouse, if any, shall consent in writing as a prerequisite to the election of Option I.

(3) The department shall adopt such rules as may be necessary to implement this section. [1986 c 58 § 4.]

51.32.072 Additional payments for prior pensioners—Children—Remarriage—Attendant. Notwithstanding any other provision of law, every surviving spouse and every permanently totally disabled worker or temporarily totally disabled worker, if such worker was unmarried at the time of the worker's injury or was then married but the marriage was later terminated by judicial action, receiving a pension or compensation for temporary total disability under this title pursuant to compensation schedules in effect prior to July 1, 1971, shall after July 1, 1975, be paid fifty percent of the average monthly wage in the state as computed under RCW 51.08.018 per month and an amount equal to five percent of such average monthly wage per month to such totally disabled worker if married at the time of the worker's injury and the marriage was not later terminated by judicial action, and an additional two percent of such average monthly wage for each child of such totally disabled worker at the time of injury in the legal custody of such totally disabled worker or such surviving spouse up to a maximum of five such children. The monthly payments such surviving spouse or totally disabled worker are receiving pursuant to compensation schedules in effect prior to July 1, 1971 shall be deducted from the monthly payments above specified.

Where such a surviving spouse has remarried, or where any such child of such worker, whether living or deceased, is not in the legal custody of such worker or such surviving spouse there shall be paid for the benefit of and on account of each such child a sum equal to two percent of such average monthly wage up to a maximum of five such children in addition to any payments theretofore paid under compensation schedules in effect prior to July 1, 1971 for the benefit of and on account of each such child. In the case of any child or children of a deceased worker not leaving a surviving spouse or where the surviving spouse has later died, there shall be paid for the benefit of and on account of each such child a sum equal to two percent of such average monthly wage up to a maximum of five such children in addition to any payments theretofore paid under such schedules for the benefit of and on account of each such child.

If the character of the injury or occupational disease is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of this title except for care granted at the discretion of the supervisor pursuant to RCW 51.36.010: PROVIDED, That such payments

shall not be considered compensation nor shall they be subject to any limitation upon total compensation payments.

No part of such additional payments shall be payable from the accident fund.

The director shall pay monthly from the supplemental pension fund such an amount as will, when added to the compensation theretofore paid under compensation schedules in effect prior to July 1, 1971, equal the amounts hereinabove specified.

In cases where money has been or shall be advanced to any such person from the pension reserve, the additional amount to be paid under this section shall be reduced by the amount of monthly pension which was or is predicated upon such advanced portion of the pension reserve. [1987 c 185 § 34; 1975 1st ex.s. c 224 § 12.]

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

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.073 Additional payments for prior pensioners—Premium liability of worker and employer for additional payments. (1) Except as provided in subsection (2) of this section, each employer shall retain from the earnings of each worker that amount as shall be fixed from time to time by the director, the basis for measuring said amount to be determined by the director. The money so retained shall be matched in an equal amount by each employer, and all such moneys shall be remitted to the department in such manner and at such intervals as the department directs and shall be placed in the supplemental pension fund: PROVIDED, That the state apprenticeship council shall pay the entire amount into the supplemental pension fund for registered apprentices or trainees during their participation in supplemental and related instruction classes. The moneys so collected shall be used exclusively for the additional payments from the supplemental pension fund prescribed in this title and for the amount of any increase payable under the provisions of RCW 51.32.075, as now or hereafter amended, and shall be no more than necessary to make such payments on a current basis. The department may require a self-insurer to make any additional payments which are payable from the supplemental pension fund and thereafter such self-insurer shall be reimbursed therefrom.

(2) None of the amount assessed for the supplemental pension fund under RCW 51.16.210 may be retained from the earnings of workers covered under RCW 51.16.210. [1989 c 385 § 4; 1980 c 14 § 9. Prior: 1977 ex.s. c 350 § 45; 1977 ex.s. c 323 § 15; 1977 ex.s. c 202 § 1; 1975-'76 2nd ex.s. c 19 § 1; prior: 1975 1st ex.s. c 286 § 1; 1975 1st ex.s. c 224 § 10; 1973 c 110 § 3; 1972 ex.s. c 43 § 24; 1971 ex.s. c 289 § 17.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.075 Adjustments in compensation or death benefits. The compensation or death benefits payable pursuant to the provisions of this chapter for temporary total dis-

ability, permanent total disability, or death arising out of injuries or occupational diseases shall be adjusted as follows:

(1) On July 1, 1982, there shall be an adjustment for those whose right to compensation was established on or after July 1, 1971, and before July 1, 1982. The adjustment shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1, 1982.

(2) In addition to the adjustment established by subsection (1) of this section, there shall be another adjustment on July 1, 1983, for those whose right to compensation was established on or after July 1, 1971, and before July 1983, which shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

(3) In addition to the adjustments under subsections (1) and (2) of this section, further adjustments shall be made beginning on July 1, 1984, and on each July 1st thereafter for those whose right to compensation was established on or after July 1, 1971. The adjustment shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1st of the year in which the adjustment is being made. The department or self-insurer shall adjust the resulting compensation rate to the nearest whole cent, not to exceed the average monthly wage in the state as computed under RCW 51.08.018. [1988 c 161 § 7; 1983 c 203 § 1; 1982 1st ex.s. c 20 § 1; 1979 c 108 § 1; 1977 ex.s. c 202 § 2; 1975 1st ex.s. c 286 § 2.]

Effective date—1982 1st ex.s. c 20: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1982." [1982 1st ex.s. c 20 § 4.]

51.32.080 Permanent partial disability—Specified—Unspecified, rules for classification—Injury after permanent partial disability. (1)(a) Until July 1, 1993, for the permanent partial disabilities here specifically described, the injured worker shall receive compensation as follows:

LOSS BY AMPUTATION

Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium)	\$54,000.00
Of leg at or above knee joint with functional stump	48,600.00
Of leg below knee joint	43,200.00
Of leg at ankle (Syme)	37,800.00
Of foot at mid-metatarsals	18,900.00

(2004 Ed.)

Of great toe with resection of metatarsal bone	11,340.00
Of great toe at metatarsophalangeal joint	6,804.00
Of great toe at interphalangeal joint	3,600.00
Of lesser toe (2nd to 5th) with resection of metatarsal bone	4,140.00
Of lesser toe at metatarsophalangeal joint	2,016.00
Of lesser toe at proximal interphalangeal joint	1,494.00
Of lesser toe at distal interphalangeal joint	378.00
Of arm at or above the deltoid insertion or by disarticulation at the shoulder	54,000.00
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon	51,300.00
Of arm at any point from below the elbow joint distal to the insertion of the biceps tendon to and including mid-metacarpal amputation of the hand	48,600.00
Of all fingers except the thumb at metacarpophalangeal joints	29,160.00
Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone	19,440.00
Of thumb at interphalangeal joint	9,720.00
Of index finger at metacarpophalangeal joint or with resection of metacarpal bone	12,150.00
Of index finger at proximal interphalangeal joint	9,720.00
Of index finger at distal interphalangeal joint	5,346.00
Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone	9,720.00
Of middle finger at proximal interphalangeal joint	7,776.00
Of middle finger at distal interphalangeal joint	4,374.00
Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone	4,860.00
Of ring finger at proximal interphalangeal joint	3,888.00
Of ring finger at distal interphalangeal joint	2,430.00
Of little finger at metacarpophalangeal joint or with resection of metacarpal bone	2,430.00
Of little finger at proximal interphalangeal joint	1,944.00
Of little finger at distal interphalangeal joint	972.00
MISCELLANEOUS	
Loss of one eye by enucleation	21,600.00
Loss of central visual acuity in one eye	18,000.00

Complete loss of hearing in both ears	43,200.00
Complete loss of hearing in one ear	7,200.00

(b) Beginning on July 1, 1993, compensation under this subsection shall be computed as follows:

(i) Beginning on July 1, 1993, the compensation amounts for the specified disabilities listed in (a) of this subsection shall be increased by thirty-two percent; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the compensation amounts for the specified disabilities listed in (a) of this subsection, as adjusted under (b)(i) of this subsection, shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30 immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) Compensation for amputation of a member or part thereof at a site other than those specified in subsection (1) of this section, and for loss of central visual acuity and loss of hearing other than complete, shall be in proportion to that which such other amputation or partial loss of visual acuity or hearing most closely resembles and approximates. Compensation shall be calculated based on the adjusted schedule of compensation in effect for the respective time period as prescribed in subsection (1) of this section.

(3)(a) Compensation for any other permanent partial disability not involving amputation shall be in the proportion which the extent of such other disability, called unspecified disability, shall bear to the disabilities specified in subsection (1) of this section, which most closely resembles and approximates in degree of disability such other disability, and compensation for any other unspecified permanent partial disability shall be in an amount as measured and compared to total bodily impairment. To reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities, the department shall enact rules having the force of law classifying such disabilities in the proportion which the department shall determine such disabilities reasonably bear to total bodily impairment. In enacting such rules, the department shall give consideration to, but need not necessarily adopt, any nationally recognized medical standards or guides for determining various bodily impairments.

(b) Until July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be deemed to be ninety thousand dollars. Beginning on July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be adjusted as follows:

(i) Beginning on July 1, 1993, the amount payable for total bodily impairment under this section shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the amount payable for total bodily impairment prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(c) Until July 1, 1993, the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of ninety thousand dollars. Beginning on July 1, 1993, total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed a sum calculated as follows:

(i) Beginning on July 1, 1993, the sum shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(4) If permanent partial disability compensation is followed by permanent total disability compensation, any portion of the permanent partial disability compensation which exceeds the amount that would have been paid the injured worker if permanent total disability compensation had been paid in the first instance, shall be deducted from the pension reserve of such injured worker and his or her monthly compensation payments shall be reduced accordingly.

(5) Should a worker receive an injury to a member or part of his or her body already, from whatever cause, permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such worker, his or her compensation for such partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

(6) When the compensation provided for in subsections (1) through (3) of this section exceeds three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, payment shall be made in monthly payments in accordance with the schedule of temporary total disability payments set forth in RCW 51.32.090 until such compensation is paid to the injured worker in full, except that the first monthly payment shall be in an amount equal to three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, and interest shall be paid at the rate of eight percent on the unpaid balance of such compensation commencing with the second monthly payment. However, upon application of the injured worker or survivor the monthly payment may be converted, in whole or in part, into a lump sum payment, in which event the monthly payment shall cease in whole or in part. Such conversion may be made only upon written application of the injured worker or survivor to the department and shall rest in the discretion of the department depending upon the merits of each individual application. Upon the death of a worker all unpaid installments accrued shall be paid according to the payment schedule established prior to the death of the worker to the widow or widower, or if there is no widow or widower surviving, to the dependent children of such claimant, and if there are no such dependent children, then to such other dependents as defined by this title.

(7) Awards payable under this section are governed by the schedule in effect on the date of injury. [1993 c 520 § 1; 1988 c 161 § 6; 1986 c 58 § 2; 1982 1st ex.s. c 20 § 2; 1979 c

104 § 1; 1977 ex.s. c 350 § 46; 1972 ex.s. c 43 § 21; 1971 ex.s. c 289 § 10; 1965 ex.s. c 165 § 1; 1961 c 274 § 3; 1961 c 23 § 51.32.080. Prior: 1957 c 70 § 32; prior: 1951 c 115 § 4; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—1993 c 520: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 18, 1993]." [1993 c 520 § 2.]

Effective dates—1988 c 161: See note following RCW 51.32.050.

Effective date—1986 c 58 §§ 2, 3: "Sections 2 and 3 of this act shall take effect on July 1, 1986." [1986 c 58 § 7.]

Effective date—1982 1st ex.s. c 20: See note following RCW 51.32.075.

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. (Expires June 30, 2007.) (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(4)(a) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than his or her usual work, the employer shall furnish to the physician or licensed advanced registered nurse practitioner, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will

enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician or licensed advanced registered nurse practitioner to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician or licensed advanced registered nurse practitioner he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(b) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician or licensed advanced registered nurse practitioner.

(c) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(d) In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages.

(7) In no event shall the monthly payments provided in this section exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section. [2004 c 65 § 9. Prior: 1993 c 521 § 3; 1993 c 299 § 1; 1993 c 271 § 1; 1988 c 161 § 4; prior: 1988 c 161 § 3; 1986 c 59 § 3; 1986 c 59 § 2; prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Report to legislature--Effective date--Expiration date--Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—1993 c 521: See note following RCW 51.32.050.

Effective date—1993 c 299: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 299 § 2.]

Effective date—1993 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 271 § 2.]

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Expiration date—1986 c 59 § 2; Effective dates—1986 c 59 § § 3, 5: "Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986." [1986 c 59 § 6.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. (Effective June 30, 2007.) (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(4)(a) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(b) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician.

(c) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(d) In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages.

(7) In no event shall the monthly payments provided in this section exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section. [1993 c 521 § 3; 1993 c 299 § 1; 1993 c 271 § 1; 1988 c 161 § 4. Prior: 1988 c 161 § 3; 1986 c 59 § 3; (1986 c 59 § 2 expired June 30, 1989, pursuant to 1986 c 59 § 6); prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Reviser's note: This section was amended by 1993 c 271 § 1, 1993 c 299 § 1, and by 1993 c 521 § 3, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1993 c 521: See note following RCW 51.32.050.

Effective date—1993 c 299: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 299 § 2.]

Effective date—1993 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 271 § 2.]

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Expiration date—1986 c 59 § 2; Effective dates—1986 c 59 §§ 3, 5: "Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986." [1986 c 59 § 6.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

51.32.095 Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. (Expires June 30, 2007.) (1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of

industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (3) of this section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period except as authorized by *RCW 51.60.060, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) Beginning with vocational rehabilitation plans approved on or after July 1, 1999, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period except as authorized by *RCW 51.60.060, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under

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(a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

(5) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(6) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section.

(7) The benefits in this section shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(8) Except as otherwise provided in this section, the benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes. [2004 c 65 § 10; 1999 c 110 § 1. Prior: 1996 c 151 § 1; 1996 c 59 § 1; 1988 c 161 § 9; 1985 c 339 § 2; 1983 c 70 § 2; 1982 c 63 § 11; 1980 c 14 § 10. Prior: 1977 ex.s. c 350 § 48; 1977 ex.s. c 323 § 16; 1972 ex.s. c 43 § 23; 1971 ex.s. c 289 § 12.]

*Reviser's note: RCW 51.60.060 expired June 30, 1999, pursuant to 1994 c 29 § 8.

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—1999 c 110 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support

of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 110 § 3.]

Legislative finding—1985 c 339: "The legislature finds that the vocational rehabilitation program created by chapter 63, Laws of 1982, has failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased costs of industrial insurance for employers and employees alike. The legislature further finds that the administrative structure established within the industrial insurance division of the department of labor and industries to develop and oversee the provision of vocational rehabilitation services has not provided efficient delivery of vocational rehabilitation services. The legislature finds that restructuring the state's vocational rehabilitation program under the department of labor and industries is necessary." [1985 c 339 § 1.]

Severability—1985 c 339: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 339 § 6.]

Severability—1983 c 70: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 70 § 5.]

Effective dates—Implementation—1982 c 63: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1982]. All other sections of this act shall take effect on January 1, 1983. The director of the department of labor and industries is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective dates." [1982 c 63 § 26.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.095 Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. (Effective June 30, 2007.) (1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (3) of this section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;

(d) Modification of a new job with the same employer including transitional return to work;

(e) Modification of the previous job with a new employer;

(f) A new job with a new employer or self-employment based upon transferable skills;

(g) Modification of a new job with a new employer;

(h) A new job with a new employer or self-employment involving on-the-job training;

(i) Short-term retraining and job placement.

(3)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period except as authorized by *RCW 51.60.060, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) Beginning with vocational rehabilitation plans approved on or after July 1, 1999, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period except as authorized by *RCW 51.60.060, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician must verify the necessity of the modifications or accommodations. The total

expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

(5) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(6) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section.

(7) The benefits in this section shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(8) Except as otherwise provided in this section, the benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes. [1999 c 110 § 1. Prior: 1996 c 151 § 1; 1996 c 59 § 1; 1988 c 161 § 9; 1985 c 339 § 2; 1983 c 70 § 2; 1982 c 63 § 11; 1980 c 14 § 10. Prior: 1977 ex.s. c 350 § 48; 1977 ex.s. c 323 § 16; 1972 ex.s. c 43 § 23; 1971 ex.s. c 289 § 12.]

***Reviser's note:** RCW 51.60.060 expired June 30, 1999, pursuant to 1994 c 29 § 8.

Effective date—1999 c 110 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 110 § 3.]

Legislative finding—1985 c 339: "The legislature finds that the vocational rehabilitation program created by chapter 63, Laws of 1982, has failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased costs of industrial insurance for employers and employees alike. The legislature further finds that the administrative structure established within the industrial insurance division of the department of labor and industries to develop and oversee the provision of vocational rehabilitation services has not provided efficient delivery of vocational rehabilitation services. The legislature finds that restructuring the state's vocational rehabilitation program under the department of labor and industries is necessary." [1985 c 339 § 1.]

Severability—1985 c 339: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 339 § 6.]

Severability—1983 c 70: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 70 § 5.]

Effective dates—Implementation—1982 c 63: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1982]. All other sections of this act shall take effect on January 1, 1983. The director of the department of labor and industries is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective dates." [1982 c 63 § 26.]

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Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.098 Vocational rehabilitation services—Applicability. Nothing in RCW 51.32.095 or in the repeal of chapter 51.41 RCW by section 5, chapter 339, Laws of 1985 shall be construed as prohibiting the completion of vocational rehabilitation plans approved under this title prior to May 16, 1985. Injured workers referred for vocational rehabilitation services under this title, but for whom vocational rehabilitation plans have not been approved by the department under this title before May 16, 1985, may only be provided vocational rehabilitation services, if applicable, by the department according to the provisions of RCW 51.32.095. [1985 c 339 § 4.]

Legislative finding—Severability—1985 c 339: See notes following RCW 51.32.095.

51.32.100 Preexisting disease. If it is determined that an injured worker had, at the time of his or her injury, a preexisting disease and that such disease delays or prevents complete recovery from such injury, it shall be ascertained, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and the extent of permanent partial disability which the injury would have caused were it not for the disease, and compensation shall be awarded only therefor. [1977 ex.s. c 350 § 49; 1971 ex.s. c 289 § 44; 1961 c 23 § 51.32.100. Prior: 1957 c 70 § 34; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.110 Medical examination—Refusal to submit—Traveling expenses—Pay for time lost. (1) Any worker entitled to receive any benefits or claiming such under this title shall, if requested by the department or self-insurer, submit himself or herself for medical examination, at a time and from time to time, at a place reasonably convenient for the worker and as may be provided by the rules of the department. An injured worker, whether an alien or other injured worker, who is not residing in the United States at the time that a medical examination is requested may be required to submit to an examination at any location in the United States determined by the department or self-insurer.

(2) If the worker refuses to submit to medical examination, or obstructs the same, or, if any injured worker shall persist in unsanitary or injurious practices which tend to imperil or retard his or her recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his or her recovery or refuse or obstruct evaluation or examination for the purpose of vocational rehabilitation or does not cooperate in reasonable efforts at such rehabilitation, the department or the self-insurer upon approval by the department, with notice to the worker may suspend any further action on any claim of such worker so long as such refusal, obstruction, noncooperation, or practice continues and reduce, suspend, or deny any compensation for such period: PROVIDED, That the department or the self-insurer shall not

suspend any further action on any claim of a worker or reduce, suspend, or deny any compensation if a worker has good cause for refusing to submit to or to obstruct any examination, evaluation, treatment or practice requested by the department or required under this section.

(3) If the worker necessarily incurs traveling expenses in attending the examination pursuant to the request of the department, such traveling expenses shall be repaid to him or her out of the accident fund upon proper voucher and audit or shall be repaid by the self-insurer, as the case may be.

(4)(a) If the medical examination required by this section causes the worker to be absent from his or her work without pay:

(i) In the case of a worker insured by the department, the worker shall be paid compensation out of the accident fund in an amount equal to his or her usual wages for the time lost from work while attending the medical examination; or

(ii) In the case of a worker of a self-insurer, the self-insurer shall pay the worker an amount equal to his or her usual wages for the time lost from work while attending the medical examination.

(b) This subsection (4) shall apply prospectively to all claims regardless of the date of injury. [1997 c 325 § 3; 1993 c 375 § 1; 1980 c 14 § 11. Prior: 1977 ex.s. c 350 § 50; 1977 ex.s. c 323 § 17; 1971 ex.s. c 289 § 13; 1961 c 23 § 51.32.110; prior: 1917 c 28 § 18; 1915 c 188 § 5; 1911 c 74 § 13; RRS § 7688.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.112 Medical examination—Standards and criteria—Special examinations by chiropractors—Compensation guidelines and reporting criteria. (1) The department shall develop standards for the conduct of special medical examinations to determine permanent disabilities, including, but not limited to:

(a) The qualifications of persons conducting the examinations;

(b) The criteria for conducting the examinations, including guidelines for the appropriate treatment of injured workers during the examination; and

(c) The content of examination reports.

(2) Within the appropriate scope of practice, chiropractors licensed under chapter 18.25 RCW may conduct special medical examinations to determine permanent disabilities in consultation with physicians licensed under chapter 18.57 or 18.71 RCW. The department, in its discretion, may request that a special medical examination be conducted by a single chiropractor if the department determines that the sole issues involved in the examination are within the scope of practice under chapter 18.25 RCW. However, nothing in this section authorizes the use as evidence before the board of a chiropractor's determination of the extent of a worker's permanent disability if the determination is not requested by the department.

(3) The department shall investigate the amount of examination fees received by persons conducting special medical examinations to determine permanent disabilities, including total compensation received for examinations of

department and self-insured claimants, and establish compensation guidelines and compensation reporting criteria.

(4) The department shall investigate the level of compliance of self-insurers with the requirement of full reporting of claims information to the department, particularly with respect to medical examinations, and develop effective enforcement procedures or recommendations for legislation if needed. [1993 c 515 § 4; 1988 c 114 § 2.]

Intent—1988 c 114: "It is the intent of the legislature that medical examinations for determining permanent disabilities be conducted fairly and objectively by qualified examiners and with respect for the dignity of the injured worker." [1988 c 114 § 1.]

51.32.114 Medical examination—Department to monitor quality and objectivity. The department shall examine the credentials of persons conducting special medical examinations and shall monitor the quality and objectivity of examinations and reports for the department and self-insured claimants. The department shall adopt rules to ensure that examinations are performed only by qualified persons meeting department standards. [1988 c 114 § 3.]

Intent—1988 c 114: See note following RCW 51.32.112.

51.32.120 Further accident after lump sum payment.

Should a further accident occur to a worker who has been previously the recipient of a lump sum payment under this title, his or her future compensation shall be adjusted according to the other provisions of this chapter and with regard to the combined effect of his or her injuries and his or her past receipt of money under this title. [1977 ex.s. c 350 § 51; 1961 c 23 § 51.32.120. Prior: 1957 c 70 § 35; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.130 Lump sum for death or permanent total disability. In case of death or permanent total disability, the monthly payment provided may be converted, in whole or in part, into a lump sum payment, not in any case to exceed eight thousand five hundred dollars, equal or proportionate, as the case may be, to the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made only upon written application (in case of minor children the application may be by either parent) to the department and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and applicant. In the event any payment shall be due to an alien residing in a foreign country, the department may settle the same by making a lump sum payment in such amount as may be agreed to by such alien, not to exceed fifty percent of the value of the annuity then remaining.

Nothing herein shall preclude the department from making, and authority is hereby given it to make, on its own motion, lump sum payments equal or proportionate, as the case may be, to the value of the annuity then remaining, in full satisfaction of claims due to dependents. [1961 c 23 § 51.32.130. Prior: 1957 c 70 § 45; prior: 1941 c 209 § 2; 1929

c 132 § 3; 1927 c 310 § 6(i); 1917 c 29 § 22; 1911 c 74 § 7; Rem. Supp. 1941 § 7681.]

51.32.135 Closing of claim in pension cases—Consent of spouse. In pension cases when a worker or beneficiary closes his or her claim by full conversion to a lump sum or in any other manner as provided in RCW 51.32.130 and 51.32.150, such action shall be conclusive and effective to bar any subsequent application or claim relative thereto by the worker or any beneficiary which would otherwise exist had such person not elected to close the claim: PROVIDED, The director may require the spouse of such worker to consent in writing as a prerequisite to conversion and/or the closing of such claim. [1977 ex.s. c 350 § 52; 1973 1st ex.s. c 154 § 98; 1961 c 23 § 51.32.135. Prior: 1953 c 143 § 1.]

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

51.32.140 Nonresident alien beneficiary. Except as otherwise provided by treaty or this title, whenever compensation is payable to a beneficiary who is an alien not residing in the United States, the department or self-insurer, as the case may be, shall pay the compensation to which a resident beneficiary is entitled under this title. But if a nonresident alien beneficiary is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he or she shall receive no compensation. No payment shall be made to any beneficiary residing in any country with which the United States does not maintain diplomatic relations when such payment is due. [1997 c 325 § 5; 1971 ex.s. c 289 § 45; 1961 c 23 § 51.32.140. Prior: 1957 c 70 § 36; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.150 Lump sum to beneficiary outside state. If a beneficiary shall reside or move out of the state, the department may, with the written consent of the beneficiary, convert any monthly payments provided for such cases into a lump sum payment (not in any case to exceed the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, but in no case to exceed the sum provided in RCW 51.32.130 as now or hereafter amended). [1977 ex.s. c 323 § 18; 1961 c 23 § 51.32.150. Prior: 1959 c 308 § 5; 1957 c 70 § 37; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.160 Aggravation, diminution, or termination. (1)(a) If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own

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motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: PROVIDED, That the director may, upon application of the worker made at any time, provide proper and necessary medical and surgical services as authorized under RCW 51.36.010. The department shall promptly mail a copy of the application to the employer at the employer's last known address as shown by the records of the department.

(b) "Closing order" as used in this section means an order based on factors which include medical recommendation, advice, or examination.

(c) Applications for benefits where the claim has been closed without medical recommendation, advice, or examination are not subject to the seven year limitation of this section. The preceding sentence shall not apply to any closing order issued prior to July 1, 1981. First closing orders issued between July 1, 1981, and July 1, 1985, shall, for the purposes of this section only, be deemed issued on July 1, 1985. The time limitation of this section shall be ten years in claims involving loss of vision or function of the eyes.

(d) If an order denying an application to reopen filed on or after July 1, 1988, is not issued within ninety days of receipt of such application by the self-insured employer or the department, such application shall be deemed granted. However, for good cause, the department may extend the time for making the final determination on the application for an additional sixty days.

(2) If a worker receiving a pension for total disability returns to gainful employment for wages, the director may suspend or terminate the rate of compensation established for the disability without producing medical evidence that shows that a diminution of the disability has occurred.

(3) No act done or ordered to be done by the director, or the department prior to the signing and filing in the matter of a written order for such readjustment shall be grounds for such readjustment. [1995 c 253 § 2; 1988 c 161 § 11; 1986 c 59 § 4; 1973 1st ex.s. c 192 § 1; 1961 c 23 § 51.32.160. Prior: 1957 c 70 § 38; prior: 1951 c 115 § 5; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.180 Occupational diseases—Limitation. Every worker who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his or her family and dependents in case of death of the worker from such disease or infection, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a worker injured or killed in employment under this title, except as follows: (a) This section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937; and (b) for claims filed on or after July 1, 1988, the rate of compensation for occupational diseases shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim. [1988 c 161 § 5;

1977 ex.s. c 350 § 53; 1971 ex.s. c 289 § 49; 1961 c 23 § 51.32.180. Prior: 1959 c 308 § 19; prior: 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

Benefit increases—Application to certain retrospective rating agreements—1988 c 161: See notes following RCW 51.32.050.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.185 Occupational diseases—Presumption of occupational disease for fire fighters—Limitations—Exception—Rules. (1) In the case of fire fighters as defined in RCW 41.26.030(4) (a), (b), and (c) who are covered under Title 51 RCW and fire fighters, including supervisors, employed on a full-time, fully compensated basis as a fire fighter of a private sector employer's fire department that includes over fifty such fire fighters, there shall exist a prima facie presumption that: (a) Respiratory disease; (b) heart problems that are experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; (c) cancer; and (d) infectious diseases are occupational diseases under RCW 51.08.140. This presumption of occupational disease may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

(2) The presumptions established in subsection (1) of this section shall be extended to an applicable member following termination of service for a period of three calendar months for each year of requisite service, but may not extend more than sixty months following the last date of employment.

(3) The presumption established in subsection (1)(c) of this section shall only apply to any active or former fire fighter who has cancer that develops or manifests itself after the fire fighter has served at least ten years and who was given a qualifying medical examination upon becoming a fire fighter that showed no evidence of cancer. The presumption within subsection (1)(c) of this section shall only apply to primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, and kidney cancer.

(4) The presumption established in subsection (1)(d) of this section shall be extended to any fire fighter who has contracted any of the following infectious diseases: Human immunodeficiency virus/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, or mycobacterium tuberculosis.

(5) Beginning July 1, 2003, this section does not apply to a fire fighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use. The department, using existing medical research, shall define in rule the extent of tobacco use that shall exclude a fire fighter from the provisions of this section. [2002 c 337 § 2; 1987 c 515 § 2.]

Legislative findings—1987 c 515: "The legislature finds that the employment of fire fighters exposes them to smoke, fumes, and toxic or chemical substances. The legislature recognizes that fire fighters as a class have a higher rate of respiratory disease than the general public. The legislature therefore finds that respiratory disease should be occu-

pationally related for industrial insurance purposes for fire fighters." [1987 c 515 § 1.]

51.32.190 Self-insurers—Notice of denial of claim, reasons—Procedure—Powers and duties of director. (1) If the self-insurer denies a claim for compensation, written notice of such denial, clearly informing the claimant of the reasons therefor and that the director will rule on the matter shall be mailed or given to the claimant and the director within thirty days after the self-insurer has notice of the claim.

(2) Until such time as the department has entered an order in a disputed case acceptance of compensation by the claimant shall not be considered a binding determination of his or her rights under this title. Likewise the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments.

(3) Upon making the first payment of income benefits, the self-insurer shall immediately notify the director in accordance with a form to be prescribed by the director. Upon request of the department on a form prescribed by the department, the self-insurer shall submit a record of the payment of income benefits including initial, termination or terminations, and change or changes to the benefits. Where temporary disability compensation is payable, the first payment thereof shall be made within fourteen days after notice of claim and shall continue at regular semimonthly or biweekly intervals.

(4) If, after the payment of compensation without an award, the self-insurer elects to controvert the right to compensation, the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments. The acceptance of compensation by the worker or his or her beneficiaries shall not be considered a binding determination of their rights under this title.

(5) The director: (a) May, upon his or her own initiative at any time in a case in which payments are being made without an award; and (b) shall, upon receipt of information from any person claiming to be entitled to compensation, from the self-insurer, or otherwise that the right to compensation is controverted, or that payment of compensation has been opposed, stopped or changed, whether or not claim has been filed, promptly make such inquiry as circumstances require, cause such medical examinations to be made, hold such hearings, require the submission of further information, make such orders, decisions or awards, and take such further action as he or she considers will properly determine the matter and protect the rights of all parties.

(6) The director, upon his or her own initiative, may make such inquiry as circumstances require or is necessary to protect the rights of all the parties and he or she may enact rules and regulations providing for procedures to ensure fair and prompt handling by self-insurers of the claims of workers and beneficiaries. [1996 c 58 § 2; 1982 1st ex.s. c 20 § 3; 1977 ex.s. c 350 § 54; 1972 ex.s. c 43 § 25; 1971 ex.s. c 289 § 47.]

Effective date—1982 1st ex.s. c 20: See note following RCW 51.32.075.

51.32.195 Self-insurers—Information to department.

On any industrial injury claim where the self-insured employer or injured worker has requested a determination by the department, the self-insurer must submit all medical reports and any other specified information not previously submitted to the department. When the department requests information from a self-insurer by certified mail, the self-insurer shall submit all information in its possession concerning a claim within ten working days from the date of receipt of such certified notice. [1987 c 290 § 1.]

51.32.200 Self-insurers—Enforcement of compensation order against.

(1) If a self-insurer fails, refuses, or neglects to comply with a compensation order which has become final and is not subject to review or appeal, the director or any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for the county in which the self-insurer may be served with process.

(2) The court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title. [1971 ex.s. c 289 § 48.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.210 Claims of injured workers, prompt action—Payment—Acceptance—Effect.

Claims of injured workers of employers who have secured the payment of compensation by insuring with the department shall be promptly acted upon by the department. Where temporary disability compensation is payable, the first payment thereof shall be mailed within fourteen days after receipt of the claim at the department's offices in Olympia and shall continue at regular semimonthly intervals. The payment of this or any other benefits under this title, prior to the entry of an order by the department in accordance with RCW 51.52.050 as now or hereafter amended, shall be not considered a binding determination of the obligations of the department under this title. The acceptance of compensation by the worker or his or her beneficiaries prior to such order shall likewise not be considered a binding determination of their rights under this title. [1977 ex.s. c 350 § 55; 1972 ex.s. c 43 § 26.]

51.32.215 Payment of compensation after appeal—Enforcement of order—Penalty.

(1)(a) If the worker or beneficiary in a state fund claim prevails in an appeal by any party to the board or the court, the department shall comply with the board or court's order with respect to the payment of compensation within the later of the following time periods:

(i) Sixty days after the compensation order has become final and is not subject to review or appeal; or

(ii) If the order has become final and is not subject to review or appeal and the department has, within the period

specified in (a)(i) of this subsection, requested the filing by the worker or beneficiary of documents necessary to make payment of compensation, sixty days after all requested documents are filed with the department.

The department may extend the sixty-day time period for an additional thirty days for good cause.

(b) If the department fails to comply with (a) of this subsection, any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for Thurston county.

(2) In a proceeding under this section, the court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders and may award a penalty of up to one thousand dollars to the person entitled to compensation under the order.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title. [1995 c 276 § 1.]

Application—1995 c 276: "This act applies to all appeals in state fund claims determined under Title 51 RCW on or after July 23, 1995, regardless of the date of filing of the claim." [1995 c 276 § 2.]

51.32.220 Reduction in total disability compensation—Limitations—Notice—Waiver.

(1) For persons receiving compensation for temporary or permanent total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 USC 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act: PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Workers under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Workers under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Workers who will become sixty-five years of age on or after June 10, 2004. [2004 c 92 § 1; 1982 c 63 § 19; 1979 ex.s. c 231 § 1; 1979 ex.s. c 151 § 1; 1977 ex.s. c 323 § 19; 1975 1st ex.s. c 286 § 3.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Applicability—1979 ex.s. c 231: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after June 15, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 231 § 2.]

Severability—1979 ex.s. c 231: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 231 § 3.]

Applicability—1979 ex.s. c 151: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after May 10, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 151 § 3.]

Severability—1979 ex.s. c 151: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 151 § 4.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.225 Reduction in total disability compensation—Offset for social security retirement benefits. (1) For persons receiving compensation for temporary or permanent total disability under this title, the compensation shall be reduced by the department to allow an offset for social security retirement benefits payable under the federal social security, old age survivors, and disability insurance act, 42 U.S.C.

This reduction shall not apply to any worker who is receiving permanent total disability benefits prior to July 1, 1986.

(2) Reductions for social security retirement benefits under this section shall comply with the procedures in RCW 51.32.220 (1) through (6), except those that relate to computation, and with any other procedures established by the department to administer this section.

(3) Any reduction in compensation made under chapter 58, Laws of 1986, shall be made before the reduction established in this section. [1986 c 59 § 5.]

Effective date—1986 c 59 § 5: See note following RCW 51.32.090.

51.32.230 Recovery of overpayments. Notwithstanding any other provisions of law, any overpayments previously recovered under the provisions of RCW 51.32.220 as now or hereafter amended shall be limited to six months' overpayments. Where greater recovery has already been made, the director, in his discretion, may make restitution in those cases where an extraordinary hardship has been created. [1979 ex.s. c 151 § 2.]

Applicability—Severability—1979 ex.s. c 151: See notes following RCW 51.32.220.

51.32.240 Erroneous payments—Payments induced by willful misrepresentation—Adjustment for self-insurer's failure to pay benefits—Penalty—Appeal—Enforcement of orders. (1)(a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department or self-insurer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the state fund or by the self-insurer, as the case may be, subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department of labor and industries or an appeal with the board of industrial insurance appeals within sixty days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(5)(a) Whenever any payment of benefits under this title has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the willful misrepresentation was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (5), it is willful misrepresentation for a person to obtain payments or other benefits under this title in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

- (i) Willful false statement; or
- (ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (5), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this title.

(d) For purposes of this subsection (5), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (5), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages pursuant to RCW 51.08.178(4).

(6) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (5) of this section, the director, director's designee, or self-insurer may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or

self-insurer. The notice and order to withhold and deliver shall be served by certified mail accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(7) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer. [2004 c 243 § 7; 2001 c 146 § 10. Prior: 1999 c 396 § 1; 1999 c 119 § 1; 1991 c 88 § 1; 1986 c 54 § 1; 1975 1st ex.s. c 224 § 13.]

Application—2004 c 243 § 7: "Section 7 of this act applies to willful misrepresentation determinations issued on or after July 1, 2004." [2004 c 243 § 9.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.250 Payment of job modification costs. Modification of the injured worker's previous job or modification of a new job is recognized as a desirable method of returning the injured worker to gainful employment. In order to assist employers in meeting the costs of job modification, and to encourage employers to modify jobs to accommodate retaining or hiring workers with disabilities resulting from work-related injury, the supervisor or the supervisor's designee, in his or her discretion, may pay job modification costs in an amount not to exceed five thousand dollars per worker per job modification. This payment is intended to be a cooperative participation with the employer and funds shall be taken from the appropriate account within the second injury fund.

The benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. [1988 c 161 § 10; 1983 c 70 § 3; 1982 c 63 § 13.]

Severability—1983 c 70: See note following RCW 51.32.095.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.32.260 Compensation for loss or damage to personal effects. Workers otherwise entitled to compensation under this title may also claim compensation for loss of or damage to the worker's personal clothing, footwear or protective equipment resulting from the industrial accident or incurred in the course of emergency medical treatment for injuries. [1983 c 111 § 1.]

51.32.300 State employee vocational rehabilitation coordinator. The director shall appoint a state employee vocational rehabilitation coordinator who shall provide technical assistance and coordination of claims management to state agencies and institutions of higher education under the state return-to-work programs created by RCW 41.06.490 and *28B.16.300. [1990 c 204 § 5.]

***Reviser's note:** RCW 28B.16.300 was repealed by 1993 c 281 § 68, effective July 1, 1993.

Findings—Purpose—1990 c 204: See note following RCW 51.44.170.

51.32.350 Chemically related illness—Criteria and procedures for claims—Claims management. (1) By July 1, 1994, the department shall establish interim criteria and procedures for management of claims involving chemically related illness to ensure consistency and fairness in the adjudication of these claims. The criteria and procedures shall apply to employees covered by the state fund and employees of self-insured employers. The department shall adopt final criteria and procedures by December 31, 1994, and report the criteria and procedures as required under section 5, chapter 265, Laws of 1994.

(2) The special procedures developed by the department shall include procedures to determine which claims involving chemically related illness require expert management. The department shall assign claims managers with special training or expertise to manage these claims. [1994 c 265 § 1.]

51.32.360 Chemically related illness—Centers for research and clinical assessment. The department shall work with the department of health to establish one or more centers for research and clinical assessment of chemically related illness. [1994 c 265 § 3.]

51.32.370 Chemically related illness—Research projects—Implementation plan—Funding—Deductions from employees' pay. (1) The department shall conduct research on chemically related illnesses, which shall include contracting with recognized medical research institutions. The department shall develop an implementation plan for research based on sound scientific research criteria, such as double blind studies, and shall include adequate provisions for peer review, and submit the plan to the worker's [workers'] compensation advisory committee for review and approval. Following approval of the plan, all specific proposals for projects under the plan shall be submitted for review to a scientific advisory committee, established to provide scientific oversight of research projects, and to the workers' com-

pensation advisory committee. The department shall include a research project that encourages regional cooperation in addressing chemically related illness.

(2) Expenditures for research projects shall be within legislative appropriations from the medical aid fund, with self-insured employers and the state fund each paying a pro rata share, based on the number of worker hours, of the authorized expenditures. For the purposes of this subsection only, self-insured employers may deduct from the pay of each of their employees one-half of the share charged to the employer for the expenditures from the medical aid fund. [1994 c 265 § 4.]

51.32.380 Injured offenders—Benefits sent in the care of the department of corrections—Exception—Liability. If the department of labor and industries has received notice that an injured worker entitled to benefits payable under this chapter is in the custody of the department of corrections pursuant to a conviction and sentence, the department shall send all such benefits to the worker in care of the department of corrections, except those benefits payable to a beneficiary as provided in RCW 51.32.040 (3)(c) and (4). Failure of the department to send such benefits to the department of corrections shall not result in liability to any party for either department. [2003 c 379 § 26.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

**Chapter 51.36 RCW
MEDICAL AID**

Sections

- 51.36.010 Extent and duration.
- 51.36.015 Chiropractic care and evaluation.
- 51.36.017 Licensed advanced registered nurse practitioners.
- 51.36.020 Transportation to treatment—Artificial substitutes and mechanical aids—Modifications to residences or motor vehicles.
- 51.36.030 First aid.
- 51.36.040 Time and place of coverage—Lunch period.
- 51.36.050 Rehabilitation center—Contracts with self-insurers and others.
- 51.36.060 Duties of attending physician or licensed advanced registered nurse practitioner—Medical information.
- 51.36.070 Medical examination—Reports—Costs.
- 51.36.080 Payment of fees and medical charges by department—Interest—Cost-effective payment methods—Audits.
- 51.36.085 Payment of fees and medical charges by self-insurers—Interest.
- 51.36.090 Review of billings—Investigation of unauthorized services.
- 51.36.100 Audits of health care providers authorized.
- 51.36.110 Audits of health care providers—Powers of department.
- 51.36.120 Confidential information.
- 51.36.130 False, misleading, or deceptive advertising or representations.

51.36.010 Extent and duration. (*Expires June 30, 2007.*) Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician or licensed advanced registered nurse practitioner of his or her own choice, if conveniently located, and proper and necessary hospital care and services during the period of his or her disability from such injury, but the same shall be limited in point of duration as follows:

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In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease. [2004 c 65 § 11; 1986 c 58 § 6; 1977 ex.s. c 350 § 56; 1975 1st ex.s. c 234 § 1; 1971 ex.s. c 289 § 50; 1965 ex.s. c 166 § 2; 1961 c 23 § 51.36.010. Prior: 1959 c 256 § 2; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.010 Extent and duration. (*Effective June 30, 2007.*) Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician of his or her own choice, if conveniently located, and proper and necessary hospital care and services during the period of his or her disability from such injury, but the same shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before perma-

nent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease. [1986 c 58 § 6; 1977 ex.s. c 350 § 56; 1975 1st ex.s. c 234 § 1; 1971 ex.s. c 289 § 50; 1965 ex.s. c 166 § 2; 1961 c 23 § 51.36.010. Prior: 1959 c 256 § 2; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.015 Chiropractic care and evaluation. Subject to the other provisions of this title, the health services that are available to an injured worker under RCW 51.36.010 include chiropractic care and evaluation. For the purposes of assisting the department in making claims determinations, an injured worker may be required by the department to undergo examination by a chiropractor licensed under chapter 18.25 RCW. [1994 c 94 § 1.]

51.36.017 Licensed advanced registered nurse practitioners. (*Expires June 30, 2007.*) Licensed advanced registered nurse practitioners are recognized as independent practitioners and, subject to the provisions of this title, the health services available to an injured worker under RCW 51.36.010 include health services provided by licensed advanced registered nurse practitioners within their scope of practice. [2004 c 65 § 16.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

51.36.020 Transportation to treatment—Artificial substitutes and mechanical aids—Modifications to residences or motor vehicles. (1) When the injury to any worker is so serious as to require his or her being taken from the place of injury to a place of treatment, his or her employer shall, at the expense of the medical aid fund, or self-insurer, as the case may be, furnish transportation to the nearest place of proper treatment.

(2) Every worker whose injury results in the loss of one or more limbs or eyes shall be provided with proper artificial substitutes and every worker, who suffers an injury to an eye producing an error of refraction, shall be once provided proper and properly equipped lenses to correct such error of refraction and his or her disability rating shall be based upon the loss of sight before correction.

(3) Every worker whose accident results in damage to or destruction of an artificial limb, eye, or tooth, shall have same repaired or replaced.

(4) Every worker whose hearing aid or eyeglasses or lenses are damaged, destroyed, or lost as a result of an industrial accident shall have the same restored or replaced. The department or self-insurer shall be liable only for the cost of restoring damaged hearing aids or eyeglasses to their condition at the time of the accident.

(5) All mechanical appliances necessary in the treatment of an injured worker, such as braces, belts, casts, and crutches, shall be provided and all mechanical appliances required as permanent equipment after treatment has been completed shall continue to be provided or replaced without regard to the date of injury or date treatment was completed, notwithstanding any other provision of law.

(6) A worker, whose injury is of such short duration as to bring him or her within the time limit provisions of RCW 51.32.090, shall nevertheless receive during the omitted period medical, surgical, and hospital care and service and transportation under the provisions of this chapter.

(7) Whenever in the sole discretion of the supervisor it is reasonable and necessary to provide residence modifications necessary to meet the needs and requirements of the worker who has sustained catastrophic injury, the department or self-insurer may be ordered to pay an amount not to exceed the state's average annual wage for one year as determined under RCW 50.04.355, as now existing or hereafter amended, toward the cost of such modifications or construction. Such payment shall only be made for the construction or modification of a residence in which the injured worker resides. Only one residence of any worker may be modified or constructed under this subsection, although the supervisor may order more than one payment for any one home, up to the maximum amount permitted by this section.

(8)(a) Whenever in the sole discretion of the supervisor it is reasonable and necessary to modify a motor vehicle owned by a worker who has become an amputee or becomes paralyzed because of an industrial injury, the supervisor may order up to fifty percent of the state's average annual wage for one year, as determined under RCW 50.04.355, to be paid by the department or self-insurer toward the costs thereof.

(b) In the sole discretion of the supervisor after his or her review, the amount paid under this subsection may be increased by no more than four thousand dollars by written order of the supervisor.

(9) The benefits provided by subsections (7) and (8) of this section are available to any otherwise eligible worker regardless of the date of industrial injury. [1999 c 395 § 1; 1982 c 63 § 12; 1977 ex.s. c 350 § 57; 1975 1st ex.s. c 224 § 14; 1971 ex.s. c 289 § 51; 1965 ex.s. c 166 § 3; 1961 c 23 § 51.36.020. Prior: 1959 c 256 § 3; prior: 1951 c 236 § 6; 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.030 First aid. Every employer, who employs workers, shall keep as required by the department's rules a first aid kit or kits equipped as required by such rules with materials for first aid to his or her injured workers. Every employer who employs fifty or more workers, shall keep one first aid station equipped as required by the department's rules with materials for first aid to his or her injured workers, and shall cooperate with the department in training one or more employees in first aid to the injured. The maintenance of such first aid kits and stations shall be deemed to be a part of any safety and health standards established under Title 49 RCW. [1980 c 14 § 12. Prior: 1977 ex.s. c 350 § 58; 1977 ex.s. c 323 § 20; 1961 c 23 § 51.36.030; prior: 1959 c 256 § 4; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.36.040 Time and place of coverage—Lunch period. The benefits of Title 51 RCW shall be provided to each worker receiving an injury, as defined therein, during the course of his or her employment and also during his or her lunch period as established by the employer while on the jobsite. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business of work process in which the employer is then engaged: PROVIDED, That if a worker by reason of his or her employment leaves such jobsite under the direction, control or request of the employer and if such worker is injured during his or her lunch period while so away from the jobsite, the worker shall receive the benefits as provided herein: AND PROVIDED FURTHER, That the employer need not consider the lunch period in worker hours for the purpose of reporting to the department unless the worker is actually paid for such period of time. [1977 ex.s. c 350 § 59; 1961 c 107 § 2.]

51.36.050 Rehabilitation center—Contracts with self-insurers and others. The department may operate and control a rehabilitation center and may contract with self-insurers, and any other persons who may be interested, for

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use of any such center on such terms as the director deems reasonable. [1979 ex.s. c 42 § 1; 1971 ex.s. c 289 § 52.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.060 Duties of attending physician or licensed advanced registered nurse practitioner—Medical information. (Expires June 30, 2007.) Physicians or licensed advanced registered nurse practitioners examining or attending injured workers under this title shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-insurer upon the condition or treatment of any such worker, or upon any other matters concerning such workers in their care. Except under RCW 49.17.210 and 49.17.250, all medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request, and no person shall incur any legal liability by reason of releasing such information. [2004 c 65 § 12; 1991 c 89 § 3; 1989 c 12 § 17; 1975 1st ex.s. c 224 § 15; 1971 ex.s. c 289 § 53.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.060 Duties of attending physician—Medical information. (Effective June 30, 2007.) Physicians examining or attending injured workers under this title shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-insurer upon the condition or treatment of any such worker, or upon any other matters concerning such workers in their care. Except under RCW 49.17.210 and 49.17.250, all medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request, and no person shall incur any legal liability by reason of releasing such information. [1991 c 89 § 3; 1989 c 12 § 17; 1975 1st ex.s. c 224 § 15; 1971 ex.s. c 289 § 53.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.070 Medical examination—Reports—Costs. Whenever the director or the self-insurer deems it necessary in order to resolve any medical issue, a worker shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The department or self-insurer shall provide

the physician performing an examination with all relevant medical records from the worker's claim file. The director, in his or her discretion, may charge the cost of such examination or examinations to the self-insurer or to the medical aid fund as the case may be. The cost of said examination shall include payment to the worker of reasonable expenses connected therewith. [2001 c 152 § 2; 1977 ex.s. c 350 § 60; 1971 ex.s. c 289 § 54.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.080 Payment of fees and medical charges by department—Interest—Cost-effective payment methods—Audits. (1) All fees and medical charges under this title shall conform to the fee schedule established by the director and shall be paid within sixty days of receipt by the department of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the department prior to final adjudication of claim allowance. The department shall pay interest at the rate of one percent per month, but at least one dollar per month, whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges.

Beginning in fiscal year 1987, interest payments under this subsection may be paid only from funds appropriated to the department for administrative purposes.

Nothing in this section may be construed to require the payment of interest on any billing, fee, or charge if the industrial insurance claim on which the billing, fee, or charge is predicated is ultimately rejected or the billing, fee, or charge is otherwise not allowable.

In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner without unduly restricting access to necessary care by persons entitled to the care. With respect to workers admitted as hospital inpatients on or after July 1, 1987, the director shall pay for inpatient hospital services on the basis of diagnosis-related groups, contracting for services, or other prudent, cost-effective payment method, which the director shall establish by rules adopted in accordance with chapter 34.05 RCW.

(2) The director may establish procedures for selectively or randomly auditing the accuracy of fees and medical billings submitted to the department under this title. [1998 c 245 § 104; 1993 c 159 § 2; 1987 c 470 § 1; 1985 c 368 § 2; 1985 c 338 § 1; 1971 ex.s. c 289 § 55.]

Effective date—1987 c 470 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987." [1987 c 470 § 4.]

Effective date—1985 c 368 § 2: "Section 2 of this act shall take effect July 1, 1987." [1985 c 368 § 7.]

Legislative findings—1985 c 368: "The legislature finds that:

(1) The governor's steering committee on the six-year state health care purchasing plan has estimated that health care expenditures by the department of labor and industries will rise from \$172.5 million in fiscal year 1985 to \$581.5 million in fiscal year 1991, an increase of two hundred thirty-seven percent in six years, while the number of persons receiving the care will rise only fifteen percent in the same period;

(2) The growing cost of health care for covered workers is a major cause of recent industrial insurance premium increases, adversely affecting both employers and employees;

(3) The department of labor and industries has not developed adequate means of controlling the costs of health care services to which covered workers are entitled by law;

(4) There is a need for all agencies of the state to act as prudent buyers in purchasing health care." [1985 c 368 § 1.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.085 Payment of fees and medical charges by self-insurers—Interest. All fees and medical charges under this title shall conform to regulations promulgated, and the fee schedule established by the director and shall be paid within sixty days of receipt by the self-insured of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the self-insured prior to final adjudication of claim allowance. The self-insured shall pay interest at the rate of one percent per month, but at least one dollar per month, whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges. [1993 c 159 § 3; 1987 c 316 § 4.]

51.36.090 Review of billings—Investigation of unauthorized services. An employer may request review of billings for any medical and surgical services received by a worker by submitting written notice to the department. The department shall investigate the billings and determine whether the worker received services authorized under this title. Whenever such medical or surgical services are determined to be unauthorized, the department shall not charge the costs of such services to the employer's account. [1985 c 337 § 3.]

51.36.100 Audits of health care providers authorized. The legislature finds and declares it to be in the public interest of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the provision of medical, chiropractic, dental, vocational, and other health services to industrially injured workers pursuant to Title 51 RCW. In order to effectively accomplish such purpose and to assure that the industrially injured worker receives such services as are paid for by the state of Washington, the acceptance by the industrially injured worker of such services, and the request by a provider of services for reimbursement for providing such services, shall authorize the director of the department of labor and industries or the director's authorized representative to inspect and audit all records in connection with the provision of such services. [1993 c 515 § 5; 1986 c 200 § 1.]

51.36.110 Audits of health care providers—Powers of department. (*Expires June 30, 2007.*) The director of the department of labor and industries or the director's authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical, chiropractic, dental, vocational, and other health services furnished to industrially injured workers pursuant to Title 51 RCW. In the conduct of such audits or investigations, the director or the director's authorized representatives may examine all records, or portions thereof, including patient records, for which services were rendered by a health

services provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential: PROVIDED, That no original patient records shall be removed from the premises of the health services provider, and that the disclosure of any records or information obtained under authority of this section by the department of labor and industries is prohibited and constitutes a violation of RCW 42.52.050, unless such disclosure is directly connected to the official duties of the department: AND PROVIDED FURTHER, That the disclosure of patient information as required under this section shall not subject any physician, licensed advanced registered nurse practitioner, or other health services provider to any liability for breach of any confidential relationships between the provider and the patient: AND PROVIDED FURTHER, That the director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW;

(3) Terminate or suspend eligibility to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW; and

(4) Pursue collection of unpaid overpayments and/or penalties plus interest accrued from health care providers pursuant to RCW 51.32.240(6). [2004 c 243 § 6; 2004 c 65 § 13; 1994 c 154 § 312; 1993 c 515 § 6; 1986 c 200 § 2.]

Reviser's note: This section was amended by 2004 c 65 § 13 and by 2004 c 243 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

51.36.110 Audits of health care providers—Powers of department. (*Effective June 30, 2007.*) The director of the department of labor and industries or the director's authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical, chiropractic, dental, vocational, and other health services furnished to industrially injured workers pursuant to Title 51 RCW. In the conduct of such audits or investigations, the director or the director's authorized representatives may examine all records, or portions thereof, including patient records, for which services were rendered by a health services provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential: PROVIDED, That no original patient records shall be removed from the premises of the health services provider, and that the disclosure of any records or information obtained under authority of this section by the department of labor and industries is prohibited and constitutes a violation of RCW 42.52.050, unless such disclosure is directly connected to the official duties of the department: AND PROVIDED FURTHER, That the disclosure of patient information as required

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under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationships between the provider and the patient: AND PROVIDED FURTHER, That the director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW;

(3) Terminate or suspend eligibility to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW; and

(4) Pursue collection of unpaid overpayments and/or penalties plus interest accrued from health care providers pursuant to RCW 51.32.240(6). [2004 c 243 § 6; 1994 c 154 § 312; 1993 c 515 § 6; 1986 c 200 § 2.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

51.36.120 Confidential information. When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter 42.17 RCW. [1989 c 189 § 2.]

51.36.130 False, misleading, or deceptive advertising or representations. In addition to other authority granted under this chapter, the department may deny applications of health care providers to participate as a provider of services to injured workers under this title, or terminate or suspend providers' eligibility to participate, if the provider uses or causes or promotes the use of, advertising matter, promotional materials, or other representation, however disseminated or published, that is false, misleading, or deceptive with respect to the industrial insurance system or benefits for injured workers under this title. [1997 c 336 § 2.]

Chapter 51.44 RCW

FUNDS

Sections

51.44.010	Accident fund.
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51.44.033	Supplemental pension fund.
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51.44.060	Charge to accident fund for the catastrophe injury account.
51.44.070	Transfer from accident fund, accounts to reserve fund—Annuity values—Self-insurers—Penalty for delay or refusal of reimbursement.
51.44.080	Reserve fund—Transfers from state fund—Surplus—Deficiency.
51.44.090	Reserve fund record and maintenance by state treasurer.
51.44.100	Investment of accident, medical aid, reserve, supplemental pension funds.
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51.44.150	Assessments upon self-insurers for administration costs.

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- 51.44.160 Interfund loans between reserve and supplemental pension funds—Audit.
 51.44.170 Industrial insurance premium refund account.

51.44.010 Accident fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "accident fund." [1961 c 23 § 51.44.010. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

51.44.020 Medical aid fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "medical aid fund." [1961 c 23 § 51.44.020. Prior: 1923 c 136 § 8, part; 1919 c 129 § 1, part; 1917 c 28 § 4, part; RRS § 7713, part.]

51.44.030 Reserve fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "reserve fund." [1961 c 23 § 51.44.030. Prior: 1957 c 70 § 39; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.033 Supplemental pension fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "supplemental pension fund". The director shall be the administrator thereof. Said fund shall be used for the sole purpose of making the additional payments therefrom prescribed in this title. [1975 1st ex.s. c 224 § 16; 1971 ex.s. c 289 § 18.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.040 Second injury fund. (1) There shall be in the office of the state treasurer, a fund to be known and designated as the "second injury fund", which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.120 and 51.32.250, as now or hereafter amended. Said fund shall be administered by the director. The state treasurer shall be the custodian of the second injury fund and shall be authorized to disburse moneys from it only upon written order of the director.

(2) Payments to the second injury fund from the accident fund shall be made pursuant to rules and regulations promulgated by the director.

(3) Assessments for the second injury fund shall be imposed on self-insurers pursuant to rules and regulations promulgated by the director to ensure that self-insurers shall pay to such fund in the proportion that the payments made from such fund on account of claims made against self-insurers bears to the total sum of payments from such fund. [1982 c 63 § 14; 1977 ex.s. c 323 § 21; 1972 ex.s. c 43 § 27; 1961 c 23 § 51.44.040. Prior: 1959 c 308 § 17; 1947 c 183 § 1; 1945 c 219 § 2; Rem. Supp. 1947 § 7676-1b.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.44.050 Catastrophe injury account. There shall be a special account within the accident fund to be known as the "catastrophe injury account" which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.130. [1961 c 23 § 51.44.050. Prior: 1959 c 308 § 6; 1957 c 70 § 40; prior: 1947 c 247 § 1(4f), part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.44.060 Charge to accident fund for the catastrophe injury account. The charge to the accident fund to defray charges against the catastrophe injury account shall be made pursuant to rules and regulations promulgated by the director. [1972 ex.s. c 43 § 28; 1961 c 23 § 51.44.060. Prior: 1959 c 308 § 7; 1957 c 70 § 41; prior: 1947 c 247 § 1(4f), part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.44.070 Transfer from accident fund, accounts to reserve fund—Annuity values—Self-insurers—Penalty for delay or refusal of reimbursement. (1) For every case resulting in death or permanent total disability the department shall transfer on its books from the accident fund of the proper class and/or appropriate account to the "reserve fund" a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this title provided to be made for the case. Such annuity values shall be based upon rates of mortality, disability, remarriage, and interest as determined by the department, taking into account the experience of the reserve fund in such respects.

Similarly, a self-insurer in these circumstances shall pay into the reserve fund a sum of money computed in the same manner, and the disbursements therefrom shall be made as in other cases.

(2) As an alternative to payment procedures otherwise provided under law, in the event of death or permanent total disability to workers of self-insured employers, a self-insured employer may upon establishment of such obligation file with the department a bond, an assignment of account from a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington, or purchase an annuity, in an amount deemed by the department to be reasonably sufficient to insure payment of the pension benefits provided by law. Any purchase of an annuity shall be from an institution meeting the following minimum requirements: (a) The institution must be rated no less than "A+" by A.M. Best, and no less than "AA" by Moody's and by Standard & Poor's; (b) the value of the assets of the institution must not be less than ten billion dollars; (c) not more than ten percent of the institution's assets may include bonds that are rated less than "BBB" by Moody's and Standard & Poor's; (d) not more than five percent of the assets may be held as equity in real estate; and (e) not more than twenty-five percent of the assets may be first mortgages, and not more than five percent may be second mortgages. The department shall adopt rules governing assignments of account and annuities. Such rules shall ensure that the funds are available if needed, even in the case of failure of the banking institution, the institution authorized to provide annuities, or the employer's business.

The annuity value for every such case shall be determined by the department based upon the department's experience

ence as to rates of mortality, disability, remarriage, and interest. The amount of the required bond, assignment of account, or annuity may be reviewed and adjusted periodically by the department, based upon periodic redeterminations by the department as to the outstanding annuity value for the case.

Under such alternative, the department shall administer the payment of this obligation to the beneficiary or beneficiaries. The department shall be reimbursed for all such payments from the self-insured employer through periodic charges not less than quarterly in a manner to be determined by the director. The self-insured employer shall additionally pay to the department a deposit equal to the first three months' payments otherwise required under RCW 51.32.050 and 51.32.060. Such deposit shall be placed in the reserve fund in accordance with RCW 51.44.140 and shall be returned to the respective self-insured employer when monthly payments are no longer required for such particular obligation.

If a self-insurer delays or refuses to reimburse the department beyond fifteen days after the reimbursement charges become due, there shall be a penalty paid by the self-insurer upon order of the director of an additional amount equal to twenty-five percent of the amount then due which shall be paid into the pension reserve fund. Such an order shall conform to the requirements of RCW 51.52.050. [1992 c 124 § 1; 1989 c 190 § 1; 1983 c 312 § 1; 1981 c 325 § 1; 1971 ex.s. c 289 § 56; 1961 c 274 § 5; 1961 c 23 § 51.44.070. Prior: 1959 c 308 § 8; 1957 c 70 § 42; prior: 1951 c 236 § 7; 1941 c 169 § 1; Rem. Supp. 1941 § 7705-2; prior: 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.080 Reserve fund—Transfers from state fund—Surplus—Deficiency. The department shall notify the state treasurer from time to time, of such transfers as a whole from the state fund to the reserve fund and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. As soon as possible after June 30th of each year the department shall expert the reserve fund to ascertain its standing as of June 30th of that year and the relation of its outstanding annuities at their then value to the cash on hand or at interest belonging to the fund. The department shall promptly report the result of the examination to the state treasurer in writing not later than September 30th following. If the report shows that there was on said June 30th, in the reserve fund in cash or at interest, a greater sum than the then annuity value of the outstanding pension obligations, the surplus shall be forthwith turned over to the state fund but, if the report shows the contrary condition of the reserve fund, the deficiency shall be forthwith made good out of the state fund. [1989 c 190 § 2; 1988 c 161 § 8; 1972 ex.s. c 43 § 29; 1971 ex.s. c 289 § 57; 1961 c 23 § 51.44.080. Prior: 1957 c 70 § 43; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

(2004 Ed.)

51.44.090 Reserve fund record and maintenance by state treasurer. The state treasurer shall keep accurate accounts of the reserve fund and the investment and earnings thereof, to the end that the total reserve fund shall at all times, as nearly as may be, be properly and fully invested and, to meet current demands for pension or lump sum payments, may, if necessary, make temporary loans to the reserve fund out of the accident fund, repaying the same from the earnings of the reserve fund or from collections of its investments or, if necessary, sales of the same. [1972 ex.s. c 43 § 31; 1961 c 23 § 51.44.090. Prior: 1957 c 70 § 44; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.100 Investment of accident, medical aid, reserve, supplemental pension funds. Whenever, in the judgment of the state investment board, there shall be in the accident fund, medical aid fund, reserve fund, or the supplemental pension fund, funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board may invest and reinvest such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise.

The state investment board may give consideration to the investment of excess funds in federally insured student loans made to persons in vocational training or retraining or reeducation programs. The state investment board may make such investments by purchasing from savings and loan associations, commercial banks, mutual savings banks, credit unions and other institutions authorized to be lenders under the federally insured student loan act, organized under federal or state law and operating in this state loans made by such institutions to residents of the state of Washington particularly for the purpose of vocational training or reeducation: **PROVIDED,** That the state investment board shall purchase only that portion of any loan which is guaranteed or insured by the United States of America, or by any agency or instrumentality of the United States of America: **PROVIDED FURTHER,** That the state investment board is authorized to enter into contracts with such savings and loan associations, commercial banks, mutual savings banks, credit unions, and other institutions authorized to be lenders under the federally insured student loan act to service loans purchased pursuant to this section at an agreed upon contract price. [1990 c 80 § 1; 1981 c 3 § 41; 1973 1st ex.s. c 103 § 6; 1972 ex.s. c 92 § 2; 1965 ex.s. c 41 § 1; 1961 c 281 § 10; 1961 c 23 § 51.44.100. Prior: 1959 c 244 § 1; 1935 c 90 § 1; RRS § 7705-1.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Severability—1973 1st ex.s. c 103: See note following RCW 2.10.080.

Legislative finding—Purpose—1972 ex.s. c 92: "The legislature finds that the accident fund, medical aid fund and reserve funds could be invested in such a manner as to promote vocational training and retraining or reeducation among the workers of this state. The legislature recognizes that federally insured student loans are already available to students at institutions of higher education. The legislature declares that the purpose of this 1972 amendatory act is to encourage the state finance committee to consider making some investment funds available for investment in federally insured student loans made to persons enrolled in vocational training and retraining or reeducation programs." [1972 ex.s. c 92 § 1.]

Motor vehicle fund warrants for state highway acquisition: RCW 47.12.180 through 47.12.240.

Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.

Student loans: RCW 28B.10.280.

Uniform Minor Student Capacity to Borrow Act: Chapter 26.30 RCW.

51.44.110 Disbursements of funds. Disbursement out of the several funds shall be made only upon warrants drawn by the department. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant is drawn wherewith to pay the same, the employer on account of whose worker it was that the warrant was drawn shall pay the same, and he or she shall be credited upon his or her next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable and, if the amount of the credit shall exceed the amount of the contribution, he or she shall have a warrant upon the same fund for the excess and, if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. [1977 ex.s. c 350 § 68; 1973 c 106 § 30; 1961 c 23 § 51.44.110. Prior: 1911 c 74 § 26, part; RRS § 7705, part.]

51.44.120 Liability of state treasurer. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the several funds, but all of the provisions of law relating to state depositaries and to the deposit of state moneys therein shall apply to the several funds and securities. [1961 c 23 § 51.44.120. Prior: (i) 1911 c 74 § 26, part; RRS § 7705, part. (ii) 1917 c 28 § 14; RRS § 7723.]

51.44.140 Self-insurer deposits into reserve fund—Accounts within fund—Surpluses and deficits. Each self-insurer shall make such deposits, into the reserve fund, as the department shall require pursuant to RCW 51.44.070, as are necessary to guarantee the payments of the pensions established pursuant to RCW 51.32.050 and 51.32.060.

Each self-insurer shall have an account within the reserve fund. Each such account shall be credited with its proportionate share of interest or other earnings as determined in RCW 51.44.080.

Each such account in the reserve fund shall be expeted by the insurance commissioner as required in RCW 51.44.080. Any surpluses shall be forthwith returned to the respective self-insurers, and each deficit shall forthwith be made good to the reserve fund by the self-insurer. [1972 ex.s. c 43 § 30; 1971 ex.s. c 289 § 58.]

51.44.150 Assessments upon self-insurers for administration costs. The director shall impose and collect assessments each fiscal year upon all self-insurers in the amount of the estimated costs of administering their portion of this title during such fiscal year. The time and manner of imposing and collecting assessments due the department shall be set forth in regulations promulgated by the director in accordance with chapter 34.05 RCW. [1971 ex.s. c 289 § 59.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.160 Interfund loans between reserve and supplemental pension funds—Audit. The director is authorized to make periodic temporary interfund transfers between the reserve and supplemental pension funds as may be necessary to provide for payments from the supplemental pension fund as prescribed in this title. At least once annually, the director shall cause an audit to be made of all pension funds administered by the department to insure that proper crediting of funds has been made, and further to direct transfers between the funds for any interfund loans which may have been made in the preceding year and not fully reimbursed. [1975 1st ex.s. c 224 § 17; 1971 ex.s. c 289 § 60.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.170 Industrial insurance premium refund account. The industrial insurance premium refund account is created in the custody of the state treasurer. All industrial insurance refunds earned by state agencies or institutions of higher education under the state fund retrospective rating program shall be deposited into the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account. Only the executive head of the agency or institution of higher education, or designee, may authorize expenditures from the account. No agency or institution of higher education may make an expenditure from the account for an amount greater than the refund earned by the agency. If the agency or institution of higher education has staff dedicated to workers' compensation claims management, expenditures from the account must be used to pay for that staff, but additional expenditure from the account may be used for any program within an agency or institution of higher education that promotes or provides incentives for employee workplace safety and health and early, appropriate return-to-work for injured employees. During the 2003-2005 fiscal biennium, the legislature may transfer from the industrial insurance premium refund account to the state general fund such amounts as reflect the excess fund balance of the account. [2003 1st sp.s. c 25 § 926; 2002 c 371 § 916; 1997 c 327 § 1; 1991 sp.s. c 13 § 29; 1990 c 204 § 2.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Findings—Purpose—1990 c 204: "The legislature finds that workplace safety in state employment is of paramount importance in maintaining a productive and committed state work force. The legislature also finds that recognition in state agencies and institutions of higher education of industrial insurance programs that provide safe working environments and promote early return-to-work for injured employees will encourage agencies and institutions of higher education to develop these programs. A purpose of this act is to provide incentives for agencies and institutions of higher education to participate in industrial insurance safety programs and return-to-work programs by authorizing use of the industrial insurance premium refunds earned by agencies or institutions of higher education participating in industrial insurance retrospective rating programs. Since agency and institution of

higher education retrospective rating refunds are generated from safety performance and cannot be set at predictable levels determined by the budget process, the incentive awards should not impact an agency's or institution of higher education's legislatively approved budget." [1997 c 327 § 2; 1990 c 204 § 1.]

Effective date—1990 c 204 § 2: "Section 2 of this act shall take effect July 1, 1990." [1990 c 204 § 6.]

Chapter 51.48 RCW PENALTIES

Sections

51.48.010	Employer's liability for penalties, injury or disease occurring before payment of compensation secured.
51.48.017	Self-insurer delaying or refusing to pay benefits.
51.48.020	Employer's false reporting or failure to secure payment of compensation—False information by claimants.
51.48.025	Retaliation by employer prohibited—Investigation—Remedies.
51.48.030	Failure to keep records and make reports.
51.48.040	Inspection of employer's records.
51.48.050	Liability for illegal collections for medical aid.
51.48.055	Termination, dissolution, or abandonment of business—Personal liability for unpaid premiums.
51.48.060	Physician or licensed advanced registered nurse practitioner—Failure to report or comply.
51.48.075	Information and training on premium liability.
51.48.080	Violation of rules.
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51.48.220	Order of execution upon property—Procedure—Sale.
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51.48.250	Liability of persons wilfully obtaining erroneous payments—Civil penalties.
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51.48.280	Kickbacks, bribes, and rebates—Representation fees—Criminal liability—Exceptions.
51.48.290	Written verification by health services providers.

51.48.010 Employer's liability for penalties, injury or disease occurring before payment of compensation secured. Every employer shall be liable for the penalties described in this title and may also be liable if an injury or occupational disease has been sustained by a worker prior to the time he or she has secured the payment of such compensation to a penalty in a sum not less than fifty percent nor more than one hundred percent of the cost for such injury or

occupational disease. Any employer who has failed to secure payment of compensation for his or her workers covered under this title may also be liable to a maximum penalty in a sum of five hundred dollars or in a sum double the amount of premiums incurred prior to securing payment of compensation under this title, whichever is greater, for the benefit of the medical aid fund. [1985 c 347 § 2; 1982 c 63 § 20; 1977 ex.s. c 350 § 69; 1971 ex.s. c 289 § 61; 1961 c 23 § 51.48.010. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.017 Self-insurer delaying or refusing to pay benefits. If a self-insurer unreasonably delays or refuses to pay benefits as they become due there shall be paid by the self-insurer upon order of the director an additional amount equal to five hundred dollars or twenty-five percent of the amount then due, whichever is greater, which shall accrue for the benefit of the claimant and shall be paid to him with the benefits which may be assessed under this title. The director shall issue an order determining whether there was an unreasonable delay or refusal to pay benefits within thirty days upon the request of the claimant. Such an order shall conform to the requirements of RCW 51.52.050. [1985 c 347 § 3; 1971 ex.s. c 289 § 66.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.020 Employer's false reporting or failure to secure payment of compensation—False information by claimants. (1)(a) Any employer, who knowingly misrepresents to the department the amount of his or her payroll or employee hours upon which the premium under this title is based, shall be liable to the state for up to ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(b) An employer is guilty of a class C felony, if:

(i) The employer, with intent to evade determination and payment of the correct amount of the premiums, knowingly makes misrepresentations regarding payroll or employee hours; or

(ii) The employer engages in employment covered under this title and, with intent to evade determination and payment of the correct amount of the premiums, knowingly fails to secure payment of compensation under this title or knowingly fails to report the payroll or employee hours related to that employment.

(c) Upon conviction under (b) of this subsection, the employer shall be ordered by the court to pay the premium due and owing, a penalty in the amount of one hundred percent of the premium due and owing, and interest on the premium and penalty from the time the premium was due until the date of payment. The court shall:

(i) Collect the premium and interest and transmit it to the department of labor and industries; and

(ii) Collect the penalty and disburse it pro rata as follows: One-third to the investigative agencies involved; one-third to the prosecuting authority; and one-third to the general fund of the county in which the matter was prosecuted.

Payments collected under this subsection must be applied until satisfaction of the obligation in the following order: Premium payments; penalty; and interest.

(2) Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. [1997 c 324 § 1; 1995 c 160 § 4; 1987 c 221 § 1; 1977 ex.s. c 323 § 22; 1971 ex.s. c 289 § 63; 1961 c 23 § 51.48.020. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.025 Retaliation by employer prohibited—Investigation—Remedies. (1) No employer may discharge or in any manner discriminate against any employee because such employee has filed or communicated to the employer an intent to file a claim for compensation or exercises any rights provided under this title. However, nothing in this section prevents an employer from taking any action against a worker for other reasons including, but not limited to, the worker's failure to observe health or safety standards adopted by the employer, or the frequency or nature of the worker's job-related accidents.

(2) Any employee who believes that he or she has been discharged or otherwise discriminated against by an employer in violation of this section may file a complaint with the director alleging discrimination within ninety days of the date of the alleged violation. Upon receipt of such complaint, the director shall cause an investigation to be made as the director deems appropriate. Within ninety days of the receipt of a complaint filed under this section, the director shall notify the complainant of his or her determination. If upon such investigation, it is determined that this section has been violated, the director shall bring an action in the superior court of the county in which the violation is alleged to have occurred.

(3) If the director determines that this section has not been violated, the employee may institute the action on his or her own behalf.

(4) In any action brought under this section, the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and to order all appropriate relief including rehiring or reinstatement of the employee with back pay. [1985 c 347 § 8.]

51.48.030 Failure to keep records and make reports.

Every employer who fails to keep and preserve the records required by this title or fails to make the reports provided in this title shall be subject to a penalty determined by the director but not to exceed two hundred fifty dollars or two hundred percent of the quarterly tax for each such offense, whichever is greater. Any employer who fails to keep and preserve the records adequate to determine taxes due shall be forever

barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department based on any period for which such records have not been kept and preserved. [1986 c 9 § 8; 1985 c 347 § 4; 1982 c 63 § 21; 1971 ex.s. c 289 § 64; 1961 c 23 § 51.48.030. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.040 Inspection of employer's records. (1) The books, records and payrolls of the employer pertinent to the administration of this title shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the persons employed, and such other information as may be necessary for the department and its management under this title.

(2) Refusal on the part of the employer to submit his or her books, records and payrolls for such inspection to the department, or any assistant presenting written authority from the director, shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars for each offense and the individual who personally gives such refusal is guilty of a misdemeanor.

(3) Any employer who fails to allow adequate inspection in accordance with the requirements of this section is subject to having its certificate of coverage revoked by order of the department and is forever barred from questioning in any proceeding in front of the board of industrial insurance appeals or any court, the correctness of any assessment by the department based on any period for which such records have not been produced for inspection. [2003 c 53 § 282; 1986 c 9 § 9; 1985 c 347 § 5; 1961 c 23 § 51.48.040. Prior: 1911 c 74 § 15, part; RRS § 7690, part.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

51.48.050 Liability for illegal collections for medical aid. It shall be unlawful for any employer to directly or indirectly demand or collect from any of his or her workers any sum of money whatsoever for or on account of medical, surgical, hospital, or other treatment or transportation of injured workers, other than as specified in RCW 51.16.140, and any employer who directly or indirectly violates the foregoing provisions of this section shall be liable to the state for the benefit of the medical aid fund in ten times the amount so demanded or collected, and such employer and every officer, agent, or servant of such employer knowingly participating therein shall also be guilty of a misdemeanor. [1980 c 14 § 13. Prior: 1977 ex.s. c 350 § 70; 1977 ex.s. c 323 § 23; 1961 c 23 § 51.48.050; prior: 1917 c 28 § 17; RRS § 7726.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.48.055 Termination, dissolution, or abandonment of business—Personal liability for unpaid premiums. (1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, mem-

ber, manager, or other person having control or supervision of payment and/or reporting of industrial insurance, or who is charged with the responsibility for the filing of returns, is personally liable for any unpaid premiums and interest and penalties on those premiums if such officer or other person willfully fails to pay or to cause to be paid any premiums due the department under chapter 51.16 RCW.

For purposes of this subsection "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member, manager, or other person is liable only for premiums that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those premiums.

(3) The officer, member, manager, or other person is not liable if that person is not exempt from mandatory coverage under RCW 51.12.020 and was directed not to pay the employer's premiums by someone who is exempt.

(4) The officer, member, manager, or other person is not liable if all of the assets of the corporation or limited liability company have been applied to its debts through bankruptcy or receivership.

(5) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 51.48.131.

(6) This section does not relieve the corporation or limited liability company of its liabilities under Title 51 RCW or otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in this chapter apply to collections under this section. [2004 c 243 § 3.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

51.48.060 Physician or licensed advanced registered nurse practitioner—Failure to report or comply. (Expires June 30, 2007.) Any physician or licensed advanced registered nurse practitioner who fails, neglects or refuses to file a report with the director, as required by this title, within five days of the date of treatment, showing the condition of the injured worker at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured worker, as required by this title, shall be subject to a civil penalty determined by the director but not to exceed two hundred fifty dollars. [2004 c 65 § 14; 1985 c 347 § 6; 1977 ex.s. c 350 § 71; 1971 ex.s. c 289 § 20; 1961 c 23 § 51.48.060. Prior: 1927 c 310 § 6(e), part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686(e), part.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.060 Physician—Failure to report or comply. (Effective June 30, 2007.) Any physician who fails, neglects or refuses to file a report with the director, as required by this title, within five days of the date of treatment, showing the condition of the injured worker at the time of treatment, a

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description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured worker, as required by this title, shall be subject to a civil penalty determined by the director but not to exceed two hundred fifty dollars. [1985 c 347 § 6; 1977 ex.s. c 350 § 71; 1971 ex.s. c 289 § 20; 1961 c 23 § 51.48.060. Prior: 1927 c 310 § 6(e), part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686(e), part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.075 Information and training on premium liability. The department shall, working with business associations and other employer and employee groups when practical, publish information and provide training to promote understanding of the premium liability that may be incurred under this chapter. [2004 c 243 § 5.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

51.48.080 Violation of rules. Every person, firm or corporation who violates or fails to obey, observe or comply with any rule of the department promulgated under authority of this title, shall be subject to a penalty of not to exceed five hundred dollars. [1985 c 347 § 7; 1961 c 23 § 51.48.080. Prior: 1915 c 188 § 8; RRS § 7704.]

51.48.090 Collection. Civil penalties to the state under this title shall be collected by civil action in the name of the state and paid into the accident fund unless a different fund is designated. [1961 c 23 § 51.48.090. Prior: (i) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part. (ii) 1911 c 74 § 15, part; RRS § 7690, part. (iii) 1917 c 28 § 17, part; RRS § 7726, part.]

51.48.100 Waiver—Penalty-free periods. (1) The director may waive the whole or any part of any penalty charged under this title.

(2) Until June 30, 1986: (a) The director may, at his or her discretion, declare a penalty-free period of no more than three months only for employers who have never previously registered under RCW 51.16.110 for eligible employees under Title 51 RCW; and (b) such employers may qualify once for penalty-free status upon payment of up to one year's past due premium in full and satisfaction of the requirements of RCW 51.16.110. Such employers shall be subject to all penalties for any subsequent failure to comply with the requirements of this title. [1985 c 227 § 1; 1961 c 23 § 51.48.100. Prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part.]

Effective date—1985 c 227: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 227 § 2.]

51.48.103 Engaging in business without certificate of coverage. (1) It is a gross misdemeanor:

(a) For any employer to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title;

(b) For the president, vice-president, secretary, treasurer, or other officer of any company to cause or permit the com-

pany to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title.

(2) It is a class C felony punishable according to chapter 9A.20 RCW:

(a) For any employer to engage in business subject to this title after the employer's certificate of coverage has been revoked by order of the department;

(b) For the president, vice-president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business subject to this title after revocation of a certificate of coverage. [2003 c 53 § 283; 1986 c 9 § 12.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

51.48.105 Failure to apply for coverage of employees—Not applicable, when. The penalties provided under this title for failure to apply for coverage for employees as required by the provisions of Title 51 RCW, the worker's compensation law, shall not be applicable prior to March 1, 1972, as to any employer whose work first became subject to this title on or after January 1, 1972. [1977 ex.s. c 350 § 73; 1972 ex.s. c 78 § 1.]

51.48.110 Decedent having no beneficiaries—Payment into supplemental pension fund. Where death results from the injury or occupational disease and the deceased leaves no beneficiaries, a self-insurer shall pay into the supplemental pension fund the sum of ten thousand dollars, less any amount that the self-insurer paid under RCW 51.32.040(2) as payment due for the period of time before the worker's death. [1999 c 185 § 2; 1986 c 56 § 1; 1971 ex.s. c 289 § 65.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.120 Notice of assessment for default in payments by employer—Issuance—Service—Contents. If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by certified mail to the employer's last known address or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries. [1995 c 160 § 5; 1986 c 9 § 10; 1985 c 315 § 6; 1972 ex.s. c 43 § 32.]

51.48.131 Notice of assessment for default in payments by employer—Appeal. A notice of assessment becomes final thirty days from the date the notice of assessment was served upon the employer unless: (1) A written request for reconsideration is filed with the department of labor and industries, or (2) an appeal is filed with the board of industrial insurance appeals and sent to the director of labor and industries by mail or delivered in person. The appeal

shall not be denied solely on the basis that it was not filed with both the board and the director if it was filed with either the board or the director. The appeal shall set forth with particularity the reason for the employer's appeal and the amounts, if any, that the employer admits are due.

The department, within thirty days after receiving a notice of appeal, may modify, reverse, or change any notice of assessment, or may hold any such notice of assessment in abeyance pending further investigation, and the board shall thereupon deny the appeal, without prejudice to the employer's right to appeal from any subsequent determinative notice of assessment issued by the department.

The burden of proof rests upon the employer in an appeal to prove that the taxes and penalties assessed upon the employer in the notice of assessment are incorrect. The department shall promptly transmit its original record, or a legible copy thereof, produced by mechanical, photographic, or electronic means, in such matter to the board. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.05.510 through 34.05.598, and the department has the same right of review from the board's decisions as do employers. [1989 c 175 § 120; 1987 c 316 § 3; 1985 c 315 § 7.]

Effective date—1989 c 175: See note following RCW 34.05.010.

51.48.140 Notice of assessment for employer's default in payments—When amount becomes final—Warrant—Execution—Garnishment—Fees. If a notice of appeal is not served on the director and the board of industrial insurance appeals pursuant to RCW 51.48.131 within thirty days from the date of service of the notice of assessment, or if a final decision and order of the board of industrial insurance appeals in favor of the department is not appealed to superior court in the manner specified in RCW 34.05.510 through 34.05.598, or if a final decision of any court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision and order of the board of industrial insurance appeals or final decision of the court shall be deemed final and the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the notice of assessment. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such employer mentioned in the warrant, the amount of the taxes and penalties due thereon, and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such

warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the employer within three days of filing with the clerk. [2001 c 146 § 11; 1989 c 175 § 121; 1985 c 315 § 8; 1972 ex.s. c 43 § 34.]

Effective date—1989 c 175: See note following RCW 34.05.010.

51.48.150 Notice of assessment for employer's default in payments—Notice to withhold and deliver property due employer. The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's duly authorized representative upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and

deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [1995 c 160 § 6; 1987 c 442 § 1119; 1986 c 9 § 11; 1972 ex.s. c 43 § 35.]

51.48.160 Revocation of certificate of coverage for failure to pay warrants or taxes. If any warrant issued under this title is not paid within thirty days after it has been filed with the clerk of the superior court, or if any employer is delinquent, for three consecutive reporting periods, in the transmission to the department of taxes due, the department may, by order issued under its official seal, revoke the certificate of coverage of the employer against whom the warrant was issued; and if the order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the employer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of coverage be issued to the employer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the department have been entered, and until the taxpayer has deposited with the department such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the department may require, but the amount of the security shall not be greater than one-half the estimated average annual taxes of the employer. [1986 c 9 § 13.]

51.48.170 Emergency assessment and collection of taxes. If the director or the director's designee has reason to believe that an employer is insolvent or about to cease business, leave the state, or remove or dissipate assets out of which taxes or penalties might be satisfied, and the collection of any taxes accrued will be jeopardized by delaying collection, the director or the director's designee may make an immediate assessment thereof and may proceed to enforce collection immediately under the terms of RCW 51.48.180 and 51.48.190, but interest and penalties shall not begin to accrue upon any taxes until the date when such taxes would normally have become delinquent. [1986 c 9 § 14.]

51.48.180 Emergency assessment and collection of taxes—Distraint and sale of property. If the amount of taxes, interest, or penalties assessed by the director or the director's designee by order and notice of assessment pursuant to RCW 51.48.170 is not paid within ten days after the service or mailing of the order and notice of assessment, the director or the director's designee may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of the delinquent employer. There shall be exempt from distraint and sale

under this section such goods and property as are exempt from execution under the laws of this state. [1986 c 9 § 15.]

51.48.190 Emergency assessment and collection of taxes—Conduct of sale. The director or the director's designee, upon making a distraint pursuant to RCW 51.48.170 and 51.48.180, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to the owner, and shall specify the time and place when the property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than twenty days from the date of posting of such notices. The sale may be adjourned from time to time at the discretion of the director or the director's designee, but not for a time to exceed in all sixty days. No sale shall take place if an appeal is pending. The sale shall be conducted by the director or the director's designee who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the director or the director's designee may declare such property to be purchased by the department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the director or the director's designee at public or private sale, and the amount realized shall be placed in the state of Washington industrial insurance fund.

In all cases of sale, as aforesaid, the director or the director's designee shall issue a bill of sale or a deed to the purchaser and the bill of sale or deed shall be prima facie evidence of the right of the director or the director's designee to make such sale and conclusive evidence of the regularity of the proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the director or the director's designee in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent taxes, interest, and penalties the industrial insurance fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the director or the director's designee shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the director or the director's designee by any other taxing authority of the state or its political subdivisions. [1986 c 9 § 16.]

51.48.200 Search and seizure of property to satisfy tax warrant or assessment—Issuance and execution of search warrant. (1) When there is probable cause to believe that there is property within this state not otherwise exempt from process or execution in the possession or control of any employer against whom a tax warrant issued under RCW

51.48.140 has been filed which remains unsatisfied, or an assessment issued pursuant to RCW 51.48.170, any judge of the superior court or district court in the county in which such property is located may, upon the request of the sheriff or agent of the department authorized to collect taxes, issue a warrant directed to the officers commanding the search for and seizure of the property described in the request for warrant.

(2) The procedure for the issuance, and execution and return of the warrant authorized by this section and for return of any property seized shall be the criminal rules of the superior court and the district court.

(3) The sheriff or agent of the department shall levy execution upon property seized under this section as provided in RCW 51.48.220 and 51.48.230.

(4) This section does not require the application for or issuance of any warrant not otherwise required by law. [1986 c 9 § 17.]

51.48.210 Delinquent taxes. If payment of any tax due is not received by the department by the due date, there shall be assessed a penalty of five percent of the amount of the tax for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the tax for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the tax for the third month or part thereof of delinquency. No penalty so added may be less than ten dollars. If a warrant is issued by the department for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than five dollars nor greater than one hundred dollars. In addition, delinquent taxes shall bear interest at the rate of one percent of the delinquent amount per month or fraction thereof from and after the due date until payment, increases, and penalties are received by the department. [1987 c 111 § 8; 1986 c 9 § 18.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

51.48.220 Order of execution upon property—Procedure—Sale. The department may issue an order of execution, pursuant to a filed warrant, under its official seal directed to the sheriff of the county in which the warrant has been filed, commanding the sheriff to levy upon and sell the real and/or personal property of the taxpayer found within the county, or so much thereof as may be necessary, for the payment of the amount of the warrant, plus the cost of executing the warrant, and return the warrant to the department and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgments of the superior court.

The sheriff shall be entitled to fees as provided by law for services in levying execution on a superior court judgment and the clerk shall be entitled to a filing fee as provided by law, which shall be added to the amount of the warrant.

The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final

amount due is received, together with interest, penalties, and costs, the judgment docket shall show the claim for taxes to be satisfied and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer or to any lien holder entitled thereto. If the return on the warrant shows that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of the warrant. [1986 c 9 § 21.]

51.48.230 Order of execution upon property—Enforcement. In the discretion of the department, an order of execution of like terms, force, and effect may be issued and directed to any agent of the department authorized to collect taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall not be entitled to any fee or compensation in excess of the actual expenses paid in the performance of such duty, which shall be added to the amount of the warrant. [1986 c 9 § 22.]

51.48.240 Agents and employees of department not personally liable—Conditions. When recovery is had in any suit or proceeding against an officer, agent, or employee of the department for any act done by that person or for the recovery of any money exacted by or paid to that person and by that person paid over to the department, in the performance of the person's official duty, and the court certifies that there was probable cause for the act done by such officer, agent, or employee, or that he or she acted under the direction of the department or an officer thereof, no execution shall issue against such officer, agent, or employee, but the amount so recovered shall, upon final judgment, be paid by the department as an expense of operation. [1986 c 9 § 23.]

51.48.250 Liability of persons wilfully obtaining erroneous payments—Civil penalties. (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an industrially injured recipient of health service, shall, on behalf of himself or others, obtain or attempt to obtain payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A wilful false statement;
- (b) Wilful misrepresentation, or by concealment of any material facts; or
- (c) Other fraudulent scheme or device, including, but not limited to:
 - (i) Billing for services, drugs, supplies, or equipment that were not furnished, of lower quality, or a substitution or misrepresentation of items billed; or
 - (ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person, firm, corporation, partnership, association, agency, institution, or other legal entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess payments received, plus interest on the amount of the excess benefits or payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. Such person or other

entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The director of the department of labor and industries may assess civil penalties in an amount not to exceed the greater of one thousand dollars or three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to April 1, 1986.

(3) A criminal action need not be brought against a person, firm, corporation, partnership, association, agency, institution, or other legal entity for that person or entity to be civilly liable under this section.

(4) Civil penalties shall be deposited in the general fund upon their receipt. [1986 c 200 § 4.]

51.48.260 Liability of persons unintentionally obtaining erroneous payments. Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an industrially injured recipient of health services, that, without intent to violate this chapter, obtains payments under Title 51 RCW to which such person or entity is not entitled, shall be liable for: (1) Any excess payments received; and (2) interest on the amount of excess payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. [1986 c 200 § 3.]

51.48.270 Criminal liability of persons making false statements or concealing information. Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an injured worker or beneficiary, that:

(1) Knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under this title; or

(2) At any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment; or

(3) Having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he or she has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized;

shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1987 c 470 § 2; 1986 c 200 § 5.]

51.48.280 Kickbacks, bribes, and rebates—Representation fees—Criminal liability—Exceptions. (1) It is a class C felony for any person, firm, corporation, partnership, association, agency, institution, or other legal entity to solicit or receive any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(a) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter; or

(b) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter.

(2) It is a class C felony for any person, firm, corporation, partnership, association, agency, institution, or other legal entity to offer or pay any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(a) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter; or

(b) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter.

(3) A health services provider who (a) provides a health care service to a claimant, while acting as the claimant's representative for the purpose of obtaining authorization for the services, and (b) charges a percentage of the claimant's benefits or other fee for acting as the claimant's representative under this title is guilty of a gross misdemeanor.

(4) Any fine imposed as a result of a violation of subsection (1), (2), or (3) of this section shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(5) Subsections (1) and (2) of this section shall not apply to:

(a) A discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter; and

(b) Any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(6) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [2003 c 53 § 284; 1997 c 336 § 1; 1986 c 200 § 6.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

51.48.290 Written verification by health services providers. The director of the department of labor and industries may by rule require that any application, statement, or form filled out by any health services provider under this title shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or mislead-

ing information may be prosecuted and punished under chapter 9A.72 RCW. [1986 c 200 § 7.]

Chapter 51.52 RCW APPEALS

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51.52.160	Publication and indexing of significant decisions.
51.52.200	Exception—Employers as parties to actions relating to compensation or assistance for victims of crimes.

51.52.010 Board of industrial insurance appeals. (*Expires June 30, 2007.*) There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor, with the advice and consent of the senate, as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active or judicial members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairperson of said board. The second member shall be a representative of the majority of workers engaged in employment under this title and selected from a list of not less than three names submitted to the governor by an organization, statewide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized statewide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his or her successor is appointed and qualified. In the event of a

vacancy the governor is authorized to appoint a successor to fill the unexpired term of his or her predecessor. All appointments to the board shall be made in conformity with the foregoing plan. In the event a board member becomes incapacitated in excess of thirty days either due to his or her illness or that of an immediate family member as determined by a request for family leave or as certified by the affected member's treating physician or licensed advanced registered nurse practitioner, the governor shall appoint an acting member to serve pro tem. Such an appointment shall be made in conformity with the foregoing plan, except that the list of candidates shall be submitted to the governor not more than fifteen days after the affected organizations are notified of the incapacity and the governor shall make the appointment within fifteen days after the list is submitted. The temporary member shall serve until such time as the affected member is able to reassume his or her duties by returning from requested family leave or as determined by the treating physician or licensed advanced registered nurse practitioner or until the affected member's term expires, whichever occurs first. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized. [2004 c 65 § 15; 2003 c 224 § 1; 1999 c 149 § 1; 1981 c 338 § 10; 1977 ex.s. c 350 § 74; 1975-'76 2nd ex.s. c 34 § 151; 1971 ex.s. c 289 § 68; 1965 ex.s. c 165 § 3; 1961 c 307 § 8; 1961 c 23 § 51.52.010. Prior: 1951 c 225 § 1; prior: 1949 c 219 § 2; Rem. Supp. 1949 § 10837-1.]

Report to legislature—Effective date—Expiration date—Severability—2004 c 65: See notes following RCW 51.04.030.

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

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.010 Board of industrial insurance appeals. (*Effective June 30, 2007.*) There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor, with the advice and consent of the senate, as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active or judicial members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairperson of said board. The second member shall be a representative of the majority of workers engaged in employment under this title and selected from a list of not less than three names submitted to the governor by an organization, statewide in scope,

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which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized statewide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his or her successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his or her predecessor. All appointments to the board shall be made in conformity with the foregoing plan. In the event a board member becomes incapacitated in excess of thirty days either due to his or her illness or that of an immediate family member as determined by a request for family leave or as certified by the affected member's treating physician, the governor shall appoint an acting member to serve pro tem. Such an appointment shall be made in conformity with the foregoing plan, except that the list of candidates shall be submitted to the governor not more than fifteen days after the affected organizations are notified of the incapacity and the governor shall make the appointment within fifteen days after the list is submitted. The temporary member shall serve until such time as the affected member is able to reassume his or her duties by returning from requested family leave or as determined by the treating physician or until the affected member's term expires, whichever occurs first. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized. [2003 c 224 § 1; 1999 c 149 § 1; 1981 c 338 § 10; 1977 ex.s. c 350 § 74; 1975-'76 2nd ex.s. c 34 § 151; 1971 ex.s. c 289 § 68; 1965 ex.s. c 165 § 3; 1961 c 307 § 8; 1961 c 23 § 51.52.010. Prior: 1951 c 225 § 1; prior: 1949 c 219 § 2; Rem. Supp. 1949 § 10837-1.]

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

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.020 Board—Rule-making power. The board may make rules and regulations concerning its functions and procedure, which shall have the force and effect of law until altered, repealed, or set aside by the board: PROVIDED, That the board may not delegate to any other person its duties of interpreting the testimony and making the final decision and order on appeal cases. All rules and regulations adopted

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by the board shall be printed and copies thereof shall be readily available to the public. [1961 c 23 § 51.52.020. Prior: 1951 c 225 § 2; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

51.52.030 Board—Expenses. The board may incur such expenses as are reasonably necessary to carry out its duties hereunder, which expenses shall be paid, one-half from the accident fund and one-half from the medical aid fund upon vouchers approved by the board. [1961 c 23 § 51.52.030. Prior: 1951 c 225 § 3; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

51.52.040 Board—Removal of member. Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit the original of such written charges to the chief justice of the supreme court and a copy thereof to the member accused. The chief justice shall thereupon designate a special tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review. [1961 c 23 § 51.52.040. Prior: 1951 c 225 § 4; prior: 1949 c 219 § 4; Rem. Supp. 1949 § 10837-3.]

51.52.050 Service of departmental action—Demand for repayment—Reconsideration or appeal. Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, which shall be addressed to such person at his or her last known address as shown by the records of the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia: PROVIDED, That a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief

sought in such appeal: PROVIDED, That in an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter. [2004 c 243 § 8; 1987 c 151 § 1; 1986 c 200 § 10; 1985 c 315 § 9; 1982 c 109 § 4; 1977 ex.s. c 350 § 75; 1975 1st ex.s. c 58 § 1; 1961 c 23 § 51.52.050. Prior: 1957 c 70 § 55; 1951 c 225 § 5; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1947 c 247 § 1, part; 1911 c 74 § 20, part; Rem. Supp. 1947 § 7676e, part. (iii) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (iv) 1923 c 136 § 7, part; 1921 c 182 § 10, part; 1917 c 29 § 3, part; RRS § 7712, part. (v) 1917 c 29 § 11; RRS § 7720. (vi) 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

51.52.060 Notice of appeal—Time—Cross-appeal—Departmental options. (1)(a) Except as otherwise specifically provided in this section, a worker, beneficiary, employer, health services provider, or other person aggrieved by an order, decision, or award of the department must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the day on which a copy of the order, decision, or award was communicated to such person, a notice of appeal to the board. However, a health services provider or other person aggrieved by a department order or decision making demand, whether with or without penalty, solely for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within twenty days from the day on which a copy of the order or decision was communicated to the health services provider upon whom the department order or decision was served, a notice of appeal to the board.

(b) Failure to file a notice of appeal with both the board and the department shall not be grounds for denying the appeal if the notice of appeal is filed with either the board or the department.

(2) Within ten days of the date on which an appeal has been granted by the board, the board shall notify the other interested parties to the appeal of the receipt of the appeal and shall forward a copy of the notice of appeal to the other interested parties. Within twenty days of the receipt of such notice of the board, the worker or the employer may file with the board a cross-appeal from the order of the department from which the original appeal was taken.

(3) If within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department directs the submission of further evidence or the investigation of any further fact, the time for filing the notice of appeal shall not commence to run until the

person has been advised in writing of the final decision of the department in the matter. In the event the department directs the submission of further evidence or the investigation of any further fact, as provided in this section, the department shall render a final order, decision, or award within ninety days from the date further submission of evidence or investigation of further fact is ordered which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days.

(4) The department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may:

(a) Modify, reverse, or change any order, decision, or award; or

(b)(i) Except as provided in (b)(ii) of this subsection, hold an order, decision, or award in abeyance for a period of ninety days which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days pending further investigation in light of the allegations of the notice of appeal; or

(ii) Hold an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause.

For purposes of this subsection, good cause includes delay that results from conduct of the claimant that is subject to sanction under RCW 51.32.110.

The board shall deny the appeal upon the issuance of an order under (b)(i) or (ii) of this subsection holding an earlier order, decision, or award in abeyance, without prejudice to the appellant's right to appeal from any subsequent determinative order issued by the department.

This subsection (4)(b) does not apply to applications deemed granted under RCW 51.32.160.

(5) An employer shall have the right to appeal an application deemed granted under RCW 51.32.160 on the same basis as any other application adjudicated pursuant to that section.

(6) A provision of this section shall not be deemed to change, alter, or modify the practice or procedure of the department for the payment of awards pending appeal. [1995 c 253 § 1; 1995 c 199 § 7; 1986 c 200 § 11; 1977 ex.s. c 350 § 76; 1975 1st ex.s. c 58 § 2; 1963 c 148 § 1; 1961 c 274 § 8; 1961 c 23 § 51.52.060. Prior: 1957 c 70 § 56; 1951 c 225 § 6; prior: 1949 c 219 §§ 1, part, 6, part; 1947 c 246 § 1, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 §§ 2, part, 6, part; 1927 c 310 §§ 4, part, 8, part; 1923 c 136 § 2, part; 1919 c 134 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 §§ 5, part, 20, part; Rem Supp. 1949 §§ 7679, part, 7697, part.]

Reviser's note: This section was amended by 1995 c 199 § 7 and by 1995 c 253 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1995 c 199: See note following RCW 51.12.120.

51.52.070 Contents of notice—Transmittal of record.

The notice of appeal to the board shall set forth in full detail the grounds upon which the person appealing considers such order, decision, or award is unjust or unlawful, and shall

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include every issue to be considered by the board, and it must contain a detailed statement of facts upon which such worker, beneficiary, employer, or other person relies in support thereof. The worker, beneficiary, employer, or other person shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in such notice of appeal or appearing in the records of the department. The department shall promptly transmit its original record, or a legible copy thereof produced by mechanical, photographic, or electronic means, in such matter to the board. [1977 ex.s. c 350 § 77; 1975 1st ex.s. c 224 § 18; 1975 1st ex.s. c 58 § 3; 1961 c 23 § 51.52.070. Prior: 1957 c 70 § 57; 1951 c 225 § 7; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.52.075 Appeal from order terminating provider's authority to provide services—Department petition for order immediately suspending provider's eligibility to participate. When a provider files with the board an appeal from an order terminating the provider's authority to provide services related to the treatment of industrially injured workers, the department may petition the board for an order immediately suspending the provider's eligibility to participate as a provider of services to industrially injured workers under this title pending the final disposition of the appeal by the board. The board shall grant the petition if it determines that there is good cause to believe that workers covered under this title may suffer serious physical or mental harm if the petition is not granted. The board shall expedite the hearing of the department's petition under this section. [2004 c 259 § 1.]

51.52.080 Appeal to board denied, when. If the notice of appeal raises no issue or issues of fact and the board finds that the department properly and lawfully decided all matters raised by such appeal it may, without further hearing, deny the same and confirm the department's decision or award, or if the department's record sustains the contention of the person appealing to the board, it may, without further hearing, allow the relief asked in such appeal; otherwise, it shall grant the appeal. [1971 ex.s. c 289 § 69; 1963 c 148 § 2; 1961 c 23 § 51.52.080. Prior: 1957 c 70 § 58; 1951 c 225 § 8; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.090 Appeal to board deemed granted, when. If the appeal is not denied within thirty days after the notice is filed with the board, the appeal shall be deemed to have been granted: PROVIDED, That the board may extend the time within which it may act upon such appeal, not exceeding thirty days. [1971 ex.s. c 289 § 70; 1961 c 23 § 51.52.090. Prior: 1957 c 70 § 59; 1951 c 225 § 9; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

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Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.095 Conference for disposal of matters involved in appeal—Mediation of disputes. (1) The board, upon request of the worker, beneficiary, or employer, or upon its own motion, may direct all parties interested in an appeal, together with their attorneys, if any, to appear before it, a member of the board, or an authorized industrial appeals judge, for a conference for the purpose of determining the feasibility of settlement, the simplification of issues of law and fact, the necessity of amendments to the notice of appeal or other pleadings, the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, the limitation of the number of expert witnesses, and such other matters as may aid in the disposition of the appeal. Such conference may be held prior to the hearing, or it may be held during the hearing, at the discretion of the board member or industrial appeals judge conducting the same, in which case the hearing will be recessed for such conference. Following the conference, the board member or industrial appeals judge conducting the same, shall state on the record the results of such conference, and the parties present or their representatives shall state their concurrence on the record. Such agreement as stated on the record shall control the subsequent course of the proceedings, unless modified at a subsequent hearing to prevent manifest injustice. If agreement concerning final disposition of the appeal is reached by the parties present at the conference, or by the employer and worker or beneficiary, the board may enter a final decision and order in accordance therewith, providing the board finds such agreement is in conformity with the law and the facts.

(2) In order to carry out subsection (1) of this section, the board shall develop expertise to mediate disputes informally. Where possible, industrial appeals judges with a demonstrated history of successfully resolving disputes or who have received training in dispute resolution techniques shall be appointed to perform mediation functions. No industrial appeals judge who mediates in a particular appeal may, without the consent of the parties, participate in writing the proposed decision and order in the appeal: PROVIDED, That this shall not prevent an industrial appeals judge from issuing a proposed decision and order responsive to a motion for summary disposition or similar motion. This section shall not operate to prevent the board from developing additional methods and procedures to encourage resolution of disputes by agreement or otherwise making efforts to reduce adjudication time. [1986 c 10 § 1; 1985 c 209 § 2; 1982 c 109 § 7; 1977 ex.s. c 350 § 78; 1963 c 148 § 3; 1963 c 6 § 1; 1961 c 23 § 51.52.095. Prior: 1951 c 225 § 10.]

51.52.100 Proceedings before board—Contempt. Hearings shall be held in the county of the residence of the worker or beneficiary, or in the county where the injury occurred, at a place designated by the board. Such hearing shall be de novo and summary, but no witness' testimony shall be received unless he or she shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard, or unless his or her testimony shall have been taken by deposition according to the statutes and rules relating to superior courts of this state. The department

shall be entitled to appear in all proceedings before the board and introduce testimony in support of its order. The board shall cause all oral testimony to be stenographically reported and thereafter transcribed, and when transcribed, the same, with all depositions, shall be filed in, and remain a part of, the record on the appeal. Such hearings on appeal to the board may be conducted by one or more of its members, or a duly authorized industrial appeals judge, and depositions may be taken by a person duly commissioned for the purpose by the board.

Members of the board, its duly authorized industrial appeals judges, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the attendance and testimony of, witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his or her office.

If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the board or any member or duly authorized industrial appeals judge may certify the facts to the superior court having jurisdiction in the place in which said board or member or industrial appeals judge is sitting; the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the proceedings, or in the presence, of the court. [1982 c 109 § 8; 1977 ex.s. c 350 § 79; 1963 c 148 § 4; 1961 c 23 § 51.52.100. Prior: 1957 c 70 § 60; 1951 c 225 § 11; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

51.52.102 Hearing the appeal—Dismissal—Evidence—Continuances. At the time and place fixed for hearing each party shall present all his evidence with respect to the issues raised in the notice of appeal, and if any party fails so to do, the board may determine the issues upon such evidence as may be presented to it at said hearing, or if an appealing party who has the burden of going forward with the evidence fails to present any evidence, the board may dismiss the appeal: PROVIDED, That for good cause shown in the record to prevent hardship, the board may grant continuances upon application of any party, but such continuances, when granted, shall be to a time and place certain within the county where the initial hearing was held unless it shall appear that a continuance elsewhere is required in justice to interested parties: AND PROVIDED FURTHER, That the board may con-

tinue hearings on its own motion to secure in an impartial manner such evidence, in addition to that presented by the parties, as the board, in its opinion, deems necessary to decide the appeal fairly and equitably, but such additional evidence shall be received subject to any objection as to its admissibility, and, if admitted in evidence all parties shall be given full opportunity for cross-examination and to present rebuttal evidence. [1963 c 148 § 5; 1961 c 23 § 51.52.102. Prior: 1951 c 225 § 12.]

51.52.104 Industrial appeals judge—Recommended decision and order—Petition for review—Finality of order. After all evidence has been presented at hearings conducted by an industrial appeals judge, who shall be an active or judicial member of the Washington state bar association, the industrial appeals judge shall enter a proposed or recommended decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The industrial appeals judge shall file the signed original of the proposed decision and order with the board, and copies thereof shall be mailed by the board to each party to the appeal and to each party's attorney or representative of record. Within twenty days, or such further time as the board may allow on written application of a party, filed within said twenty days from the date of communication of the proposed decision and order to the parties or their attorneys or representatives of record, any party may file with the board a written petition for review of the same. Filing of a petition for review is perfected by mailing or personally delivering the petition to the board's offices in Olympia. Such petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein.

In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. [2003 c 224 § 2; 1985 c 314 § 1; 1982 c 109 § 5; 1971 ex.s. c 289 § 22; 1963 c 148 § 6.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.106 Review of decision and order. After the filing of a petition or petitions for review as provided for in RCW 51.52.104, the proposed decision and order of the industrial appeals judge, petition or petitions for review and, in its discretion, the record or any part thereof, may be considered by the board and on agreement of at least two of the regular members thereof, the board may, within twenty days after the receipt of such petition or petitions, decline to review the proposed decision and order and thereupon deny the petition or petitions. In such event all parties shall forthwith be notified in writing of said denial: PROVIDED, That

if a petition for review is not denied within said twenty days it shall be deemed to have been granted. If the petition for review is granted, the proposed decision and order, the petition or petitions for review and the record or any part thereof deemed necessary shall be considered by a panel of at least two of the members of the board, on which not more than one industry and one labor member serve. The chairman may be a member of any panel. The decision and order of any such panel shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. The board shall, in all cases, render a final decision and order within one hundred and eighty days from the date a petition for review is filed. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal and to his attorney of record. [1982 c 109 § 9; 1975 1st ex.s. c 58 § 4; 1971 ex.s. c 289 § 23; 1965 ex.s. c 165 § 4; 1963 c 148 § 7; 1961 c 23 § 51.52.106. Prior: 1951 c 225 § 13.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.110 Court appeal—Taking the appeal. Within thirty days after a decision of the board to deny the petition or petitions for review upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the final decision and order of the board upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the appeal is denied as herein provided, such worker, beneficiary, employer or other person aggrieved by the decision and order of the board may appeal to the superior court. If such worker, beneficiary, employer, or other person fails to file with the superior court its appeal as provided in this section within said thirty days, the decision of the board to deny the petition or petitions for review or the final decision and order of the board shall become final.

In cases involving injured workers, an appeal to the superior court shall be to the superior court of the county of residence of the worker or beneficiary, as shown by the department's records, or to the superior court of the county wherein the injury occurred or where neither the county of residence nor the county wherein the injury occurred are in the state of Washington then the appeal may be directed to the superior court for Thurston county. In all other cases the appeal shall be to the superior court of Thurston county. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board. If the case is one involving a self-insurer, a copy of the notice of appeal shall also be served by mail, or personally, on such self-insurer. The department shall, in all cases not involving a self-insurer, within twenty days after the receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. If the case is one involving a self-insurer, such self-insurer shall, within twenty days after receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed to be at issue. In such cases the department may appear and take part in any proceedings. The board shall serve upon the

appealing party, the director, the self-insurer if the case involves a self-insurer, and any other party appearing at the board's proceeding, and file with the clerk of the court before trial, a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order, which shall become the record in such case. No bond shall be required on appeals to the superior court or on review by the supreme court or the court of appeals, except that an appeal by the employer from a decision and order of the board under *RCW 51.48.070, shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay: PROVIDED, HOWEVER, That whenever the board has made any decision and order reversing an order of the supervisor of industrial insurance on questions of law or mandatory administrative actions of the director, the department shall have the right of appeal to the superior court. [1988 c 202 § 49; 1982 c 109 § 6; 1977 ex.s. c 350 § 80; 1973 c 40 § 1. Prior: 1972 ex.s. c 50 § 1; 1972 ex.s. c 43 § 36; 1971 ex.s. c 289 § 24; 1971 c 81 § 122; 1961 c 23 § 51.52.110; prior: 1957 c 70 § 61; 1951 c 225 § 14; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Rules of court: Cf. Title 8 RAP, RAP 18.22.

*Reviser's note: RCW 51.48.070 was repealed by 1996 c 60 § 2.

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

51.52.112 Court appeal—Payment of taxes, penalties, and interest required. All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest unless the court determines that there would be an undue hardship to the employer. In the event an employer prevails in a court action, the employer shall be allowed interest on all taxes, penalties, and interest paid by the employer but determined by a final order of the court to not be due, from the date such taxes, penalties, and interest were paid. Interest shall be at the rate allowed by law as prejudgment interest. [1986 c 9 § 19.]

51.52.113 Collection of tax or penalty may not be enjoined. No restraining order or injunction may be granted or issued by any court to restrain or enjoin the collection of any tax or penalty or any part thereof, except upon the ground that the assessment thereof was in violation of the Constitution of the United States or that of the state. [1986 c 9 § 20.]

51.52.115 Court appeal—Procedure at trial—Burden of proof. Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110: PROVIDED, That in cases of alleged irregularities in procedure

before the board, not shown in said record, testimony thereon may be taken in the superior court. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. In all court proceedings under or pursuant to this title the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the department with an order directing it to proceed in accordance with the findings of the court: PROVIDED, That any award shall be in accordance with the schedule of compensation set forth in this title. In appeals to the superior court hereunder, either party shall be entitled to a trial by jury upon demand, and the jury's verdict shall have the same force and effect as in actions at law. Where the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court. [1961 c 23 § 51.52.115. Prior: 1957 c 70 § 62; 1951 c 225 § 15; prior: (i) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (ii) 1949 c 219 § 6; 1939 c 184 § 1; Rem. Supp. 1949 § 7697-2.]

51.52.120 Attorney's fee before department or board—Unlawful attorney's fees. (1) It shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the board is communicated to the party making the application. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by the director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an

attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board.

(3) Any person who violates this section is guilty of a misdemeanor. [2003 c 53 § 285; 1990 c 15 § 1; 1982 c 63 § 22; 1977 ex.s. c 350 § 81; 1965 ex.s. c 63 § 1; 1961 c 23 § 51.52.120. Prior: 1951 c 225 § 16; prior: 1947 c 246 § 3; Rem. Supp. 1947 § 7679-3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.52.130 Attorney and witness fees in court appeal.

If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer. [1993 c 122 § 1; 1982 c 63 § 23; 1977 ex.s. c 350 § 82; 1961 c 23 § 51.52.130. Prior: 1957 c 70 § 63; 1951 c 225 § 17; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.52.132 Unlawful attorney's fees. Where the department, the board or the court, pursuant to RCW 51.52.120 or 51.52.130 fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee in excess of that fixed by the department, board or the court. Any person who violates any provision of this section shall be guilty of a misdemeanor. [1965 ex.s. c 63 § 2; 1961 c 23 § 51.52.132. Prior: 1951 c 225 § 18.]

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51.52.135 Worker or beneficiary entitled to interest on award—Rate. (1) When a worker or beneficiary prevails in an appeal by the employer to the board or in an appeal by the employer to the court from the decision and order of the board, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(2) When a worker or beneficiary prevails in an appeal by the worker or beneficiary to the board or the court regarding a claim for temporary total disability, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(3) The interest provided for in subsections (1) and (2) of this section shall accrue from the date of the department's order granting the award or denying payment of the award. The interest shall be paid by the party having the obligation to pay the award. The amount of interest to be paid shall be fixed by the board or court, as the case may be. [1983 c 301 § 1.]

51.52.140 Rules of practice—Duties of attorney general—Supreme court appeal. Except as otherwise provided in this chapter, the practice in civil cases shall apply to appeals prescribed in this chapter. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal advisor of the department and the board. [1961 c 23 § 51.52.140. Prior: 1957 c 70 § 64; 1951 c 225 § 19; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Rules of court: *Method of appellate review superseded by RAP 2.1, 2.2.*

51.52.150 Costs on appeals. All expenses and costs incurred by the department for board and court appeals, including fees for medical and other witnesses, court reporter costs and attorney's fees, and all costs taxed against the department, shall be paid one-half out of the medical aid fund and one-half out of the accident fund. [1961 c 23 § 51.52.150. Prior: 1951 c 225 § 20; prior: 1931 c 116 § 1; RRS § 7697-1.]

51.52.160 Publication and indexing of significant decisions. The board shall publish and index its significant decisions and make them available to the public at reasonable cost. [1985 c 209 § 1.]

51.52.200 Exception—Employers as parties to actions relating to compensation or assistance for victims of crimes. This chapter shall not apply to matters concerning employers as parties to any settlement, appeal, or other action in accordance with chapter 7.68 RCW. [1997 c 102 § 2.]

Chapter 51.98 RCW CONSTRUCTION

Sections

51.98.010	Continuation of existing law.
51.98.020	Title, chapter, section headings not part of law.
51.98.030	Invalidity of part of title not to affect remainder.
51.98.040	Repeals and saving.

51.98.050 Emergency—1961 c 23.
 51.98.060 Effective dates—1971 ex.s. c 289.
 51.98.070 Severability—1971 ex.s. c 289.
 51.98.080 Severability—1972 ex.s. c 43.

Construction—1947 c 246: "The increased benefits and compensation authorized by this act shall not be applicable to a case of death, or injury or aggravation thereof, occurring prior to the effective date of this act." [1947 c 246 § 2.]

Construction—1923 c 136: "For all cases of injuries to workmen which occurred and for all claims or actions pending or causes of action existing before this act shall go into effect, Sections 7673 to 7796 of Remington's Compiled Statutes of Washington shall continue in force as they were prior to and they shall be unaffected by the passage of this amendatory act." [1923 c 136 § 20.] The internal references refer to the entire industrial insurance act as it existed in 1923.

Construction—1919 c 131: "For all cases of injuries to workmen which occurred before this act shall be into effect Sections 6604-3, 6604-5, 6604-6, and 6604-10 shall continue in force as they were prior to and they shall be unaffected by the passage of this amendatory act. The amendatory provisions of sections 2, 4, 5, and 6 of this act shall apply only to injuries occurring after they shall go into effect." [1919 c 131 § 9.] The internal references to prior compilations refer to such sections as amended in the 1919 act by sections 2, 4, 5, and 6 as repeated in the last sentence of the above quotation. Such sections are scattered throughout chapters 51.16, 51.20, 51.32, and 51.48 RCW.

51.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 23 § 51.98.010.]

51.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 23 § 51.98.020.]

51.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090. [1961 c 23 § 51.98.030.]

51.98.040 Repeals and saving. See 1961 c 23 § 51.98.040.

51.98.050 Emergency—1961 c 23. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 23 § 51.98.050.]

51.98.060 Effective dates—1971 ex.s. c 289. The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1971: PROVIDED, That RCW 51.08.070 as amended by section 1 of this 1971 amendatory act, RCW 51.12.010 as amended in section 2 of this 1971 amendatory act, RCW 51.12.020 as amended in section 3 of this 1971 amendatory act and RCW 51.16.110 as amended in section 4 of this 1971 amendatory

act shall take effect and become operative without any further action of the legislature on January 1, 1972. [1971 ex.s. c 289 § 90.]

51.98.070 Severability—1971 ex.s. c 289. If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090. [1971 ex.s. c 289 § 91.]

51.98.080 Severability—1972 ex.s. c 43. If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1972 ex.s. c 43 § 38.]

Title 52

FIRE PROTECTION DISTRICTS

Chapters

- 52.02 Formation.**
- 52.04 Annexation.**
- 52.06 Merger.**
- 52.08 Withdrawal.**
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- 52.12 Powers—Burning permits.**
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- 52.20 Local improvement districts.**
- 52.22 Special proceedings.**
- 52.26 Regional fire protection service authorities.**
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Annexation of district territory to cities and towns: Chapter 35.13 RCW.

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

Credit card use by local governments: RCW 43.09.2855.

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Fire fighting equipment, standardization: Chapter 70.75 RCW.

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

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

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Retirement—Law enforcement officers' and fire fighters' retirement system: Chapter 41.26 RCW.

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Chapter 52.02 RCW

FORMATION

Sections

- 52.02.001 Actions subject to review by boundary review board.
- 52.02.020 Districts authorized—Health clinic services.
- 52.02.030 Petition—Certification.
- 52.02.035 Petition—Notice of sufficiency.
- 52.02.040 Petition—Public hearing.
- 52.02.050 Public hearing—Notice—Publication and posting.
- 52.02.060 Hearing—Inclusion and exclusion of land.
- 52.02.070 Action on petition—Resolution—Election—District name when located in more than one county.
- 52.02.080 Election.
- 52.02.110 Declaration of election results—Resolution.
- 52.02.140 Appeal.
- 52.02.150 Organization conclusive.

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52.02.001 Actions subject to review by boundary review board. Actions taken under chapter 52.02 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 41.]

52.02.020 Districts authorized—Health clinic services. (1) Fire protection districts for the provision of fire prevention services, fire suppression services, emergency medical services, and for the protection of life and property in areas outside of cities and towns, except where the cities and towns have been annexed into a fire protection district or where the district is continuing service pursuant to RCW 35.02.202, are authorized to be established as provided in this title.

(2) In addition to other services authorized under this section, fire protection districts that share a common border with Canada and are surrounded on three sides by water, may also establish or participate in the provision of health clinic services. [2003 c 309 § 1; 1991 c 360 § 10; 1984 c 230 § 1; 1979 ex.s. c 179 § 5; 1959 c 237 § 1; 1947 c 254 § 1; 1945 c 162 § 1; 1943 c 121 § 1; 1941 c 70 § 1; 1939 c 34 § 1; Rem. Supp. 5654-101. Formerly RCW 52.04.020.]

Construction—Severability—1939 c 34: "The provisions of this act and proceedings thereunder shall be liberally construed with a view to effect their objects. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional." [1939 c 34 § 51.]

Validating—Saving—1939 c 34: "Any petition heretofore drawn, signed and filed with the county auditor in compliance with the provisions of section 1 to section 6, inclusive, of the Laws of 1933, Extraordinary Session, shall be valid and the various steps required by this act for the creation of a fire-protection district may be continued, if the further steps to be taken are begun within ninety (90) days after the taking effect of this act [March 1, 1939], and it shall not be necessary to prepare, sign and file with the county auditor a new petition, and any district so created shall not be invalid by reason of the failure to draw, sign and file a new petition under the provisions of this act." [1939 c 34 § 49.]

52.02.030 Petition—Certification. (1) For the purpose of the formation of a fire protection district, a petition designating the boundaries of the proposed district, by metes and bounds, or by describing the lands to be included in the proposed district by United States townships, ranges and legal subdivisions, signed by not less than ten percent of the registered voters who reside within the boundaries of the proposed district who voted in the last general municipal election, and setting forth the object for the creation of the proposed district and alleging that the establishment of the proposed district will be conducive to the public safety, welfare, and convenience, and will be a benefit to the property included in the proposed district, shall be filed with the county auditor of the county in which all, or the largest portion of, the proposed district is located, accompanied by an obligation signed by two or more petitioners, agreeing to pay the cost of the publication of the notice required by this title. The organization of

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any fire protection district previously formed is hereby approved and confirmed as a legally organized fire protection district in the state of Washington.

(2) The county auditor shall, within thirty days from the date of filing the petition, examine the signatures and certify to the sufficiency or insufficiency of the signatures. If the proposed fire protection district is located in more than one county, the auditor of the county in which the largest portion of the proposed fire protection district is located shall be the lead auditor and shall transmit a copy of the petition to the auditor or auditors of the other county or counties within which the proposed fire protection district is located. Each of these other auditors shall certify to the lead auditor both the total number of registered voters residing in that portion of the proposed fire protection district that is located in the county and the number of valid signatures of such voters who have signed the petition. The lead auditor shall certify the sufficiency or insufficiency of the signatures. The books and records of the auditor shall be prima facie evidence of the truth of the certificate. No person having signed the petition is allowed to withdraw his or her name after the filing of the petition with the county auditor.

(3) If the petition is found to contain a sufficient number of signatures of registered voters residing within the proposed district, the county auditor shall transmit the petition, together with the auditor's certificate of sufficiency, to the county legislative authority or authorities of the county or counties in which the proposed fire protection district is located. [1990 c 259 § 12; 1989 c 63 § 1; 1984 c 230 § 2; 1963 ex.s. c 13 § 1; 1947 c 254 § 2; 1939 c 34 § 2; Rem. Supp. 1947 § 5654-102. Prior: 1933 c 60 § 2. Formerly RCW 52.04.030.]

52.02.035 Petition—Notice of sufficiency. The county auditor who certifies the sufficiency of the petition shall notify the person or persons who submitted the petition of its sufficiency or insufficiency within five days of when the determination of sufficiency or insufficiency is made. Notice shall be by certified mail and additionally may be made by telephone. If a boundary review board exists in the county or counties in which the proposed fire protection district is located and the petition has been certified as being sufficient, the petitioners shall file notice of the proposed incorporation with the boundary review board or boards. [1989 c 63 § 2.]

52.02.040 Petition—Public hearing. (1) A public hearing on the petition shall be held by the county legislative authority of the county in which the proposed fire protection district is located if: (a) No boundary review board exists in the county; (b) jurisdiction by the boundary review board over the proposal has not been invoked; or (c) the boundary review board fails to take action on the proposal over which its jurisdiction has been invoked within the time period that the board must act or a proposal is deemed to have been approved. If such a public hearing is held by the county legislative authority, the hearing shall be held not less than twenty nor more than forty days from the date of receipt of the petition with the certificate of sufficiency from the county auditor if there is no boundary review board in the county, or not more than one hundred days from when the notice of the

proposal was submitted to the boundary review board if the jurisdiction of the boundary review board was not invoked, or not less than forty days after the date that the boundary review board that has had its jurisdiction invoked over the proposal must act if the proposal is deemed to have been approved. The hearing by the county legislative authority may be completed at the scheduled time or may be adjourned from time to time as may be necessary for a determination of the petition, but such adjournment or adjournments shall not extend the time for considering the petition more than twenty days from the date of the initial hearing on the petition.

(2) If the proposed fire protection district is located in more than one county, a public hearing shall be held in each of the counties by the county legislative authority or boundary review board. Joint public hearings may be held by two or more county legislative authorities, or two or more boundary review boards, on the proposal. [1989 c 63 § 3; 1984 c 230 § 3; 1939 c 34 § 3; RRS § 5654-103. Prior: 1933 c 60 § 2. Formerly RCW 52.04.040.]

52.02.050 Public hearing—Notice—Publication and posting. Notice of the public hearing by the county legislative authority on such a proposal shall be published for three consecutive weeks in the official paper of the county prior to the date set for the hearing and shall be posted for not less than fifteen days prior to the date of the hearing in each of three public places within the boundaries of the proposed district. The notices shall contain the time, date, and place of the public hearing. [1989 c 63 § 4; 1984 c 230 § 4; 1939 c 34 § 4; RRS § 5654-104. Prior: 1933 c 60 § 2. Formerly RCW 52.04.050.]

52.02.060 Hearing—Inclusion and exclusion of land. At the time and place of the hearing on the petition or at any adjournment thereof, the county legislative authority shall consider the petition and shall receive evidence as it deems material in favor of or opposed to the formation of the district or to the inclusion or exclusion of any lands. No lands outside of the boundaries of the proposed district as described in the petition may be included within the district without a written petition describing the land, executed by all persons having an interest of record in the lands, and filed with the proceedings on the petition. No land within the boundaries described in the petition, except that land which the county legislative authority finds will receive no benefits from the proposed district, may be excluded from the district. [1984 c 230 § 5; 1947 c 254 § 3; 1939 c 34 § 5; Rem. Supp. 1947 § 5654-105. Prior: 1933 c 60 § 3. Formerly RCW 52.04.060.]

52.02.070 Action on petition—Resolution—Election—District name when located in more than one county. The county legislative authority has the authority to consider the petition and, if it finds that the lands or any portion of the lands described in the petition, and any lands added thereto by petition of those interested, will be benefited and that the formation of the district will be conducive to the public safety, welfare, and convenience, it shall make a finding by resolution; otherwise it shall deny the petition. The county legislative authority shall consider only those areas located within the county when considering the petition. If

the county legislative authority approves the petition, it shall designate the name and number of the district, fix the boundaries of the district that are located within the county, and direct that an election be held within the proposed district for the purpose of determining whether the district shall be organized under this title and for the purpose of the election of its first fire commissioners.

Where a proposed fire protection district is located in more than a single county, the fire protection district shall be identified by the name of each county in which the proposed fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts. An election on a proposed fire protection district that is located in more than one county shall not be held unless the proposed district has been approved by the county legislative authorities, or boundary review boards, of each county within which the proposed district is located. [1989 c 63 § 5; 1984 c 230 § 6; 1939 c 34 § 6; RRS § 5654-106. Prior: 1933 c 60 § 3. Formerly RCW 52.04.070.]

52.02.080 Election. The election on the formation of the district and to elect the initial fire commissioners shall be conducted by the election officials of the county or counties in which the proposed district is located in accordance with the general election laws of the state. This election shall be held at the next general election date, as specified under *RCW 29.13.020, that occurs forty-five or more days after the date of the action by the boundary review board, or county legislative authority or authorities, approving the proposal. [1989 c 63 § 6; 1984 c 230 § 7; 1939 c 34 § 7; RRS § 5654-107. Formerly RCW 52.04.080.]

***Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Elections: Title 29A RCW.

52.02.110 Declaration of election results—Resolution. If three-fifths of all the votes cast at the election were cast in favor of the ballot proposition to create the proposed fire protection district, the county legislative authority of the county in which all, or the largest portion of, the proposed district is located shall by resolution declare the territory organized as a fire protection district under the name designated and shall declare the candidate for each fire commissioner position who receives the highest number of votes for that position to be an initial fire commissioner of the district. [1989 c 63 § 7; 1984 c 230 § 10; 1941 c 70 § 2; 1939 c 34 § 10; Rem. Supp. 1941 § 5654-110. Formerly RCW 52.04.110.]

52.02.140 Appeal. Any person or entity having a substantial interest and feeling aggrieved by any finding, determination, or resolution of the county legislative authority in the proceedings for the organization of a fire protection district under this title, may appeal within five days after the action of the county legislative authority to the superior court of the county, in the same manner as provided by law for appeals from the orders and determinations of the county leg-

(2004 Ed.)

islative authority. [1984 c 230 § 13; 1939 c 34 § 13; RRS § 5654-113. Formerly RCW 52.04.140.]

Appeal from board's action: RCW 36.32.330.

52.02.150 Organization conclusive. After the expiration of five days from the approval of the resolution of the county legislative authority declaring the district to be organized, and the filing of the certified copies of the resolution of the county legislative authority with the county auditor and the county assessor, the creation of the district is complete and its legal existence cannot thereafter be questioned by any person by reason of a defect in the proceedings for the organization of the district. [1984 c 230 § 14; 1939 c 34 § 14; RRS § 5654-114. Formerly RCW 52.04.150.]

Chapter 52.04 RCW ANNEXATION

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52.04.001 Actions subject to review by boundary review board. Actions taken under chapter 52.04 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 42.]

52.04.011 Annexation of territory by election method—Procedure—Indebtedness—Election dispensed with, when. (1) A territory adjacent to a fire protection district and not within the boundaries of a city, town, or other fire protection district may be annexed to the fire protection district by petition of fifteen percent of the qualified registered electors residing within the territory proposed to be annexed. Such territory may be located in a county or counties other than the county or counties within which the fire protection district is located. The petition shall be filed with the fire commissioners of the fire protection district and if the fire commissioners concur in the petition they shall file the petition with the county auditor of the county within which the territory is located. If this territory is located in more than one county, the original petition shall be filed with the auditor of the county within which the largest portion of the territory

is located, who shall be designated as the lead auditor, and a copy shall be filed with the auditor of each other county within which such territory is located. Within thirty days after the date of the filing of the petition the auditor shall examine the signatures on the petition and certify to the sufficiency or insufficiency of the signatures. If this territory is located in more than one county, the auditor of each other county who receives a copy of the petition shall examine the signatures and certify to the lead auditor the number of valid signatures and the number of registered voters residing in that portion of the territory that is located within the county. The lead auditor shall certify the sufficiency or insufficiency of the signatures.

After the county auditor has certified the sufficiency of the petition, the county legislative authority or authorities, or the boundary review board or boards, of the county or counties in which such territory is located shall consider the proposal under the same basis that a proposed incorporation of a fire protection district is considered, with the same authority to act on the proposal as in a proposed incorporation, as provided under chapter 52.02 RCW. If the proposed annexation is approved by the county legislative authority or boundary review board, the board of fire commissioners shall adopt a resolution requesting the county auditor to call a special election, as specified under *RCW 29.13.020, at which the ballot proposition is to be submitted. No annexation shall occur when the territory proposed to be annexed is located in more than one county unless the county legislative authority or boundary review board of each county approves the proposed annexation.

(2) The county legislative authority or authorities of the county or counties within which such territory is located have the authority and duty to determine on an equitable basis, the amount of any obligation which the territory to be annexed to the district shall assume to place the property owners of the existing district on a fair and equitable relationship with the property owners of the territory to be annexed as a result of the benefits of annexing to a district previously supported by the property owners of the existing district. If a boundary review board has had its jurisdiction invoked on the proposal and approves the proposal, the county legislative authority of the county within which such territory is located may exercise the authority granted in this subsection and require such an assumption of indebtedness. This obligation may be paid to the district in yearly benefit charge installments to be fixed by the county legislative authority. This benefit charge shall be collected with the annual tax levies against the property in the annexed territory until fully paid. The amount of the obligation and the plan of payment established by the county legislative authority shall be described in general terms in the notice of election for annexation and shall be described in the ballot proposition on the proposed annexation that is presented to the voters for their approval or rejection. Such benefit charge shall be limited to an amount not to exceed a total of fifty cents per thousand dollars of assessed valuation: PROVIDED, HOWEVER, That the special election on the proposed annexation shall be held only within the boundaries of the territory proposed to be annexed to the fire protection district.

(3) On the entry of the order of the county legislative authority incorporating the territory into the existing fire pro-

tection district, the territory shall become subject to the indebtedness, bonded or otherwise, of the existing district. If the petition is signed by sixty percent of the qualified registered electors residing within the territory proposed to be annexed, and if the board of fire commissioners concur, an election in the territory and a hearing on the petition shall be dispensed with and the county legislative authority shall enter its order incorporating the territory into the existing fire protection district. [1999 c 105 § 1; 1989 c 63 § 8; 1984 c 230 § 22; 1973 1st ex.s. c 195 § 49; 1965 ex.s. c 18 § 1; 1959 c 237 § 3; 1947 c 254 § 5; 1945 c 162 § 2; 1941 c 70 § 3; Rem. Supp. 1947 § 5654-116a. Formerly RCW 52.08.060.]

*Reviser's note: RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

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

52.04.021 Annexation by petition method—Alternative to election method. The method of annexation provided for in RCW 52.04.031, 52.04.041, and 52.04.051 shall be an alternate method to that specified in RCW 52.04.011. [1984 c 230 § 23; 1965 c 59 § 1. Formerly RCW 52.08.065.]

52.04.031 Annexation by petition method—Petition—Signers—Content. A petition for annexation of an area adjacent to a fire district shall be in writing, addressed to and filed with the board of fire commissioners of the district to which annexation is desired. Such territory may be located in a county or counties other than the county or counties within which the fire protection district is located. It must be signed by the owners, according to the records of the county auditor or auditors, of not less than sixty percent of the area of land included in the annexation petition, shall set forth a legal description of the property and shall be accompanied by a plat which outlines the boundaries of the property to be annexed. The petition shall state the financial obligation, if any, to be assumed by the area to be annexed. [1999 c 105 § 2; 1989 c 63 § 9; 1984 c 230 § 24; 1965 c 59 § 2. Formerly RCW 52.08.066.]

52.04.041 Annexation by petition method—Hearing—Notice. If the petition for annexation filed with the board of commissioners complies with the requirements of law, the board may accept the petition, fix a date for public hearing, and publish notice of the hearing in a newspaper of general circulation in the area proposed to be annexed and also post the notice in three public places within the area proposed for annexation. The notice shall specify the time and place of the hearing and invite interested persons to attend. The expense of publication of the notice shall be paid by the district. [1984 c 230 § 25; 1965 c 59 § 3. Formerly RCW 52.08.067.]

52.04.051 Annexation by petition method—Resolution providing for annexation. After the hearing, the board of fire commissioners shall determine by resolution whether the area shall be annexed. It may annex all or any portion of the proposed area but may not include in the annexation property not described in the petition. The proposed annexation shall be subject to action by the county legislative authority, as provided under RCW 52.04.011, to the same extent as if

the annexation were done under the election method of annexation. If the area proposed to be annexed under this procedure is reduced, the annexation shall occur only if the owners of not less than sixty percent of the remaining area have signed the petition. After adoption of the resolution a copy shall be filed with the county legislative authority or authorities within which the territory is located. [1989 c 63 § 10; 1984 c 230 § 26; 1965 c 59 § 4. Formerly RCW 52.08.068.]

52.04.056 Withdrawal or reannexation of areas. (1)

As provided in this section, a fire protection district may withdraw areas from its boundaries, or reannex areas into the fire protection district that previously had been withdrawn from the fire protection district under this section.

(2) The withdrawal of an area shall be authorized upon:

(a) Adoption of a resolution by the board of fire commissioners requesting the withdrawal and finding that, in the opinion of the board, inclusion of this area within the fire protection district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority or authorities of the county or counties within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The authority of an area to be withdrawn from a fire protection district as provided under this section is in addition, and not subject, to the provisions of RCW 52.04.101.

The withdrawal of an area from the boundaries of a fire protection district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the fire protection district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a fire protection district under this section may be reannexed into the fire protection district upon: (a) Adoption of a resolution by the board of fire commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority or authorities of the county or counties within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority or authorities, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number

to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in *RCW 29.13.020 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [1989 c 63 § 11; 1987 c 138 § 3.]

***Reviser's note:** As enacted by 1987 c 138 § 3, this section contained an apparently erroneous reference to RCW 29.13.030, a section repealed in 1965. Pursuant to RCW 1.08.015, this reference has been changed to RCW 29.13.020, a later enactment of the section repealed. RCW 29.13.020 was subsequently recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

52.04.061 Annexation of adjacent city or town—Procedure.

A city or town lying adjacent to a fire protection district may be annexed to such district if at the time of the initiation of annexation the population of the city or town is 100,000 or less. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated. [1999 c 105 § 3; 1985 c 313 § 1; 1979 ex.s. c 179 § 1. Formerly RCW 52.04.170.]

52.04.071 Annexation of adjacent city or town—Election.

The county legislative authority or authorities shall by resolution call a special election to be held in the city or town and in the fire protection district at the next date provided in *RCW 29.13.010 but not less than forty-five days from the date of the declaration of the finding, and shall cause notice of the election to be given as provided for in *RCW 29.27.080.

The election on the annexation of the city or town into the fire protection district shall be conducted by the auditor of the county or counties in which the city or town and the fire protection district are located in accordance with the general election laws of the state. The results thereof shall be canvassed by the canvassing board of the county or counties. No person is entitled to vote at the election unless he or she is a qualified elector in the city or town or unless he or she is a qualified elector within the boundaries of the fire protection district. The ballot proposition shall be in substantially the following form:

"Shall the city or town of be annexed to and be a part of fire protection district?"

YES
NO "

If a majority of the persons voting on the proposition in the city or town and a majority of the persons voting on the proposition in the fire protection district vote in favor thereof, the city or town shall be annexed and shall be a part of the fire

protection district. [1984 c 230 § 16; 1979 ex.s. c 179 § 2. Formerly RCW 52.04.180.]

***Reviser's note:** RCW 29.13.010 and 29.27.080 were recodified as RCW 29A.04.320 and 29A.52.350, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 and 29A.52.350 were subsequently repealed by 2004 c 271 § 193.

Elections: Title 29A RCW.

52.04.081 Annexation of adjacent city or town—Annual tax levies—Limitations. The annual tax levies authorized by chapter 52.16 RCW shall be imposed throughout the fire protection district, including any city or town annexed thereto. Any city or town annexed to a fire protection district is entitled to levy up to three dollars and sixty cents per thousand dollars of assessed valuation less any regular levy made by the fire protection district or by a library district under RCW 27.12.390 in the incorporated area: **PROVIDED**, That the limitations upon regular property taxes imposed by chapter 84.55 RCW apply. [1984 c 230 § 17; 1979 ex.s. c 179 § 4. Formerly RCW 52.04.190.]

52.04.091 Additional territory annexed by city to be part of district. When any city, code city, or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, thereafter, any territory annexed by the city shall also be annexed and be a part of the fire protection district. [1989 c 76 § 1.]

52.04.101 Withdrawal by annexed city or town—Election. The legislative body of such a city or town which has annexed to such a fire protection district, may, by resolution, present to the voters of such city or town a proposition to withdraw from said fire protection district at any general election held at least three years following the annexation to the fire protection district. If the voters approve such a proposition to withdraw from said fire protection district, the city or town shall have a vested right in the capital assets of the district proportionate to the taxes levied within the corporate boundaries of the city or town and utilized by the fire district to acquire such assets. [1979 ex.s. c 179 § 3. Formerly RCW 52.04.200.]

52.04.111 Annexation of city or town—Transfer of employees. When any city, code city or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, any employee of the fire department of such city, code city or town who (1) was at the time of annexation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire protection district (2) will, as a direct consequence of annexation, be separated from the employ of the city, code city or town, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer his employment to the fire protection district as provided in this section and RCW 52.04.121 and 52.04.131.

For purposes of this section and RCW 52.04.121 and 52.04.131, employee means an individual whose employment with a city, code city or town has been terminated because the city, code city or town was annexed by a fire protection district for purposes of fire protection. [1986 c 254 § 10.]

52.04.121 Annexation of city or town—Transfer of employees—Rights and benefits. (1) An eligible employee may transfer into the fire protection district civil service system, if any, or if none, then may request transfer of employment under this section by filing a written request with the board of fire commissioners of the fire protection district and by giving written notice to the legislative authority of the city, code city, or town. Upon receipt of such request by the board of fire commissioners the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the fire protection district in the position filled, but if the transferring employee has already completed a probationary period as a fire fighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees of the fire protection district in the position filled, and (d) in all other matters, such as retirement, vacation, and sick leave, have all the rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district from the beginning of employment with the city, code city, or town fire department: **PROVIDED**, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The city, code city, or town shall, upon receipt of such notice, transmit to the board of fire commissioners a record of the employee's service with the city, code city, or town which shall be credited to such employee as a part of the period of employment in the fire protection district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the fire protection district as the district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.04.111 and 52.04.131 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the fire protection district when appropriate positions become available: **PROVIDED**, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. [1994 c 73 § 4; 1986 c 254 § 11.]

Effective date—1994 c 73: See note following RCW 35.10.365.

52.04.131 Annexation of city or town—Transfer of employees—Notice—Time limitation. When a city, code

city or town is annexed to a fire protection district and as a result any employee is laid off who is eligible to transfer to the fire protection district pursuant to this section and RCW 52.04.111 and 52.04.121, the city, code city or town shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the fire protection district. [1986 c 254 § 12.]

52.04.141 Annexation of contiguous territory not in same county. Any attempted annexation in 1987 and thereafter by a fire protection district of contiguous territory, that is located in a county other than the county in which the fire protection district was located, is validated where the annexation would have occurred if the territory had been located in the same county as the fire protection district. The effective date of such annexations occurring in 1987 shall be February 1, 1988, for purposes of establishing the boundaries of taxing districts for purposes of imposing property taxes as provided in RCW 84.09.030.

Any reference to a county official of the county in which a fire protection district is located or proposed to be located shall be deemed to refer to the appropriate county official of each county in which the fire protection district is located or proposed to be located. [1988 c 274 § 12.]

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

52.04.151 Annexation of territory not in same county—District name. Any fire protection district located in a single county that annexes territory in another county shall be identified by the name of each county in which the fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts. [1989 c 63 § 12.]

52.04.161 Newly incorporated city or town deemed annexed by district—Withdrawal. If the area of a newly incorporated city or town is located in one or more fire protection districts, the city or town is deemed to have been annexed by the fire protection district or districts effective immediately on the city's or town's official date of incorporation, unless the city or town council adopts a resolution during the interim transition period precluding the annexation of the newly incorporated city or town by the fire protection district or districts. The newly incorporated city or town shall remain annexed to the fire protection district or districts for the remainder of the year of the city's or town's official date of incorporation, or through the following year if such extension is approved by resolution adopted by the city or town council and by the board or boards of fire commissioners, and shall be withdrawn from the fire protection district or districts at the end of this period, unless a ballot proposition is adopted by the voters providing for annexation of the city or town to one fire protection district or providing for the fire protection district or districts to annex only that area of the city or town located within the district. Such election shall be held pursuant to RCW 52.04.071 where possible, provided that in annexations to more than one fire protection district, the qual-

ified elector shall reside within the boundaries of the appropriate fire protection district or in that area of the city located within the district.

If the city or town is withdrawn from the fire protection district or districts, the maximum rate of the first property tax levy that is imposed by the city or town after the withdrawal is calculated as if the city or town never had been annexed by the fire protection district or districts. [2003 c 253 § 1; 1993 c 262 § 1.]

Chapter 52.06 RCW

MERGER

Sections

52.06.001	Actions subject to review by boundary review board.
52.06.010	Merger of districts authorized—Review.
52.06.020	Petition—Contents.
52.06.030	Action on petition—Special election.
52.06.050	Vote required—Status after favorable vote.
52.06.060	Merger by petition.
52.06.070	Obligations of merged districts.
52.06.080	Delivery of property and funds.
52.06.085	Board membership upon merger of districts—Subsequent boards—Creation of commissioner districts.
52.06.090	Merger of part of district with adjacent district.
52.06.100	Merger of part of district with adjacent district—When election unnecessary.
52.06.110	Transfer of employees.
52.06.120	Transfer of employees—Rights and benefits.
52.06.130	Transfer of employees—Notice—Time limitation.
52.06.140	Merger of districts located in different counties—District name.
52.06.150	Merger of districts located in same county—District name.

52.06.001 Actions subject to review by boundary review board. Actions taken under chapter 52.06 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 43.]

52.06.010 Merger of districts authorized—Review. A fire protection district may merge with another adjacent fire protection district, on such terms and conditions as they agree upon, in the manner provided in this title. The fire protection districts may be located in different counties. The district desiring to merge with another district, or the district from which it is proposed that a portion of the district be merged with another district, shall be called the "merging district." The district into which the merger is to be made shall be called the "merger district." The merger of any districts under chapter 52.06 RCW is subject to potential review by the boundary review board or boards of the county in which the merging district, or the portion of the merging district that is proposed to be merged with another district, is located. [1989 c 63 § 13; 1984 c 230 § 57; 1947 c 254 § 12; Rem. Supp. 1947 § 5654-151a. Formerly RCW 52.24.010.]

52.06.020 Petition—Contents. To effect such a merger, a petition to merge shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition on their own initiative, and they shall file a petition when it is signed by ten percent of the registered voters resident in the merging district who voted in the last general municipal election and presented to the board of commissioners. The petition shall state the reasons for the merger, state

the terms and conditions under which the merger is proposed, and request the merger. [1990 c 259 § 13; 1984 c 230 § 58; 1947 c 254 § 13; Rem. Supp. 1947 § 5654-151b. Formerly RCW 52.24.020.]

52.06.030 Action on petition—Special election. The board of the merger district may, by resolution, reject or approve the petition as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution to the merging district.

If the petition is approved as presented or as modified, the board of the merging district shall send an elector-signed petition, if there is one, to the auditor or auditors of the county or counties in which the merging district is located, who shall within thirty days examine the signatures and certify to the sufficiency or insufficiency of the signatures. If the merging district is located in more than one county, the auditor of the county within which the largest portion of the merging district is located shall be the lead auditor. Each other auditor shall certify to the lead auditor the number of valid signatures and the number of registered voters of the merging district who reside in the county. The lead auditor shall certify as to the sufficiency or insufficiency of the signatures. No signatures may be withdrawn from the petition after the filing. A certificate of sufficiency shall be provided to the board of the merging district, which shall adopt a resolution requesting the county auditor or auditors to call a special election, as provided in *RCW 29.13.020, for the purpose of presenting the question of merging the districts to the voters of the merging district.

If there is no elector-signed petition, the merging district board shall adopt a resolution requesting the county auditor or auditors to call a special election in the merging district, as specified under *RCW 29.13.020, for the purpose of presenting the question of the merger to the electors. [1989 c 63 § 14; 1984 c 230 § 59; 1947 c 254 § 14; Rem. Supp. 1947 § 5654-151c. Formerly RCW 52.24.030.]

***Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

52.06.050 Vote required—Status after favorable vote. The board of the merging district shall notify the board of the merger district of the results of the election. If a majority of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1995 c 79 § 1; 1947 c 254 § 16; Rem. Supp. 1947 § 5654-151e. Formerly RCW 52.24.050.]

52.06.060 Merger by petition. If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary

and the auditor, or lead auditor if the merging district is located in more than a single county, shall return the petition, together with a certificate of sufficiency to the board of the merging district. The boards of the respective districts shall then adopt resolutions declaring the districts merged in the same manner and to the same effect as if the merger had been authorized by an election. [1989 c 63 § 15; 1984 c 230 § 61; 1947 c 254 § 17; Rem. Supp. 1947 § 5654-151f. Formerly RCW 52.24.060.]

52.06.070 Obligations of merged districts. None of the obligations of the merged districts or of a local improvement district located in the merged districts may be affected by the merger and dissolution, and all land liable to be assessed to pay any of the indebtedness shall remain liable to the same extent as if the districts had not been merged and any assessments previously levied against the land shall remain unimpaired and shall be collected in the same manner as if the districts had not merged. The commissioners of the merged district shall have all the powers of the two districts to levy, assess, and cause to be collected all assessments against any land in both districts that may be necessary to pay for the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the merger: PROVIDED, That the board of the merged district may, with the consent of the creditors of the districts merged, cancel any or all assessments previously levied, in accordance with the terms and conditions of the merger, so that the lands in the respective districts bear their fair and proportionate share of the indebtedness. [1984 c 230 § 62; 1947 c 254 § 18; Rem. Supp. 1947 § 5654-151g. Formerly RCW 52.24.070.]

52.06.080 Delivery of property and funds. The commissioners of the merging district shall, upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments previously levied. [1984 c 230 § 63; 1947 c 254 § 19; Rem. Supp. 1947 § 5654-151h. Formerly RCW 52.24.080.]

52.06.085 Board membership upon merger of districts—Subsequent boards—Creation of commissioner districts. (1) Whenever two or more fire protection districts merge, the board of fire commissioners of the merged fire protection district shall consist of all of the fire commissioners of the districts that are merging, including a person who is elected as a fire commissioner of one of the merging districts at that same election that the ballot proposition was approved authorizing the merger, who shall retain the same terms of office they would possess as if the merger had not been approved. The number of members on the board of the merged district shall be reduced to either three or five members as provided in subsections (2) and (3) of this section, depending on whether the district has chosen to eventually have either a three-member or a five-member board under RCW 52.14.020.

(2) The number of members on the board of the merged district shall be reduced by one whenever a fire commis-

sioner resigns from office or a vacancy otherwise occurs on the board, until the number of remaining members is reduced to the number of members that is chosen for the board eventually to have. The reduction of membership on the board shall not be considered to be a vacancy that is to be filled until the number of remaining members is less than the number of members on the board that is chosen for the board eventually to have.

(3) At the next three district general elections after the merger is approved, the number of fire commissioners for the merged district that are elected shall be as follows, notwithstanding the number of fire commissioners whose terms expire:

(a) In the first election after the merger, only one position shall be filled, whether the new fire protection district be a three-member district or a five-member district.

(b) In each of the two subsequent elections, one position shall be filled if the new fire protection district is a three-member district and two positions shall be filled if the new fire protection district is a five-member district.

Thereafter, the fire commissioners shall be elected in the same manner as prescribed for such fire protection districts of the state.

(4) A ballot proposition to create commissioner districts may be submitted to the voters of the fire protection districts proposed to be merged at the same election the ballot proposition is submitted authorizing the merging of the fire protection districts. The procedure to create commissioner districts shall conform with RCW 52.14.013, except that: (a) Resolutions proposing the creation of commissioner districts must be adopted by unanimous vote of the boards of fire commissioners of each of the fire protection districts that are proposed to be merged; and (b) commissioner districts will be authorized only if the ballot propositions to authorize the merger and to create commissioner districts are both approved. A ballot proposition authorizing the creation of commissioner districts is approved if it is approved by a simple majority vote of the combined voters of all the fire protection districts proposed to be merged. The commissioner districts shall not be drawn until the number of commissioners in the fire protection district has been reduced under subsections (1) through (3) of this section to either three or five commissioners. After this reduction of fire commissioners has occurred the commissioner districts shall be drawn and used for the election of the successor fire commissioners. [1994 c 14 § 1; 1992 c 74 § 1; 1985 c 7 § 118; 1977 ex.s. c 121 § 1; 1971 c 55 § 1. Formerly RCW 52.24.085.]

52.06.090 Merger of part of district with adjacent district. A part of one district may be transferred and merged with an adjacent district if the area can be better served by the merged district. To effect such a merger, a petition, signed by a majority of the commissioners of the merging district or signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district, if signed by electors, or with the commissioners of the merger district if signed by commissioners of the merging district. If the commissioners of the merging district approve the petition, the petition shall be presented to the commissioners of the merger district. If

the commissioners of the merger district approve the petition, an election shall be called in the area to be merged.

In the event that either board of fire district commissioners does not approve the petition, the petition may be approved by the boundary review board of the county or the county legislative authority of the county in which the area to be merged is situated, and may approve the merger if it decides the area can be better served by a merger. If the part of the merging district that is proposed to merge with the merger district is located in more than one county, the approval must be by the boundary review board or county legislative authority of each county. If there is an affirmative decision, an election shall be called in the area to be merged.

A majority of the votes cast is necessary to approve the transfer. [1989 c 63 § 16; 1984 c 230 § 64; 1965 ex.s. c 18 § 2; 1963 c 42 § 1; 1953 c 176 § 5. Formerly RCW 52.24.090.]

52.06.100 Merger of part of district with adjacent district—When election unnecessary. If three-fifths of the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor or lead auditor shall return the petition, together with a certificate of sufficiency, to the board of the merger district. The board of the merger district shall then adopt a resolution declaring the portion of the district merged in the same manner and to the same effect as if the same had been authorized by an election. [1989 c 63 § 17; 1984 c 230 § 65; 1953 c 176 § 6. Formerly RCW 52.24.100.]

52.06.110 Transfer of employees. When any portion of a fire protection district merges with another fire protection district, any employee of the merging district who (1) was at the time of merger employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the merger district (2) will, as a direct consequence of the merger, be separated from the employ of the merging district, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the merger district as provided in this section and RCW 52.06.120 and 52.06.130.

For purposes of this section and RCW 52.06.120 and 52.06.130, employee means an individual whose employment with a fire protection district has been terminated because the fire protection district merged with another fire protection district for purposes of fire protection. [1986 c 254 § 13.]

52.06.120 Transfer of employees—Rights and benefits. (1) An eligible employee may transfer into the merger district by filing a written request with the board of fire commissioners of the merger district and by giving written notice to the board of fire commissioners of the merging district. Upon receipt of such request by the board of the merger district the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the merger district in the position filled, but if the transferring employee has already completed a probationary period as a fire fighter prior to the transfer,

then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees of the merger district in the position filled, and (d) in all other matters, such as retirement, vacation, and sick leave, have, all the rights, benefits, and privileges to which he or she would have been entitled to as an employee of the merger district from the beginning of employment with the merging district: **PROVIDED**, That for purposes of layoffs by the merger fire agency, only the time of service accrued with the merger agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the merging and merger fire agencies and the merging and merger fire agencies. The board of the merging district shall, upon receipt of such notice, transmit to the board of the merger district a record of the employee's service with the merging district which shall be credited to such employee as a part of the period of employment in the merger district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the merger district as the merger district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.06.110 and 52.06.130 shall head the list for employment in order of their seniority, to the end that they shall be the first to be reemployed in the merger district when appropriate positions become available: **PROVIDED**, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the merging and merged fire agencies and the merging and merged fire agencies. [1994 c 73 § 5; 1986 c 254 § 14.]

Effective date—1994 c 73: See note following RCW 35.10.365.

52.06.130 Transfer of employees—Notice—Time limitation. If, as a result of merging of districts any employee is laid off who is eligible to transfer to the merger district under this section and RCW 52.06.110 and 52.06.120, the merging district shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the merger district. [1986 c 254 § 15.]

52.06.140 Merger of districts located in different counties—District name. A merger fire protection district located in a single county, that merged with a merging fire protection district located in another county or counties, shall be identified by the name of each county in which the fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a

fire protection district in the one of these counties that has the greatest number of fire protection districts. [1989 c 63 § 18.]

52.06.150 Merger of districts located in same county—District name. A fire protection district resulting from the merger of two or more fire protection districts located in the same county shall be identified by the name of the county and the number of the merger fire protection district. However, the fire protection district resulting from such a merger shall be identified by the number of the merging district or one of the merging districts if a resolution providing for this number change is adopted by the board of fire commissioners of the district resulting from the merger or if resolutions providing for this number change are adopted by each of the boards of fire commissioners of the districts proposed to be merged. [1992 c 74 § 3.]

Chapter 52.08 RCW WITHDRAWAL

Sections

52.08.001	Actions subject to review by boundary review board.
52.08.011	Withdrawal authorized.
52.08.021	Withdrawal by incorporation of part of district.
52.08.025	City may not be included within district—Exceptions—Withdrawal of city.
52.08.032	Levy for emergency medical care and services.
52.08.035	City withdrawn to determine fire and emergency medical protection methods—Contracts—Joint operations—Sale, lease, etc., of property.
52.08.041	Taxes and assessments unaffected.
52.08.051	Commissioners residing in territory withdrawn—Vacancy created.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

52.08.001 Actions subject to review by boundary review board. Actions taken under chapter 52.08 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 44.]

52.08.011 Withdrawal authorized. Territory within a fire protection district may be withdrawn from the district in the same manner provided by law for withdrawal of territory from water-sewer districts, as provided by chapter 57.28 RCW. [1999 c 153 § 61; 1984 c 230 § 54; 1955 c 111 § 1. Formerly RCW 52.22.010.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Withdrawal or reannexation of areas: RCW 52.04.056.

52.08.021 Withdrawal by incorporation of part of district. The incorporation of any previously unincorporated land lying within a fire protection district shall operate to automatically withdraw such lands from the fire protection district. [1959 c 237 § 5; 1955 c 111 § 2. Formerly RCW 52.22.020.]

52.08.025 City may not be included within district—Exceptions—Withdrawal of city. Effective January 1, 1960, every city or town, or portion thereof, which is situated within the boundaries of a fire protection district shall become automatically removed from such fire protection dis-

tract, and no fire protection district shall thereafter include any city or town, or portion thereof, within its boundaries except as provided for in RCW 52.02.020, 52.04.061, 52.04.071, 52.04.081, 52.04.101, and 52.04.161.

However, if the area which incorporates or is annexed includes all of a fire protection district, the fire protection district, for purposes of imposing regular property taxes, shall continue in existence: (1)(a) Until the first day of January in the year in which the initial property tax collections of the newly incorporated city or town will be made, if a resolution is adopted under RCW 52.04.161 precluding annexation of the city or town to the district; (b) until the city or town is withdrawn from the fire protection district, if no such resolution is adopted and no ballot proposition under RCW 52.04.161 is approved; or (c) indefinitely, if such a ballot proposition is approved; or (2) until the first day of January in the year the annexing city or town will collect its property taxes imposed on the newly annexed area. The members of the city or town council or commission shall act as the board of commissioners to impose, receive, and expend these property taxes. [1993 c 262 § 2; 1986 c 234 § 35; 1985 c 7 § 119; 1979 ex.s. c 179 § 6; 1959 c 237 § 6. Formerly RCW 52.22.030.]

52.08.032 Levy for emergency medical care and services. See RCW 84.52.069.

52.08.035 City withdrawn to determine fire and emergency medical protection methods—Contracts—Joint operations—Sale, lease, etc., of property. A city or town encompassing territory withdrawn under chapter 52.08 RCW shall determine the most effective and feasible fire protection and emergency medical protection for the withdrawn territory, or any part thereof, and the legislative authority of the city or town and the commissioners of the fire protection district may, without limitation of any other powers provided by law:

(1) Enter into contracts to the same extent as fire protection districts and cities and towns may enter into contracts under authority of RCW 52.12.031(3), and

(2) Sell, purchase, rent, lease, or exchange property of every nature. [1984 c 230 § 55; 1959 c 237 § 8. Formerly RCW 52.22.040.]

52.08.041 Taxes and assessments unaffected. The provisions of RCW 57.28.110 shall apply to territory withdrawn from a fire protection district under the provision of chapter 52.08 RCW. [1985 c 7 § 120; 1959 c 237 § 7. Formerly RCW 52.22.050.]

52.08.051 Commissioners residing in territory withdrawn—Vacancy created. Fire protection district commissioners residing in territory withdrawn from a fire protection district shall be replaced in the manner provided for the filling of vacancies in RCW 52.14.050. [1984 c 230 § 56; 1959 c 237 § 9. Formerly RCW 52.22.060.]

(2004 Ed.)

Chapter 52.10 RCW

DISSOLUTION

Sections

- 52.10.001 Actions subject to review by boundary review board.
- 52.10.010 Dissolution—Election method.
- 52.10.020 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.

52.10.001 Actions subject to review by boundary review board. Actions taken under chapter 52.10 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 45.]

52.10.010 Dissolution—Election method. Fire protection districts may be dissolved by a majority vote of the registered electors of the district at an election conducted by the election officials of the county or counties in which the district is located in accordance with the general election laws of the state. The proceedings for dissolution may be initiated by the adoption of a resolution by the board of commissioners of the district calling for the dissolution. The dissolution of the district shall not cancel outstanding obligations of the district or of a local improvement district within the district, and the county legislative authority or authorities of the county or counties in which the district was located may make annual levies against the lands within the district until the obligations of the districts are paid. When the obligations are fully paid, all moneys in district funds and all collections of unpaid district taxes shall be transferred to the expense fund of the county. Where the fire protection district that was dissolved was located in more than one county, the amount of money transferred to the expense fund of each county shall be in direct proportion to the amount of assessed valuation of the fire protection district that was located in each county at the time of its dissolution. [1989 c 63 § 19; 1984 c 230 § 15; 1939 c 34 § 46; RRS § 5654-146. Formerly RCW 52.04.155.]

Dissolution of special purpose districts: Chapters 36.96 and 53.48 RCW.

52.10.020 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

Chapter 52.12 RCW

POWERS—BURNING PERMITS

Sections

- 52.12.011 Status.
- 52.12.021 General powers.
- 52.12.031 Specific powers—Acquisition or lease of property or equipment—Contracts—Association of districts—Group life insurance—Building inspections—Fire investigations.
- 52.12.036 Community revitalization financing—Public improvements.
- 52.12.041 Eminent domain.
- 52.12.051 Condemnation proceedings.
- 52.12.061 Contracts, promissory notes, deeds of trust, and mortgages for purchase of property—Limit on indebtedness—Election, when.
- 52.12.071 Liability insurance for officials and employees.
- 52.12.101 Burning permits authorized—Resolution.
- 52.12.102 Burning permits—Resolution to be published and posted.
- 52.12.103 Burning permits—Issuance—Contents.
- 52.12.104 Burning permits—Duties of permittee.
- 52.12.105 Burning permits—Penalty.
- 52.12.106 Burning permits—Penalty.

- 52.12.108 Burning permits—Liability for fire suppression costs.
- 52.12.111 Use of equipment and personnel beyond district boundaries—Governmental function.
- 52.12.121 Use of equipment and personnel outside district—Duty of fire fighter deemed duty for district—Benefits not impaired.
- 52.12.125 Reimbursement for fire suppression costs on state lands—Limitations.
- 52.12.131 Emergency medical services—Establishment and collection of charges.
- 52.12.135 Interlocal agreements for ambulance services.
- 52.12.140 Hazardous materials response teams.
- 52.12.150 Setting fires for fire fighter instruction—When burning permit not required—Notice, inspection required.

Association of fire commissioners to furnish information to legislature and governor: RCW 44.04.170.

52.12.011 Status. Fire protection districts created under this title are political subdivisions of the state and shall be held to be municipal corporations within the laws and Constitution of the state of Washington. A fire protection district shall constitute a body corporate and possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by law. [1984 c 230 § 18; 1967 c 164 § 5; 1939 c 34 § 15; RRS § 5654-115. Formerly RCW 52.08.010.]

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Tortious conduct of political subdivisions, municipal corporations, and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

52.12.021 General powers. Fire protection districts have full authority to carry out their purposes and to that end may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property, or any interest therein, to enter into and to perform any and all necessary contracts, to appoint and employ the necessary officers, agents, and employees, to sue and be sued, to exercise the right of eminent domain, to levy and enforce the collection of assessments and special taxes in the manner and subject to the limitations provided in this title against the lands within the district for district revenues, and to do any and all lawful acts required and expedient to carry out the purpose of this title. [1984 c 230 § 19; 1939 c 34 § 16; RRS § 5654-116. Formerly RCW 52.08.020.]

52.12.031 Specific powers—Acquisition or lease of property or equipment—Contracts—Association of districts—Group life insurance—Building inspections—Fire investigations. Any fire protection district organized under this title may:

(1) Lease, acquire, own, maintain, operate, and provide fire and emergency medical apparatus and all other necessary or proper facilities, machinery, and equipment for the prevention and suppression of fires, the providing of emergency medical services and the protection of life and property;

(2) Lease, acquire, own, maintain, and operate real property, improvements, and fixtures for housing, repairing, and maintaining the apparatus, facilities, machinery, and equipment described in subsection (1) of this section;

(3) Contract with any governmental entity under chapter 39.34 RCW or private person or entity to consolidate, provide, or cooperate for fire prevention protection, fire suppression, investigation, and emergency medical purposes. In so contracting, the district or governmental entity is deemed for

all purposes to be acting within its governmental capacity. This contracting authority includes the furnishing of fire prevention, fire suppression, investigation, emergency medical services, facilities, and equipment to or by the district, governmental entity, or private person or entity;

(4) Encourage uniformity and coordination of fire protection district operations. The fire commissioners of fire protection districts may form an association to secure information of value in suppressing and preventing fires and other district purposes, to hold and attend meetings, and to promote more economical and efficient operation of the associated fire protection districts. The commissioners of fire protection districts in the association shall adopt articles of association or articles of incorporation for a nonprofit corporation, select a chairman, secretary, and other officers as they may determine, and may employ and discharge agents and employees as the officers deem convenient to carry out the purposes of the association. The expenses of the association may be paid from funds paid into the association by fire protection districts: PROVIDED, That the aggregate contributions made to the association by a district in a calendar year shall not exceed two and one-half cents per thousand dollars of assessed valuation;

(5) Enter into contracts to provide group life insurance for the benefit of the personnel of the fire districts;

(6) Perform building and property inspections that the district deems necessary to provide fire prevention services and pre-fire planning within the district and any area that the district serves by contract in accordance with RCW 19.27.110: PROVIDED, That codes used by the district for building and property inspections shall be limited to the applicable codes adopted by the state, county, city, or town that has jurisdiction over the area in which the property is located. A copy of inspection reports prepared by the district shall be furnished by the district to the appropriate state, county, city, or town that has jurisdiction over the area in which the property is located: PROVIDED, That nothing in this subsection shall be construed to grant code enforcement authority to a district. This subsection shall not be construed as imposing liability on any governmental jurisdiction;

(7) Determine the origin and cause of fires occurring within the district and any area the district serves by contract. In exercising the authority conferred by this subsection, the fire protection district and its authorized representatives shall comply with the provisions of RCW 48.48.060;

(8) Perform acts consistent with this title and not otherwise prohibited by law. [1995 c 369 § 65; 1986 c 311 § 1; 1984 c 238 § 1; 1973 1st ex.s. c 195 § 48; 1963 c 101 § 1; 1959 c 237 § 2; 1947 c 254 § 6; 1941 c 70 § 4; 1939 c 34 § 20; Rem. Supp. 1947 § 5654-120. Formerly RCW 52.08.030.]

Effective date—1995 c 369: See note following RCW 43.43.930.

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

Hospitalization and medical insurance authorized: RCW 41.04.180.

Use of city fire apparatus beyond city limits: RCW 35.84.040.

52.12.036 Community revitalization financing—Public improvements. In addition to other authority that a fire protection district possesses, a fire protection district may

provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a fire protection district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 17.]

Severability—2001 c 212: See RCW 39.89.902.

52.12.041 Eminent domain. The taking and damaging of property or property rights by a fire protection district to carry out the purposes of its organization are declared to be for a public use. A district organized under this title may exercise the power of eminent domain to acquire property or property rights either inside or outside the district, for the use of the district. A district exercising the power of eminent domain shall proceed in the name of the district in the manner provided by law for the appropriation of real property or of real property rights by private corporations. [1984 c 230 § 20; 1939 c 34 § 18; RRS § 5654-118. Formerly RCW 52.08.040.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); chapter 8.20 RCW.

52.12.051 Condemnation proceedings. A fire protection district may unite in a single action, proceedings to condemn property which is held by separate owners. Two or more condemnation suits instituted separately may also, in the discretion of the court, upon a motion of an interested party, be consolidated into a single action. In these cases, the jury shall render separate verdicts for each tract of land in different ownership. A finding of the jury or decree of the court as to damages shall not in any manner be construed to abridge or destroy the right of the district to levy and collect taxes for district purposes against the uncondemned land situated within the district. The title acquired by a fire protection district in condemnation proceedings shall be the fee simple title or a lesser estate as designated in the decree of appropriation. [1984 c 230 § 21; 1939 c 34 § 19; RRS § 5654-119. Formerly RCW 52.08.050.]

52.12.061 Contracts, promissory notes, deeds of trust, and mortgages for purchase of property—Limit on indebtedness—Election, when. Fire protection districts may execute executory conditional sales contracts, installment promissory notes secured by a deed of trust, or mortgages with a governmental entity or a private party for the purchase or sale of any real or personal property, or property rights: PROVIDED, That the purchase price specified in a contract or promissory note to purchase property does not result in a total indebtedness in excess of three-eighths of one percent of the value of the taxable property in the fire protection district: PROVIDED FURTHER, That if a proposed purchase contract or promissory note would result in a total indebtedness in excess of that amount, a proposition to determine whether that contract or promissory note may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters: AND PROVIDED FURTHER, That a fire protection district may jointly execute contracts,

promissory notes, deeds of trust, or mortgages authorized by this section with any governmental entity.

The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1984 c 230 § 27; 1970 ex.s. c 42 § 29; 1965 c 21 § 1. Formerly RCW 52.08.080.]

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

52.12.071 Liability insurance for officials and employees. The board of commissioners of each fire district may purchase liability insurance with limits it deems reasonable for the purpose of protecting its officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1984 c 230 § 28; 1973 c 125 § 3. Formerly RCW 52.08.090.]

52.12.101 Burning permits authorized—Resolution. In any district in which the commissioners have adopted and published a resolution assuming the authority of issuing burning permits, a person, firm, or corporation shall not start, permit, or cause to be started or permitted an open fire on any land within a fire protection district, without a written permit issued by the district under terms and conditions as the district establishes by resolution. A fire district shall not assume authority to issue a burning permit for a fire on any forest or cut over land, except as otherwise provided by law. A fire district shall have the authority to revoke a permit issued by the district for the protection of life or property or to prevent or abate the nuisances caused by such burning. [1987 c 21 § 1; 1984 c 229 § 1; 1947 c 254 § 20; Rem. Supp. 1947 § 5654-151i. Formerly RCW 52.28.010.]

52.12.102 Burning permits—Resolution to be published and posted. The commissioners of a district may adopt a resolution authorizing the district to issue fire permits and establishing the terms and conditions under which the permit shall be issued. Notice of the resolution shall be published once a week for three consecutive weeks in a newspaper published in the county and of general circulation in the district and post it in three public places in the district. The affidavit of publication by the publisher and of the clerk of the district of the posting shall be filed in the records of the district. Ten days after the posting and the last publication, the resolution shall take effect. [1984 c 229 § 2; 1947 c 254 § 21; Rem. Supp. 1947 § 5654-151j. Formerly RCW 52.28.020.]

52.12.103 Burning permits—Issuance—Contents. Burning permits may be issued upon request, by the persons authorized by the commissioners when the issuing officer deems it appropriate. The permit shall designate the premises and the exact location where the fire may be started and permitted, the nature of the material to be burned, the time limit of the permit, and may contain any special requirements and conditions pertaining to the fire and the control of the fire as the issuing officer deems appropriate. [1984 c 229 § 3; 1947 c 254 § 22; Rem. Supp. 1947 § 5654-151k. Formerly RCW 52.28.030.]

52.12.104 Burning permits—Duties of permittee.

The permittee shall comply with the terms and conditions of the permit, and shall maintain a responsible person in charge of the fire at all times who shall maintain the fire under control, not permit it to spread to other property or structures, and extinguish the fire when the authorized burning is completed or when directed by district personnel. The possession of a permit shall not relieve the permittee from liability for damages resulting from the fire for which the permittee may otherwise be liable. [1984 c 229 § 4; 1947 c 254 § 23; Rem. Supp. 1947 § 5654-1511. Formerly RCW 52.28.040.]

Crimes relating to fires: Chapter 9A.48 RCW.

Liability for fire damage: RCW 4.24.040, 4.24.050, 4.24.060, 76.04.495, 76.04.750.

52.12.105 Burning permits—Penalty. The violation of or failure to comply with any provision of this chapter pertaining to fire permits, or of any term or condition of the permit, is a misdemeanor. [1947 c 254 § 24; Rem. Supp. 1947 § 5654-1511m. Formerly RCW 52.28.050.]

52.12.106 Burning permits—Penalty. The violation of or failure to comply with any provision of this chapter pertaining to fire permits, or of any term or condition of the permit, is a misdemeanor. [1984 c 229 § 5.]

52.12.108 Burning permits—Liability for fire suppression costs. If a person starts a fire without a permit or if a permit holder fails to comply with any provision of this chapter pertaining to fire permits, or of any term or condition of the permit, and as a result of that failure the district is required to suppress a fire, the person or permit holder is liable to the district to reimburse it for the costs of the fire suppression services. [1984 c 229 § 6.]

52.12.111 Use of equipment and personnel beyond district boundaries—Governmental function. A fire protection district may permit, under conditions prescribed by the fire commissioners of the district, the use of its equipment and personnel beyond the boundaries of the district. Any use made of the equipment or personnel under this section shall be deemed an exercise of a governmental function of the district. [1984 c 230 § 77; 1980 c 43 § 1; 1969 c 88 § 2. Formerly RCW 52.36.025.]

52.12.121 Use of equipment and personnel outside district—Duty of fire fighter deemed duty for district—Benefits not impaired. If a fire fighter engages in any duty outside the boundaries of the district the duty shall be considered as part of the duty as fire fighter for the district, and a fire fighter who is injured while engaged in duties outside the boundaries of the district shall be entitled to the same benefits that the fire fighter or the fire fighter's dependents would be entitled to receive if the injury occurred within the district. [1984 c 230 § 78; 1969 c 88 § 3. Formerly RCW 52.36.027.]

52.12.125 Reimbursement for fire suppression costs on state lands—Limitations. Fire protection districts in proximity to land protected by a state agency are encouraged to enter into mutually beneficial contracts covering reciprocal

response arrangements. In the absence of such a contractual agreement, a fire protection district that takes immediate action on such land outside of its jurisdictional boundaries, if such immediate response could prevent the spread of the fire onto lands protected by the district, shall be reimbursed by the state agency for its reasonable fire suppression costs that are incurred until the responsible agency takes charge, but in no event shall the costs exceed a twenty-four hour period. A fire protection district suppressing a fire on such lands shall as soon as practicable notify the responsible agency. The state agency shall not be responsible to pay such reimbursement if it is not so notified.

Reasonable efforts shall be taken to protect evidence of the fire's origin. The state agency shall not be responsible to pay such reimbursement if reasonable efforts are not taken to protect such evidence.

Requests for reimbursement shall be submitted within thirty days of the complete suppression of the fire. Reasonable costs submitted for reimbursement include all salaries and expenses of personnel, equipment, and supplies and shall take into consideration the amount of compensation, if any, paid by the fire protection district to its fire fighters. [1986 c 311 § 2.]

52.12.131 Emergency medical services—Establishment and collection of charges. Any fire protection district which provides emergency medical services, may by resolution establish and collect reasonable charges for these services in order to reimburse the district for its costs of providing emergency medical services. [1984 c 230 § 81; 1975 c 64 § 1. Formerly RCW 52.36.090.]

52.12.135 Interlocal agreements for ambulance services. (1) A rural fire protection district organized under this title may enter into a contract pursuant to chapter 39.34 RCW with a contiguous city for the furnishing by the city to the fire protection district or districts of emergency medical services in the form of ambulance services, provided that the contract may not provide for the establishment of any ambulance service that would compete with any existing, private ambulance service. The fire protection district or districts may impose a monthly utility service charge on each developed residential property located in the portion of the fire protection district or districts served pursuant to the contract in an amount equal to the amount imposed by the city on similar city developed residential property. Developed residential property includes single-family residences, apartments, manufactured homes, mobile homes, and trailers available for occupancy for a continuous period greater than thirty days. A fire protection district or districts may contract with the contiguous city or with any other governmental entity pursuant to chapter 39.34 RCW for the billing and collection services related to the monthly utility service charge for ambulance service. A city providing ambulance services to a fire protection district or districts under a contract entered into pursuant to this subsection may charge individuals actually using the ambulance services reasonable rates and charges for the ambulance services.

(2) For purposes of this section, "rural" means a population density within the fire protection district or districts as a

whole of ten or fewer persons per square mile. [2003 c 209 § 1.]

52.12.140 Hazardous materials response teams. Fire protection districts may cooperate and participate with counties, cities, or towns in providing hazardous materials response teams under the county, city, or town emergency management plan provided for in RCW 38.52.070. The participation and cooperation shall be pursuant to an agreement or contract entered into under chapter 39.34 RCW. [1986 c 278 § 49.]

Severability—1986 c 278: See note following RCW 36.01.010.

52.12.150 Setting fires for fire fighter instruction—When burning permit not required—Notice, inspection required. Without obtaining a permit issued under RCW 70.94.650, fire protection district fire fighters may set fire to structures located outside of urban growth areas in counties that plan under the requirements of RCW 36.70A.040, and outside of any city with a population of ten thousand or more in all other counties, for instruction in methods of fire fighting, if all of the following conditions are met:

(1) In consideration of prevailing air patterns, the fire is unlikely to cause air pollution in areas of sensitivity downwind of the proposed fire location;

(2) The fire is not located in an area that is declared to be in an air pollution episode or any stage of an impaired air quality as defined in RCW 70.94.715 and 70.94.473;

(3) Nuisance laws are applicable to the fire, including nuisances related to the unreasonable interference with the enjoyment of life and property and the depositing of particulate matter or ash on other property;

(4) Notice of the fire is provided to the owners of property adjoining the property on which the fire will occur, to other persons who potentially will be impacted by the fire, and to additional persons in a broader manner as specifically requested by the local air pollution control agency or the department of ecology;

(5) Each structure that is proposed to be set on fire must be identified specifically as a structure to be set on fire. Each other structure on the same parcel of property that is not proposed to be set on fire must be identified specifically as a structure not to be set on fire; and

(6) Before setting a structure on fire, a good-faith inspection is conducted by the fire agency or fire protection district conducting the training fire to determine if materials containing asbestos are present, the inspection is documented in writing and forwarded to the appropriate local air authority or the department of ecology if there is no local air authority, and asbestos that is found is removed as required by state and federal laws. [2000 c 199 § 1; 1994 c 28 § 1.]

- 52.14.017 Decrease from five to three commissioners—Election—Disposition of commissioner districts.
- 52.14.020 Number in district having full-time, fully-paid personnel—Terms of first appointees.
- 52.14.030 Polling places.
- 52.14.050 Vacancies.
- 52.14.060 Commissioner's terms.
- 52.14.070 Oath of office.
- 52.14.080 Chairman—Secretary—Duties and oath.
- 52.14.090 Office—Meetings.
- 52.14.100 Meetings—Powers and duties of board.
- 52.14.110 Purchases and public works—Competitive bids required—Exceptions.
- 52.14.120 Purchases and public works—Competitive bidding procedures.
- 52.14.130 Low bidder claiming error—Prohibition on later bid for same project.

52.14.010 Number—Qualifications—Insurance—Compensation and expenses—Service as volunteer fire fighter. The affairs of the district shall be managed by a board of fire commissioners composed of three registered voters residing in the district except as provided in RCW 52.14.015 and 52.14.020. Each member shall each receive seventy dollars per day or portion thereof, not to exceed six thousand seven hundred twenty dollars per year, for attendance at board meetings and for performance of other services in behalf of the district.

In addition, they shall receive necessary expenses incurred in attending meetings of the board or when otherwise engaged in district business, and shall be entitled to receive the same insurance available to all fire fighters of the district: PROVIDED, That the premiums for such insurance, except liability insurance, shall be paid by the individual commissioners who elect to receive it.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The board shall fix the compensation to be paid the secretary and all other agents and employees of the district. The board may, by resolution adopted by unanimous vote, authorize any of its members to serve as volunteer fire fighters without compensation. A commissioner actually serving as a volunteer fire fighter may enjoy the rights and benefits of a volunteer fire fighter. [1998 c 121 § 2; 1994 c 223 § 48; 1985 c 330 § 2; 1980 c 27 § 1; 1979 ex.s. c 126 § 31; 1973 c 86 § 1; 1971 ex.s. c 242 § 2; 1969 ex.s. c 67 § 1; 1967 c 51 § 1; 1965 c 112 § 1; 1959 c 237 § 4; 1957 c 238 § 1; 1945 c 162 § 3; 1939 c 34 § 22; Rem. Supp. 1945 § 5654-122. Formerly RCW 52.12.010.]

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Terms of commissioners: RCW 52.14.060.

**Chapter 52.14 RCW
COMMISSIONERS**

Sections

- 52.14.010 Number—Qualifications—Insurance—Compensation and expenses—Service as volunteer fire fighter.
- 52.14.013 Commissioner districts—Creation—Boundaries.
- 52.14.015 Increase from three to five commissioners—Election.

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52.14.013 Commissioner districts—Creation—Boundaries. The board of fire commissioners of a fire protection district may adopt a resolution by unanimous vote causing a ballot proposition to be submitted to voters of the district authorizing the creation of commissioner districts. The board of fire commissioners shall create commissioner districts if the ballot proposition authorizing the creation of

commissioner districts is approved by a simple majority vote of the voters of the fire protection district voting on the proposition. Three commissioner districts shall be created for a fire protection district with three commissioners, and five commissioner districts shall be created for a fire protection district with five commissioners. No two commissioners may reside in the same commissioner district.

No change in the boundaries of any commissioner district shall be made within one hundred twenty days next before the date of a general district election, nor within twenty months after the commissioner districts have been established or altered. However, if a boundary change results in one commissioner district being represented by two or more commissioners, those commissioners having the shortest unexpired terms shall be assigned by the commission to commissioner districts where there is a vacancy, and the commissioners so assigned shall be deemed to be residents of the commissioner districts to which they are assigned for purposes of determining whether those positions are vacant.

The population of each commissioner district shall include approximately equal population. Commissioner districts shall be redrawn as provided in *chapter 29.70 RCW. Commissioner districts shall be used as follows: (1) Only a registered voter who resides in a commissioner district may be a candidate for, or serve as, a commissioner of the commissioner district; and (2) only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire fire protection district may vote at a general election to elect a person as a commissioner of the commissioner district.

When a board of fire commissioners that has commissioner districts has been increased to five members under RCW 52.14.015, the board of fire commissioners shall divide the fire protection district into five commissioner districts before it appoints the two additional fire commissioners. The two additional fire commissioners who are appointed shall reside in separate commissioner districts in which no other fire commissioner resides. [1994 c 223 § 49; 1992 c 74 § 2.]

*Reviser's note: Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Creation of commissioner districts upon merger: RCW 52.06.085.

52.14.015 Increase from three to five commissioners—Election. In the event a three member board of commissioners of any fire protection district determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, or in the event the board is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for such an increase in the number of commissioners of the district, the board shall submit a resolution to the county legislative authority or authorities of the county or counties in which the district is located requesting that an election be held. Upon receipt of the resolution, the legislative authority or authorities of the county or counties shall call a special election to be held within the fire protection district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of county fire protection district no. . . . be increased from three members to five members?

Yes
No

If the fire protection district is located in more than a single county, this proposition shall indicate the name of the district.

If the proposition receives a majority approval at the election, the board of commissioners of the fire protection district shall be increased to five members. The two additional members shall be appointed in the same manner as provided in RCW 52.14.020. [1994 c 223 § 50; 1990 c 259 § 14; 1989 c 63 § 20; 1984 c 230 § 85.]

52.14.017 Decrease from five to three commissioners—Election—Disposition of commissioner districts.

Except as provided in RCW 52.14.020, in the event a five-member board of commissioners of any fire protection district determines by resolution that it would be in the best interest of the fire district to decrease the number of commissioners from five to three, or in the event the board is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for such a decrease in the number of commissioners of the district, the board shall submit a resolution to the county legislative authority or authorities of the county or counties in which the district is located requesting that an election be held. Upon receipt of the resolution, the legislative authority or authorities of the county or counties shall call a special election to be held within the fire protection district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of county fire protection district no. . . be decreased from five members to three members?

Yes . . .
No . . .

If the fire protection district has commissioner districts, the commissioners of the district must pass a resolution, before the submission of the proposition to the voters, to either redistrict from five commissioner districts to three commissioner districts or eliminate the commissioner districts. The resolution takes effect upon approval of the proposition by the voters.

If the fire protection district is located in more than a single county, this proposition shall indicate the name of the district.

If the proposition receives a majority approval at the election, the board of commissioners of the fire protection district shall be decreased to three members. The two members shall be decreased in accordance with RCW 52.06.085. [1997 c 43 § 1.]

52.14.020 Number in district having full-time, fully-paid personnel—Terms of first appointees.

In a fire protection district maintaining a fire department consisting wholly of personnel employed on a full-time, fully-paid

basis, there shall be five fire commissioners. The two positions created on boards of fire commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general fire district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general fire district election after the appointment, at which two commissioners shall be elected for six-year terms. [1984 c 230 § 29; 1971 ex.s. c 242 § 3. Formerly RCW 52.12.015.]

52.14.030 Polling places. The polling places for a fire protection district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the fire protection district is located, and the elections of the fire protection district shall not be held to be irregular or void on that account. [1994 c 223 § 51; 1984 c 230 § 31; 1939 c 34 § 24; RRS § 5654-124. Formerly RCW 52.12.030.]

52.14.050 Vacancies. Vacancies on a board of fire commissioners shall occur as provided in chapter 42.12 RCW. In addition, if a fire commissioner is absent from the district for three consecutive regularly scheduled meetings unless by permission of the board, the office shall be declared vacant by the board of commissioners. However, such an action shall not be taken unless the commissioner is notified by mail after two consecutive unexcused absences that the position will be declared vacant if the commissioner is absent without being excused from the next regularly scheduled meeting. Vacancies on a board of fire commissioners shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 52; 1989 c 63 § 21; 1984 c 238 § 2; 1977 c 64 § 1; 1974 ex.s. c 17 § 1; 1971 ex.s. c 153 § 1; 1939 c 34 § 26; RRS § 5654-126. Formerly RCW 52.12.050.]

52.14.060 Commissioner's terms. The initial three members of the board of fire commissioners shall be elected at the same election as when the ballot proposition is submitted to the voters authorizing the creation of the fire protection district. If the district is not authorized to be created, the election of the initial fire commissioners shall be null and void. If the district is authorized to be created, the initial fire commissioners shall take office immediately when qualified. Candidates shall file for each of the three separate fire commissioner positions. Elections shall be held as provided in *chapter 29.21 RCW, with the county auditor opening up a special filing period as provided in **RCW 29.15.170 and 29.15.180, as if there were a vacancy. The person who receives the greatest number of votes for each position shall be elected to that position. The terms of office of the initial fire commissioners shall be staggered as follows: (1) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the

other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall take office immediately when elected and qualified and their terms of office shall be calculated from the first day of January in the year following their election.

The term of office of each subsequent commissioner shall be six years. Each commissioner shall serve until a successor is elected and qualified and assumes office in accordance with **RCW 29.04.170. [1994 c 223 § 53; 1989 c 63 § 22; 1984 c 230 § 33; 1979 ex.s. c 126 § 33; 1939 c 34 § 27; RRS § 5654-127. Formerly RCW 52.12.060.]

Reviser's note: *(1) Chapter 29.21 RCW was recodified as chapter 29A.52 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

***(2) RCW 29.15.170, 29.15.180, and 29.04.170 were recodified as RCW 29A.24.170, 29A.24.180, and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

52.14.070 Oath of office. Before beginning the duties of office, each fire commissioner shall take and subscribe the official oath for the faithful discharge of the duties of office as required by *RCW 29.01.135, which oath shall be filed in the office of the auditor of the county in which all, or the largest portion of, the district is located. [1989 c 63 § 23; 1986 c 167 § 22; 1984 c 230 § 34; 1939 c 34 § 29; RRS § 5654-129. Formerly RCW 52.12.070.]

Reviser's note: RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Severability—1986 c 167: See note following RCW 29A.04.049.

52.14.080 Chairman—Secretary—Duties and oath. The fire commissioners shall elect a chairman from their number and shall appoint a secretary of the district, who may or may not be a member of the board, for such term as they shall by resolution determine. The secretary, if a member of the board, shall not receive additional compensation for serving as secretary.

The secretary of the district shall keep a record of the proceedings of the board, shall perform other duties as prescribed by the board or by law, and shall take and subscribe an official oath similar to that of the fire commissioners which oath shall be filed in the same office as that of the commissioners. [1984 c 230 § 35; 1965 c 112 § 2; 1939 c 34 § 30; RRS § 5654-130. Formerly RCW 52.12.080.]

52.14.090 Office—Meetings. (1) The office of the fire commissioners and principal place of business of the district shall be at some place within the county in which the district is situated, to be designated by the board of fire commissioners.

(2) The board shall hold regular monthly meetings at a place and date as it determines by resolution, and may adjourn its meetings as required for the proper transaction of business. Special meetings of the board shall be called at any time under the provisions of RCW 42.30.080. [1984 c 230 § 36; 1947 c 254 § 8; 1939 c 34 § 31; Rem. Supp. 1947 § 5654-131. Formerly RCW 52.12.090.]

52.14.100 Meetings—Powers and duties of board.

All meetings of the board of fire commissioners shall be conducted in accordance with chapter 42.30 RCW and a majority constitutes a quorum for the transaction of business. All records of the board shall be open to inspection in accordance with the provisions of RCW 42.17.250 through 42.17.340. The board has the power and duty to adopt a seal of the district, to manage and conduct the business affairs of the district, to make and execute all necessary contracts, to employ any necessary services, and to adopt reasonable rules to govern the district and to perform its functions, and generally to perform all such acts as may be necessary to carry out the objects of the creation of the district. [1984 c 230 § 37; 1939 c 34 § 32; RRS § 5654-132. Formerly RCW 52.12.100.]

Open public meetings: Chapters 42.30, 42.32 RCW.

52.14.110 Purchases and public works—Competitive bids required—Exceptions. Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

(1) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of ten thousand dollars. However, whenever the estimated cost does not exceed fifty thousand dollars, the commissioners may by resolution use the process provided in RCW 39.04.190 to award contracts;

(2) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of two thousand five hundred dollars, which includes the costs of labor, material, and equipment;

(3) Contracts using the small works roster process under RCW 39.04.155; and

(4) Any contract for purchases or public work pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2001 c 79 § 1; 2000 c 138 § 209; 1998 c 278 § 5; 1993 c 198 § 11; 1984 c 238 § 3.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

52.14.120 Purchases and public works—Competitive bidding procedures. (1) Notice of the call for bids shall be given by publishing the notice in a newspaper of general circulation within the district at least thirteen days before the last date upon which bids will be received. If no bid is received on the first call, the commissioners may readvertise and make a second call, or may enter into a contract without a further call.

(2) A public work involving three or more specialty contractors requires that the district retain the services of a general contractor as defined in RCW 18.27.010. [1993 c 198 § 12; 1984 c 238 § 4.]

52.14.130 Low bidder claiming error—Prohibition on later bid for same project. A low bidder who claims error and fails to enter into a contract with a fire protection district for a public works project is prohibited from bidding

on the same project if a second or subsequent call for bids is made for the project. [1996 c 18 § 10.]

Chapter 52.16 RCW**FINANCES**

Sections

52.16.010	County treasurer as financial agent.
52.16.020	Funds.
52.16.030	Budget for each fund.
52.16.040	Tax levies—Assessment roll—Collection.
52.16.050	Disbursal of funds—Issuance of warrants—Monthly reports.
52.16.061	General obligation bonds—Issuance—Limitations.
52.16.070	Obligations shall not exceed taxes, revenues, and cash balances—Exceptions.
52.16.080	Bonds may be issued for capital purposes—Excess property tax levies.
52.16.130	General levy authorized—Limit—Excess levy at special election.
52.16.140	General levy may exceed limit—When.
52.16.150	Donations and bequests to district.
52.16.160	Tax levy authorized.
52.16.170	Taxation and assessment of lands lying both within a fire protection district and forest protection assessment area.

52.16.010 County treasurer as financial agent. It is the duty of the county treasurer of the county in which all, or the largest portion of, any fire protection district created under this title is located to receive and disburse district revenues, to collect taxes and assessments authorized and levied under this title, and to credit district revenues to the proper fund. However, where a fire protection district is located in more than one county, the county treasurer of each other county in which the district is located shall collect the fire protection district's taxes and assessments that are imposed on property located within the county and transfer these funds to the county treasurer of the county in which the largest portion of the district is located. [1989 c 63 § 24; 1984 c 230 § 38; 1939 c 34 § 33; RRS § 5654-133.]

52.16.020 Funds. In each county in which a fire protection district is situated, there shall be in the county treasurer's office of each district the following funds: (1) Expense fund; (2) reserve fund; (3) local improvement district No. . . . fund; (4) general obligation bond fund; and (5) such other funds as the board of commissioners of the district may establish. Taxes levied for administrative, operative, and maintenance purposes and for the purchase of fire fighting and emergency medical equipment and apparatus and for the purchase of real property, when collected, and proceeds from the sale of general obligation bonds shall be placed by the county treasurer in the proper fund. Taxes levied for the payment of general obligation bonds and interest thereon, when collected, shall be placed by the county treasurer in the general obligation bond fund. The board of fire commissioners may include in its annual budget items of possible outlay to be provided for and held in reserve for any district purpose, and taxes shall be levied therefor. Such taxes, when collected, shall be placed by the county treasurer in the reserve fund. The reserve fund, or any part of it, may be transferred by the county treasurer to other funds of the district at any time by order of the board of fire commissioners. Special assessments levied against the lands in any improvement district within the district, when collected, shall be placed by the county treasurer in the local improvement district fund for the local

improvement district. [1984 c 230 § 39; 1983 c 167 § 120; 1959 c 221 § 1; 1955 c 134 § 1; 1953 c 176 § 2; 1951 2nd ex.s. c 24 § 1; 1949 c 22 § 1; 1947 c 254 § 9; 1939 c 34 § 34; Rem. Supp. 1949 § 5654-134.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

52.16.030 Budget for each fund. Annually after the county board or boards of equalization of the county or counties in which the district is located have equalized the assessments for general tax purposes in that year, the secretary of the district shall prepare and certify a budget of the requirements of each district fund, and deliver it to the county legislative authority or authorities of the county or counties in which the district is located in ample time for the tax levies to be made for district purposes. [1989 c 63 § 25; 1984 c 230 § 40; 1939 c 34 § 35; RRS § 5654-135.]

52.16.040 Tax levies—Assessment roll—Collection. At the time of making general tax levies in each year the county legislative authority or authorities of the county or counties in which a fire protection district is located shall make the required levies for district purposes against the real and personal property in the district in accordance with the equalized valuations of the property for general tax purposes and as a part of the general taxes. The tax levies shall be a part of the general tax roll and shall be collected as a part of the general taxes against the property in the district. [1989 c 63 § 26; 1984 c 230 § 41; 1939 c 34 § 36; RRS § 5654-136.]

Levy of taxes: Chapter 84.52 RCW.

52.16.050 Disbursal of funds—Issuance of warrants—Monthly reports. (1) Except as provided in subsections (2) and (3) of this section, the county treasurer shall pay out money received for the account of the district on warrants issued by the county auditor against the proper funds of the district. The warrants shall be issued on vouchers approved and signed by a majority of the district board and by the district secretary.

(2) The board of fire commissioners of a district that had an annual operating budget of five million or more dollars in each of the preceding three years may by resolution adopt a policy to issue its own warrants for payment of claims or other obligations of the fire district. The board of fire commissioners, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the chair of the board of fire commissioners, authorizing the county treasurer to pay all the warrants specified by date, number, name, and amount, and the accounting funds on which the warrants shall be drawn; thereupon the district secretary may issue the warrants specified in the general certificate.

(3) The board of fire commissioners of a district that had an annual operating budget of greater than two hundred fifty thousand dollars and under five million dollars in each of the preceding three years may upon agreement between the county treasurer and the fire district commission, with approval of the fire district commission by resolution, adopt a policy to issue its own warrants for payment of claims or other obligations of the fire district. The board of fire com-

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missioners, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the chair of the board of fire commissioners, authorizing the county treasurer to pay all the warrants specified by date, number, name, and amount, and the accounting funds on which the warrants shall be drawn. The district secretary may then issue the warrants specified in the general certificate.

(4) The county treasurer may also pay general obligation bonds and the accrued interest thereon in accordance with their terms from the general obligation bond fund when interest or principal payments become due. The county treasurer shall report in writing monthly to the secretary of the district the amount of money held by the county in each fund and the amounts of receipts and disbursements for each fund during the preceding month. [2002 c 165 § 1; 1998 c 5 § 1; 1984 c 230 § 42; 1983 c 167 § 121; 1939 c 34 § 37; RRS § 5654-137.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

52.16.061 General obligation bonds—Issuance—Limitations. The board of fire commissioners of the district shall have authority to contract indebtedness and to refund same for any general district purpose, including expenses of maintenance, operation and administration, and the acquisition of firefighting facilities, and evidence the same by the issuance and sale of general obligation bonds of the district payable at such time or times not longer than twenty years from the issuing date of the bonds. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. Such bonds shall not exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one percent of the value of the taxable property within the fire protection district, as the term "value of the taxable property" is defined in RCW 39.36.015. [1993 c 231 § 1; 1984 c 186 § 39; 1983 c 167 § 122; 1970 ex.s. c 56 § 66; 1969 ex.s. c 232 § 89; 1955 c 134 § 2; 1953 c 176 § 3.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

52.16.070 Obligations shall not exceed taxes, revenues, and cash balances—Exceptions. Except as authorized by the issuance and sale of general obligation bonds, the creation of local improvements districts, and the issuance of local improvement bonds and warrants of the fire protection district, the board of fire commissioners may not incur expenses or other financial obligations payable in any year in excess of the aggregate amount of taxes levied for that year, revenues derived from all other sources, and the cash balances on hand in the expense and reserve funds of the district on the first day of that year. In the event that there are any unpaid warrants drawn on any district funds for expenses and obligations incurred and outstanding at the end of any calendar year, the warrants may be paid from taxes collected in the subsequent year or years and from other income. [1984 c 230 § 43; 1983 c 167 § 123; 1975 1st ex.s. c 130 § 1; 1972 ex.s. c

16 § 1; 1959 c 221 § 2; 1955 c 134 § 3; 1951 2nd ex.s. c 24 § 10; 1947 c 254 § 11; 1943 c 106 § 1; 1941 c 70 § 5; 1939 c 34 § 39; Rem. Supp. 1947 § 5654-139.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Construction—1975 1st ex.s. c 130: "If any section, clause, or other provision of this 1975 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of such 1975 amendatory act, or the application of such section, clause, or provision to other persons or circumstances, shall not be affected. The rule of strict construction shall have no application to this 1975 amendatory act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this 1975 amendatory act is intended. When this 1975 amendatory act comes in conflict with any provision, limitation, or restriction in any other law, this 1975 amendatory act shall govern and control." [1975 1st ex.s. c 130 § 6.]

52.16.080 Bonds may be issued for capital purposes—Excess property tax levies. Fire protection districts additionally are authorized to incur general indebtedness for capital purposes and to issue general obligation bonds not to exceed an amount, together with any outstanding general obligation indebtedness, equal to three-fourths of one percent of the value of the taxable property within such district, as the term "value of the taxable property" is defined in RCW 39.36.015, and to provide for the retirement thereof by excess property tax levies, when the voters of the district have approved a proposition authorizing such indebtedness and levies by an affirmative vote of three-fifths of those voting on the proposition at such election, at which election the total number of persons voting shall constitute not less than forty percent of the voters in the fire protection district who voted at the last preceding general state election. The maximum term of such bonds may not exceed twenty years. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. Such elections shall be held as provided in RCW 39.36.050. [1984 c 186 § 40; 1973 1st ex.s. c 195 § 50; 1970 ex.s. c 42 § 30; 1953 c 176 § 4; 1951 2nd ex.s. c 24 § 3.]

Purpose—1984 c 186: See note following RCW 39.46.110.

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

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

52.16.130 General levy authorized—Limit—Excess levy at special election. To carry out the purposes for which fire protection districts are created, the board of fire commissioners of a district may levy each year, in addition to the levy or levies provided in RCW 52.16.080 for the payment of the principal and interest of any outstanding general obligation bonds, an ad valorem tax on all taxable property located in the district not to exceed fifty cents per thousand dollars of assessed value: PROVIDED, That in no case may the total general levy for all purposes, except the levy for the retirement of general obligation bonds, exceed one dollar per thousand dollars of assessed value. Levies in excess of one dollar per thousand dollars of assessed value or in excess of the aggregate dollar rate limitations or both may be made for any district purpose when so authorized at a special election under RCW 84.52.130. Any such tax when levied shall be certified to the proper county officials for the collection of the tax as for other general taxes. The taxes when collected shall be placed in the appropriate district fund or funds as provided

by law, and shall be paid out on warrants of the auditor of the county in which all, or the largest portion of, the district is located, upon authorization of the board of fire commissioners of the district. [2002 c 180 § 3; 1989 c 63 § 27; 1985 c 7 § 121; 1984 c 230 § 44; 1983 c 167 § 126; 1973 1st ex.s. c 195 § 52; 1971 ex.s. c 105 § 1; 1963 ex.s. c 13 § 2; 1951 2nd ex.s. c 24 § 8.]

Contingent effective date—2002 c 180: See note following RCW 84.52.052.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

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

52.16.140 General levy may exceed limit—When. Notwithstanding the limitation of dollar rates contained in RCW 52.16.130, the board of fire commissioners of any district may levy, in addition to any levy for the payment of the principal and interest of outstanding general obligation bonds, an ad valorem tax on all property located in the district of not to exceed fifty cents per thousand dollars of assessed value and which will not cause the combined levies to exceed the constitutional or statutory limitations, and the additional levy, or any portion of the levy, may also be made when dollar rates of other taxing units are released by agreement with the other taxing units from their authorized levies. [1984 c 230 § 45; 1983 c 167 § 127; 1973 1st ex.s. c 195 § 53; 1951 2nd ex.s. c 24 § 9.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

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

Levy of taxes: Chapter 84.52 RCW.

52.16.150 Donations and bequests to district. A fire protection district may accept and receive in behalf of the district any money or property donated, devised, or bequeathed to the district, and may carry out the terms of the donation, devise, or bequest, if within the powers granted by law to fire protection districts. In the absence of such terms, a fire protection district may expend or use the money or property for district purposes as determined by the board. [1984 c 230 § 46; 1951 2nd ex.s. c 24 § 11.]

52.16.160 Tax levy authorized. Notwithstanding the limitation of dollar rates contained in RCW 52.16.130, and in addition to any levy for the payment of the principal and interest of any outstanding general obligation bonds and in addition to any levy authorized by RCW 52.16.130, 52.16.140 or any other statute, the board of fire commissioners of any fire protection district within such county, which fire protection district has at least one full-time, paid employee, or contracts with another municipal corporation for the services of at least one full-time, paid employee, is hereby authorized to levy each year an ad valorem tax on all taxable property within such district of not to exceed fifty cents per thousand dollars of assessed value, which levy may be made only if it will not affect dollar rates which other taxing districts may lawfully claim nor cause the combined levies to exceed the constitutional and/or statutory limitations.

[2002 c 84 § 1; 1985 c 112 § 1; 1983 c 167 § 128; 1973 1st ex.s. c 195 § 54; 1969 ex.s. c 243 § 2; 1961 c 53 § 9.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

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

Severability—1969 ex.s. c 243: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 243 § 8.]

52.16.170 Taxation and assessment of lands lying both within a fire protection district and forest protection assessment area. In the event that lands lie within both a fire protection district and a forest protection assessment area they shall be taxed and assessed as follows:

(1) If the lands are wholly unimproved, they shall be subject to forest protection assessments but not to fire protection district levies;

(2) If the lands are wholly improved, they shall be subject to fire protection district levies but not to forest protection assessments;

(3) If the lands are partly improved and partly unimproved they shall be subject both to fire protection district levies and to forest protection assessments: **PROVIDED,** That upon request, accompanied by appropriate legal descriptions, the county assessor shall segregate any unimproved portions which each consist of twenty or more acres, and thereafter the unimproved portion or portions shall be subject only to forest protection assessments. [1984 c 230 § 47; 1963 ex.s. c 13 § 3.]

Forest protection assessments: RCW 76.04.610.

Chapter 52.18 RCW BENEFIT CHARGES (Formerly: Service charges)

Sections

52.18.010	Benefit charges authorized—Exceptions—Amounts—Limitations.
52.18.020	Personal property, improvements to real property—Defined.
52.18.030	Resolution establishing benefit charges—Contents—Listing—Collection.
52.18.040	Reimbursement of county for administration and collection expenses.
52.18.050	Voter approval of benefit charges required—Election—Ballot.
52.18.060	Public hearing—Required—Report—Benefit charge resolution to be filed—Notification to property owners.
52.18.065	Property tax limited if benefit charge imposed.
52.18.070	Review board.
52.18.080	Model resolution.
52.18.090	Exemptions.
52.18.900	Severability—1974 ex.s. c 126.
52.18.901	Severability—1990 c 294.

Assessments and charges against state lands: Chapter 79.44 RCW.

52.18.010 Benefit charges authorized—Exceptions—Amounts—Limitations. The board of fire commissioners of a fire protection district may by resolution, for fire protection district purposes authorized by law, fix and impose a benefit charge on personal property and improvements to real property which are located within the fire protection district on the date specified and which have or will receive the benefits provided by the fire protection district, to be paid by the owners of the properties: **PROVIDED,** That a benefit charge

shall not apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization as, or including, a sanctuary or for purposes related to the bona fide religious ministries of the denomination or religious organization, including schools and educational facilities used for kindergarten, primary, or secondary educational purposes or for institutions of higher education and all grounds and buildings related thereto, but not including personal property and improvements to real property owned or used by any recognized religious denomination or religious organization for business operations, profit-making enterprises, or activities not including use of a sanctuary or related to kindergarten, primary, or secondary educational purposes or for institutions of higher education. The aggregate amount of such benefit charges in any one year shall not exceed an amount equal to sixty percent of the operating budget for the year in which the benefit charge is to be collected: **PROVIDED,** That it shall be the duty of the county legislative authority or authorities of the county or counties in which the fire protection district is located to make any necessary adjustments to assure compliance with such limitation and to immediately notify the board of fire commissioners of any changes thereof.

A benefit charge imposed shall be reasonably proportioned to the measurable benefits to property resulting from the services afforded by the district. It is acceptable to apportion the benefit charge to the values of the properties as found by the county assessor or assessors modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the benefit charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly maintained fire protection equipment, the level of fire prevention services provided to the properties, or the need of the properties for specialized services, may be specified in the resolution and shall be subject to contest on the ground of unreasonable or capricious action or action in excess of the measurable benefits to the property resulting from services afforded by the district. The board of fire commissioners may determine that certain properties or types or classes of properties are not receiving measurable benefits based on criteria they establish by resolution. A benefit charge authorized by this chapter shall not be applicable to the personal property or improvements to real property of any individual, corporation, partnership, firm, organization, or association maintaining a fire department and whose fire protection and training system has been accepted by a fire insurance underwriter maintaining a fire protection engineering and inspection service authorized by the state insurance commissioner to do business in this state, but such property may be protected by the fire protection district under a contractual agreement.

For administrative purposes, the benefit charge imposed on any individual property may be compiled into a single charge, provided that the district, upon request of the property owner, provide an itemized list of charges for each measurable benefit included in the charge. [1998 c 16 § 1; 1990 c 294 § 1; 1989 c 63 § 28; 1987 c 325 § 1; 1985 c 7 § 122; 1974 ex.s. c 126 § 1.]

52.18.020 Personal property, improvements to real property—Defined. The term "personal property" for the purposes of this chapter shall include every form of tangible personal property, including but not limited to, all goods, chattels, stock in trade, estates, or crops: PROVIDED, That all personal property not assessed and subjected to ad valorem taxation under Title 84 RCW, all property under contract or for which the district is receiving payment for as authorized by RCW 52.30.020 and all property subject to the provisions of chapter 54.28 RCW, or all property that is subject to a contract for services with a fire protection district, shall be exempt from the benefit charge imposed under this chapter: PROVIDED FURTHER, That the term "personal property" shall not include any personal property used for farming, field crops, farm equipment or livestock: AND PROVIDED FURTHER, That the term "improvements to real property" shall not include permanent growing crops, field improvements installed for the purpose of aiding the growth of permanent crops, or other field improvements normally not subject to damage by fire. [1990 c 294 § 2; 1987 c 325 § 2; 1985 c 7 § 123; 1974 ex.s. c 126 § 2.]

52.18.030 Resolution establishing benefit charges—Contents—Listing—Collection. The resolution establishing benefit charges as specified in RCW 52.18.010 shall specify, by legal geographical areas or other specific designations, the charge to apply to each property by location, type, or other designation, or other information that is necessary to the proper computation of the benefit charge to be charged to each property owner subject to the resolution. The county assessor of each county in which the district is located shall determine and identify the personal properties and improvements to real property which are subject to a benefit charge in each fire protection district and shall furnish and deliver to the county treasurer of that county a listing of the properties with information describing the location, legal description, and address of the person to whom the statement of benefit charges is to be mailed, the name of the owner, and the value of the property and improvements, together with the benefit charge to apply to each. These benefit charges shall be certified to the county treasurer for collection in the same manner that is used for the collection of fire protection charges for forest lands protected by the department of natural resources under RCW 76.04.610 and the same penalties and provisions for collection shall apply. [1990 c 294 § 3; 1989 c 63 § 29; 1987 c 325 § 3; 1986 c 100 § 53; 1974 ex.s. c 126 § 3.]

52.18.040 Reimbursement of county for administration and collection expenses. Each fire protection district shall contract, prior to the imposition of a benefit charge, for the administration and collection of the benefit charge by each county treasurer, who shall deduct a percent, as provided by contract to reimburse the county for expenses incurred by the county assessor and county treasurer in the administration of the resolution and this chapter. The county treasurer shall make distributions each year, as the charges are collected, in the amount of the benefit charges imposed on behalf of each district, less the deduction provided for in the contract. [1990 c 294 § 4; 1989 c 63 § 30; 1987 c 325 § 4; 1974 ex.s. c 126 § 4.]

52.18.050 Voter approval of benefit charges required—Election—Ballot. (1) Any benefit charge authorized by this chapter shall not be effective unless a proposition to impose the benefit charge is approved by a sixty percent majority of the voters of the district voting at a general election or at a special election called by the district for that purpose, held within the fire protection district. An election held pursuant to this section shall be held not more than twelve months prior to the date on which the first such charge is to be assessed: PROVIDED, That a benefit charge approved at an election shall not remain in effect for a period of more than six years nor more than the number of years authorized by the voters if fewer than six years unless subsequently reapproved by the voters.

(2) The ballot shall be submitted so as to enable the voters favoring the authorization of a fire protection district benefit charge to vote "Yes" and those opposed thereto to vote "No," and the ballot shall be:

"Shall county fire protection district No. be authorized to impose benefit charges each year for (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?

YES NO

(3) Districts renewing the benefit charge may elect to use the following alternative ballot:

"Shall county fire protection district No. be authorized to continue voter-authorized benefit charges each year for (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?

YES NO

[1998 c 16 § 2; 1990 c 294 § 5; 1989 c 27 § 1; 1987 c 325 § 5; 1974 ex.s. c 126 § 5.]

52.18.060 Public hearing—Required—Report—Benefit charge resolution to be filed—Notification to property owners. (1) Not less than ten days nor more than six months before the election at which the proposition to impose the benefit charge is submitted as provided in this chapter, the board of fire commissioners of the district shall hold a public hearing specifically setting forth its proposal to impose benefit charges for the support of its legally authorized activities which will maintain or improve the services afforded in the district. A report of the public hearing shall be filed with the county treasurer of each county in which the property is located and be available for public inspection.

(2) Prior to November 15 of each year the board of fire commissioners shall hold a public hearing to review and establish the fire district benefit charges for the subsequent year.

All resolutions imposing or changing the benefit charges shall be filed with the county treasurer or treasurers of each county in which the property is located, together with the record of each public hearing, before November 30 immediately preceding the year in which the benefit charges are to be collected on behalf of the district.

After the benefit charges have been established, the owners of the property subject to the charge shall be notified of the amount of the charge. [1990 c 294 § 6; 1989 c 63 § 31; 1987 c 325 § 6; 1974 ex.s. c 126 § 6.]

52.18.065 Property tax limited if benefit charge imposed. A fire protection district that imposes a benefit charge under this chapter shall not impose all or part of the property tax authorized under RCW 52.16.160. [1990 c 294 § 7; 1987 c 325 § 9.]

52.18.070 Review board. After notice has been given to the property owners of the amount of the charge, the board of fire commissioners of a fire protection district imposing a benefit charge under this chapter shall form a review board for at least a two-week period and shall, upon complaint in writing of a party aggrieved owning property in the district, reduce the charge of a person who, in their opinion, has been charged too large a sum, to a sum or amount as they believe to be the true, fair, and just amount. [1990 c 294 § 8; 1987 c 325 § 7; 1974 ex.s. c 126 § 7.]

52.18.080 Model resolution. The Washington fire commissioners association, as soon as practicable, shall draft a model resolution to impose the fire protection district benefit charge authorized by this chapter and may provide assistance to fire protection districts in the establishment of a program to develop benefit charges. [1990 c 294 § 9; 1987 c 325 § 8; 1974 ex.s. c 126 § 8.]

52.18.090 Exemptions. A person who is receiving the exemption contained in RCW 84.36.381 through 84.36.389 shall be exempt from any legal obligation to pay a portion of the charge imposed by this chapter according to the following.

(1) A person who meets the income limitation contained in RCW 84.36.381(5)(a) and does not meet the income limitation contained in RCW 84.36.381(5)(b) (i) or (ii) shall be exempt from twenty-five percent of the charge.

(2) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(i) shall be exempt from fifty percent of the charge.

(3) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(ii) shall be exempt from seventy-five percent of the charge. [1990 c 294 § 10.]

52.18.900 Severability—1974 ex.s. c 126. If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 126 § 9.]

52.18.901 Severability—1990 c 294. If any provision of this act or its application to any person or circumstance is

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held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 294 § 11.]

Chapter 52.20 RCW

LOCAL IMPROVEMENT DISTRICTS

Sections

52.20.010	L.I.D.'s authorized—Petition or resolution method.
52.20.020	Dismissal, approval of petition or resolution of intention—Notice of hearing.
52.20.022	Notice must contain statement that assessments may vary from estimates.
52.20.025	Hearing and subsequent proceedings to be in accordance with laws applicable to cities and towns—Definitions.
52.20.027	Lands subject to forest fire protection assessments exempt—Separation of forest-type lands for tax and assessment purposes.
52.20.060	Coupon or registered warrants—Payment—Interest—Registration.
52.20.070	Contracts not general district obligations.

Assessments and charges against state lands: Chapter 79.44 RCW.

Local improvements, supplemental authority: Chapter 35.51 RCW.

52.20.010 L.I.D.'s authorized—Petition or resolution method. If, for fire protection or emergency medical purposes the acquisition, maintenance, and operation of real property, buildings, apparatus, and instrumentalities needed to provide such services are of special benefit to part or all of the lands in the fire protection district, the board of fire commissioners may include the lands in a local improvement district, and may levy special assessments under a mode of annual installments extending over a period not exceeding twenty years on all property specially benefited by any local improvement, on the basis of the special benefits to pay in whole or in part the damages or costs of improvements ordered in the local improvement district. Local improvement districts may be initiated either by resolution of the board of fire commissioners or by petition signed by the owners of a majority of the acreage of lands to be included within the local improvement district.

If the petition procedure is followed, the petition shall set forth generally the necessity for the creation of a local improvement district, outline the plan of fire or emergency medical protection to be accomplished, and the means by which the cost shall be financed. Upon receipt of a petition, the board of fire commissioners of the district shall at its next regular meeting review the petition. The owners of the lands as shown on the general tax roll in the county treasurer's office, last equalized, shall be used to determine the ownership of the lands to be included in the local improvement district. If the petition is sufficient, the district board shall consider the petition and determine whether the proposed local improvement appears feasible and of special benefit to the lands concerned.

If the board of fire commissioners desire[s] to initiate the formation of a local improvement district by resolution, it shall adopt a resolution declaring its intention to order the proposed improvement, set forth the nature and territorial extent of the proposed improvement, designate the number of the proposed district, describe the boundaries, state the estimated costs and expenses of the improvement and the proportionate amount of the costs which will be borne by the

property within the proposed district, and fix a date, time, and place for a public hearing on the formation of the proposed district. [1984 c 230 § 48; 1975 1st ex.s. c 130 § 2; 1961 c 161 § 1; 1939 c 34 § 40; RRS § 5654-140.]

Severability—Construction—1975 1st ex.s. c 130: See note following RCW 52.16.070.

52.20.020 Dismissal, approval of petition or resolution of intention—Notice of hearing. If the petition is found insufficient or if the district board determines that a local improvement district is not feasible or is of no special benefit to the lands concerned, it shall dismiss the petition. If the district board approves the petition or adopts a resolution of intention to order an improvement, it shall fix a date, hour, and place for hearing the matter and shall (1) mail notice of the hearing at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of each lot, tract, or parcel of land within the proposed local improvement district as shown on the tax rolls of the county treasurer at the address shown thereon, and (2) publish notice of the hearing in a newspaper of general circulation in the county, for three consecutive weeks prior to the day of the hearing. The cost of publication shall be paid by the fire protection district. The notices shall describe the boundaries of the proposed local improvement district and the plan of fire or emergency medical protection proposed, or may refer to the resolution of intention describing the nature and territorial extent of the proposed improvement. The notices shall state the means by which the cost shall be financed, shall state the date, hour, and place of the hearing on the petition and shall be signed by the secretary of the fire protection district. In addition, the notice given each owner or reputed owner by mail shall state the estimated cost and expense of the improvement to be borne by the particular lot, tract, or parcel. [1984 c 230 § 49; 1975 1st ex.s. c 130 § 3; 1961 c 161 § 2; 1939 c 34 § 41; RRS § 5654-141.]

Severability—Construction—1975 1st ex.s. c 130: See note following RCW 52.16.070.

52.20.022 Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 7.]

52.20.025 Hearing and subsequent proceedings to be in accordance with laws applicable to cities and towns—Definitions. The hearing and all subsequent proceedings in connection with the local improvement, including but not limited to the levying, collection, and enforcement of local improvement assessments, and the authorization, issuance, and payment of local improvement bonds and warrants shall be in accordance with the provisions of law applicable to cities and towns set forth in chapters 35.43, 35.44, 35.45, 35.49, 35.50, and 35.53 RCW. Fire protection districts may exercise the powers set forth in those chapters: PROVIDED, That no local improvement guaranty fund may be created: PROVIDED FURTHER, That for the purposes of RCW

52.16.070, 52.20.010, 52.20.020, and 52.20.025, with respect to the powers granted and the duties imposed in chapters 35.43, 35.44, 35.45, 35.50, and 35.53 RCW:

(1) The words "city or town" mean fire protection district.

(2) The secretary of a fire protection district shall perform the duties of the "clerk" or "city or town clerk."

(3) The board of fire commissioners of a fire protection district shall perform the duties of the "council" or "city or town council" or "legislative authority of a city or town."

(4) The board of fire commissioners of a fire protection district shall perform the duties of the "mayor."

(5) The word "ordinance" means a resolution of the board of fire commissioners of a fire protection district.

(6) The treasurer or treasurers of the county or counties in which a fire protection district is located shall perform the duties of the "treasurer" or "city or town treasurer." [1989 c 63 § 32; 1984 c 230 § 50; 1975 1st ex.s. c 130 § 4; 1961 c 161 § 3.]

Severability—Construction—1975 1st ex.s. c 130: See note following RCW 52.16.070.

52.20.027 Lands subject to forest fire protection assessments exempt—Separation of forest-type lands for tax and assessment purposes. RCW 52.20.010, 52.20.020, and 52.20.025 shall not apply to any tracts or parcels of wholly forest-type lands within the district which are required to pay forest fire protection assessments, as required by RCW 76.04.610; however, both the tax levy or special assessments of the district and the forest fire protection assessment shall apply to the forest land portion of any tract or parcel which is in the district containing a combination of both forest-type lands and nonforest-type lands or improvements: PROVIDED, That an owner has the right to have forest-type lands of more than twenty acres in extent separated from land bearing improvements and from nonforest-type lands for taxation and assessment purposes upon furnishing to the assessor a written request containing the proper legal description. [1986 c 100 § 54; 1984 c 230 § 51; 1961 c 161 § 5.]

52.20.060 Coupon or registered warrants—Payment—Interest—Registration. (1) The district board may also, if in accordance with the adopted method of financing the local improvement district, issue and sell at par and accrued interest coupon or registered warrants payable within three years from the date thereof exclusively from the local improvement fund of the district. The coupon or registered warrants shall bear semiannual interest and shall be in such form as the board determines and shall state on their face that they are payable exclusively from the local improvement fund of the district. Interest shall be payable on the first day of January and of July. Such warrants may be registered as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1984 c 230 § 52; 1983 c 167 § 129; 1970 ex.s. c 56 § 68; 1969 ex.s. c 232 § 90; 1939 c 34 § 45; RRS § 5654-145.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

52.20.070 Contracts not general district obligations.

A fire protection district shall not be liable under any contract creating an obligation chargeable against the lands of any local improvement district therein, unless the liability and the extent thereof is specifically stated in the contract. [1984 c 230 § 53; 1939 c 34 § 21; RRS § 5654-121.]

Chapter 52.22 RCW

SPECIAL PROCEEDINGS

Sections

- 52.22.011 Legislative validation.
- 52.22.021 Special proceedings for judicial confirmation of organization, bonds, warrants, contracts, etc.
- 52.22.031 Petition.
- 52.22.041 Hearing date to be fixed—Notice.
- 52.22.051 Answer of petition.
- 52.22.061 Pleading and practice—Motion for new trial.
- 52.22.071 Jurisdiction of court.
- 52.22.081 Minor irregularities to be disregarded.
- 52.22.091 Costs.
- 52.22.101 Appellate review.
- 52.22.111 Districts governed by Title 52 RCW.

52.22.011 Legislative validation. The respective areas, organized and established or attempted to be organized and established under the authority granted in Title 52 RCW which since their organization and establishment or attempted organization and establishment have continuously maintained their organization as fire protection districts established under the authority of these statutes are declared to be properly organized fire protection districts existing under and by virtue of the statutes having in each case, the boundaries set forth in the respective organization proceedings of each of them as shown by the files and records in the offices of the legislative authority or authorities and auditor or auditors of the county or counties in which the particular area lies. [1989 c 63 § 33; 1984 c 230 § 66; 1947 c 230 § 1; Rem. Supp. 1947 § 5654-151o. Formerly RCW 52.32.010.]

52.22.021 Special proceedings for judicial confirmation of organization, bonds, warrants, contracts, etc. The board of fire commissioners of a fire protection district now existing or which may be organized under the laws of this state may commence a special proceeding in the superior court of the state of Washington. These proceedings for the organization of the fire district, for the formation of any local improvement district therein, or proceedings for the authorization, issuance, and sale of coupon or registered warrants or general obligation bonds issued pursuant to RCW 52.16.061, either of the fire district or for a local improvement district therein, or both, whether the bonds or coupon or registered warrants have been sold, or proceedings for any contract of the district involving the fire district or any local improvement district therein, and any other proceedings that may affect the legality of the proceedings concerned or any or all of the proceedings above outlined, may be judicially examined, approved, and confirmed. [1984 c 230 § 67; 1983 c 167

§ 130; 1947 c 255 § 1; Rem. Supp. 1947 § 5654-153a. Formerly RCW 52.34.010 and 52.32.020.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—1947 c 255: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, provision, or part thereof not adjudged to be invalid or unconstitutional." [1947 c 255 § 10.] This applies to RCW 52.22.021 through 52.22.101.

52.22.031 Petition. The board of fire commissioners of the fire protection district shall file in the superior court of the county in which the fire protection district was organized, a petition requesting in effect that the proceedings be examined, approved, and confirmed by the court. The petition shall state the facts showing any of the proceedings that the petition asks the court to examine, approve, and confirm, but need allege only generally that the fire protection district was properly organized and that the first board of fire commissioners was properly elected. [1984 c 230 § 68; 1947 c 255 § 2; Rem. Supp. 1947 § 5654-153b. Formerly RCW 52.34.020 and 52.32.030.]

52.22.041 Hearing date to be fixed—Notice. The court shall fix the time for the hearing of the petition and direct the clerk of the court to give notice of the filing of the petition and of the time and place fixed for the hearing. The notice shall state the time and place of the hearing of the petition and that any person interested in the proceedings sought by the petition to be examined, approved, and confirmed by the court, may on or before the date of the hearing of the petition, answer the petition. The petition may be referred to and described in the notice as the petition of the board of fire commissioners of county fire protection district No. (giving the county and its number or any other name by which it is officially designated), requesting that the proceedings (naming them as set out in the request of the petition), be examined, approved, and confirmed by the court, and shall be signed by the clerk.

The notice shall be given by posting and publishing for the same length of time that the notice of the hearing on the petition before the county legislative body to form the district was required by law to be posted and published, and it may be published in any legal newspaper designated in the order of the court fixing the time and place of the hearing of the petition and directing the clerk of the court to give notice thereof. [1984 c 230 § 69; 1947 c 255 § 3; Rem. Supp. 1947 § 5654-153c. Formerly RCW 52.34.030 and 52.32.040.]

Public hearing—Notice—Publication and posting: RCW 52.02.050.

52.22.051 Answer of petition. A person interested in the fire protection district, or in a local improvement district therein, involved in the petition or in any proceedings sought by the petition to be examined, approved, and confirmed by the court, may answer the petition. The statutes of this state respecting answers to verified complaints are applicable to answers to the petition. The person so answering the petition shall be the defendant in the special proceeding, and the board of fire commissioners shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer must, for purposes of the special pro-

ceedings, be taken as true, and each person failing to answer the petition is deemed to admit as true all the material statements of the petition. [1984 c 230 § 70; 1947 c 255 § 4; Rem. Supp. 1947 § 5654-153d. Formerly RCW 52.34.040 and 52.32.050.]

Pleadings: Chapters 4.32, 4.36 RCW.

52.22.061 Pleading and practice—Motion for new trial. The rules of pleading and practice governing civil actions are applicable to the special proceedings provided for except where inconsistent with this chapter. A motion for a new trial must be made upon the minutes of the court and in case of an order granting a new trial, the order must specify the issue to be reexamined at the new trial. The findings of the court on the other issues shall not be affected by the order granting a new trial. [1984 c 230 § 71; 1947 c 255 § 5; Rem. Supp. 1947 § 5654-153e. Formerly RCW 52.34.050 and 52.32.060.]

New trials: Chapter 4.76 RCW.

52.22.071 Jurisdiction of court. At the hearing of the special proceedings, the court has power and jurisdiction to examine and determine the legality and validity of, and to approve and confirm, each and all of the proceedings for the organization of the fire protection district and for the formation of any local improvement district therein under the law relating to such districts from and including the petition for the organization of the fire district and for the formation of any local improvement district therein and all other proceedings which affect the legality of the districts, or the validity and legality of any coupon or registered warrants or bonds either of the fire district or for a local improvement district therein and all proceedings conducted by the fire district for a contract of the district involving the fire district or a local improvement district therein, and any other proceeding which may affect the legality of the proceedings concerned. [1984 c 230 § 72; 1983 c 167 § 131; 1947 c 255 § 6; Rem. Supp. 1947 § 5654-153f. Formerly RCW 52.34.060 and 52.32.070.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

52.22.081 Minor irregularities to be disregarded. The court has full authority and jurisdiction to consider any question of laches, estoppel, and other infirmities in the position and claims of the defendants, to question the legality of the proceedings sought by the plaintiff to be confirmed by the court, and to pass upon and determine them. The court, in inquiring into the regularity, legality, and correctness of the proceedings sought by the board of fire commissioners in its petition to be examined, approved, and confirmed by the court, must disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to the special proceedings. The court may approve and confirm the proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings, or it may approve and confirm all of the proceedings, and make and enter its decree accordingly. [1984 c 230 § 73; 1947 c 255 § 7; Rem. Supp. 1947 § 5654-153g. Formerly RCW 52.34.070 and 52.32.080.]

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52.22.091 Costs. The court shall find and determine, in these special proceedings, whether the notice of the filing of the petition and of the time and place of hearing on the petition has been properly posted and published for the time and in the manner prescribed in this chapter. The costs of the special proceedings may be allowed and apportioned between all the parties, in the court's discretion. [1984 c 230 § 74; 1947 c 255 § 8; Rem. Supp. 1947 § 5654-153h. Formerly RCW 52.34.080 and 52.32.090.]

52.22.101 Appellate review. Appellate review of an order granting or refusing a new trial, or from the judgment, in the special proceedings must be taken by the party aggrieved within thirty days after the entry of the order or the judgment. [1988 c 202 § 50; 1984 c 230 § 75; 1947 c 255 § 9; Rem. Supp. 1947 § 5654-153i. Formerly RCW 52.34.090 and 52.32.100.]

Rules of court: *Cf. RAP 2.2, 18.22.*

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

52.22.111 Districts governed by Title 52 RCW. All fire protection districts are governed by Title 52 RCW. [1984 c 230 § 86.]

Chapter 52.26 RCW

REGIONAL FIRE PROTECTION SERVICE AUTHORITIES

Sections

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52.26.010 Findings. The legislature finds that:

(1) The ability to respond to emergency situations by many of Washington state's fire protection jurisdictions has

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not kept up with the state's needs, particularly in urban regions;

(2) Providing a fire protection service system requires a shared partnership and responsibility among the federal, state, local, and regional governments and the private sector;

(3) There are efficiencies to be gained by regional fire protection service delivery while retaining local control; and

(4) Timely development of significant projects can best be achieved through enhanced funding options for regional fire protection service agencies, using already existing taxing authority to address fire protection emergency service needs and new authority to address critical fire protection projects and emergency services. [2004 c 129 § 1.]

52.26.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the governing body of a regional fire protection service authority.

(2) "Regional fire protection service authority" or "authority" means a municipal corporation, an independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, whose boundaries are coextensive with two or more adjacent fire protection jurisdictions and that has been created by a vote of the people under this chapter to implement a regional fire protection service authority plan.

(3) "Regional fire protection service authority planning committee" or "planning committee" means the advisory committee created under RCW 52.26.030 to create and propose to fire protection jurisdictions a regional fire protection service authority plan to design, finance, and develop fire protection service projects.

(4) "Regional fire protection service authority plan" or "plan" means a plan to develop and finance a fire protection service authority project or projects, including, but not limited to, specific capital projects, fire operations and emergency service operations pursuant to RCW 52.26.040(3)(b), and preservation and maintenance of existing or future facilities.

(5) "Fire protection jurisdiction" means a fire district, city, town, port district, or Indian tribe.

(6) "Regular property taxes" has the same meaning as in RCW 84.04.140. [2004 c 129 § 2.]

52.26.030 Planning committee—Formation—Powers. Regional fire protection service authority planning committees are advisory entities that are created, convened, and empowered as follows:

(1) Any two or more adjacent fire protection jurisdictions may create a regional fire protection service authority and convene a regional fire protection service authority planning committee. No fire protection jurisdiction may participate in more than one authority.

(2) Each governing body of the fire protection jurisdictions participating in planning under this chapter shall appoint three elected officials to the authority planning committee. Members of the planning committee may receive compensation of seventy dollars per day, or portion thereof,

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not to exceed seven hundred dollars per year, for attendance at planning committee meetings and for performance of other services in behalf of the authority, and may be reimbursed for travel and incidental expenses at the discretion of their respective governing body.

(3) A regional fire protection service authority planning committee may receive state funding, as appropriated by the legislature, or county funding provided by the affected counties for start-up funding to pay for salaries, expenses, overhead, supplies, and similar expenses ordinarily and necessarily incurred. Upon creation of a regional fire protection service authority, the authority shall within one year reimburse the state or county for any sums advanced for these start-up costs from the state or county.

(4) The planning committee shall conduct its affairs and formulate a regional fire protection service authority plan as provided under RCW 52.26.040.

(5) At its first meeting, a regional fire protection service authority planning committee may elect officers and provide for the adoption of rules and other operating procedures.

(6) The planning committee may dissolve itself at any time by a majority vote of the total membership of the planning committee. Any participating fire protection jurisdiction may withdraw upon thirty calendar days' written notice to the other jurisdictions. [2004 c 129 § 3.]

52.26.040 Planning committee—Duties—Formulation of service plan. (1) A regional fire protection service authority planning committee shall adopt a regional fire protection service authority plan providing for the design, financing, and development of fire protection services. The planning committee may consider the following factors in formulating its plan:

(a) Land use planning criteria; and

(b) The input of cities and counties located within, or partially within, a participating fire protection jurisdiction.

(2) The planning committee may coordinate its activities with neighboring cities, towns, and other local governments that engage in fire protection planning.

(3) The planning committee shall:

(a) Create opportunities for public input in the development of the plan;

(b) Adopt a plan proposing the creation of a regional fire protection service authority and recommending design, financing, and development of fire protection and emergency service facilities and operations, including maintenance and preservation of facilities or systems, except that no ambulance service may be recommended unless the regional fire protection service authority determines that the fire protection jurisdictions that are members of the authority are not adequately served by existing private ambulance service in which case the authority may provide for the establishment of a system of ambulance service to be operated by the authority or operated by contract after a call for bids; and

(c) Recommend sources of revenue authorized by RCW 52.26.050 and a financing plan to fund selected fire protection service projects.

(4) Once adopted, the plan must be forwarded to the participating fire protection jurisdictions' governing bodies to initiate the election process under RCW 52.26.060.

(5) If the ballot measure is not approved, the planning committee may redefine the selected regional fire protection service authority projects, financing plan, and the ballot measure. The fire protection jurisdictions' governing bodies may approve the new plan and ballot measure, and may then submit the revised proposition to the voters at a subsequent election or a special election. If a ballot measure is not approved by the voters by the third vote, the planning committee is dissolved. [2004 c 129 § 4.]

52.26.050 Service plan—Taxes and benefit charges.

(1) A regional fire protection service authority planning committee may, as part of a regional fire protection service authority plan, recommend the imposition of some or all of the following revenue sources, which a regional fire protection service authority may impose upon approval of the voters as provided in this chapter:

(a) Benefit charges under RCW 52.26.180 through 52.26.270;

(b) Property taxes under RCW 52.26.140 through 52.26.170 and 84.52.044 and RCW 84.09.030, 84.52.010, 84.52.052, and 84.52.069; or

(c) Both (a) and (b) of this subsection.

(2) Taxes and benefit charges may not be imposed unless they are identified in the regional fire protection service authority plan and the plan is approved by an affirmative vote of the majority of the voters within the boundaries of the authority voting on a ballot proposition as set forth in RCW 52.26.060. The voter approval requirement provided in this section is in addition to any other voter approval requirement under law for the levying of property taxes or the imposition of benefit charges. Revenues from these taxes and benefit charges may be used only to implement the plan as set forth in this chapter. [2004 c 129 § 5.]

52.26.060 Service plan—Submission to voters. The governing bodies of two or more adjacent fire protection jurisdictions, upon receipt of the regional fire protection service authority plan under RCW 52.26.040, may certify the plan to the ballot, including identification of the tax options necessary to fund the plan. The governing bodies of the fire protection jurisdictions may draft a ballot title, give notice as required by law for ballot measures, and perform other duties as required to put the plan before the voters of the proposed authority for their approval or rejection as a single ballot measure that both approves formation of the authority and approves the plan. Authorities may negotiate interlocal agreements necessary to implement the plan. The electorate is the voters voting within the boundaries of the proposed regional fire protection service authority. A simple majority of the total persons voting on the single ballot measure to approve the plan, establish the authority, and approve the taxes is required for approval. The authority must act in accordance with the general election laws of the state. The authority is liable for its proportionate share of the costs when the elections are held under RCW *29A.04.320 and 29A.04.330. [2004 c 129 § 6.]

*Reviser's note: RCW 29A.04.320 was repealed by 2004 c 271 s 193. For later enactment, see RCW 29A.04.321.

52.26.070 Regional fire protection service authority—Formation—Challenges. If the voters approve the plan, including creation of a regional fire protection service authority and imposition of taxes, if any, the authority is formed. The appropriate county election officials shall, within fifteen days of the final certification of the election results, publish a notice in a newspaper or newspapers of general circulation in the authority declaring the authority formed. A party challenging the procedure or the formation of a voter-approved authority must file the challenge in writing by serving the prosecuting attorney of each county within, or partially within, the regional fire protection service authority and the attorney general within thirty days after the final certification of the election. Failure to challenge within that time forever bars further challenge of the authority's valid formation. [2004 c 129 § 7.]

52.26.080 Organization and composition of governing board. (1) The board shall adopt rules for the conduct of business. The board shall adopt bylaws to govern authority affairs, which may include:

(a) The time and place of regular meetings;

(b) Rules for calling special meetings;

(c) The method of keeping records of proceedings and official acts;

(d) Procedures for the safekeeping and disbursement of funds; and

(e) Any other provisions the board finds necessary to include.

(2) The governing board shall be determined by the plan and consist solely of elected officials. [2004 c 129 § 8.]

52.26.090 Board's powers and duties. (1) The governing board of the authority is responsible for the execution of the voter-approved plan. Participating jurisdictions shall review the plan every ten years. The board shall:

(a) Levy and impose taxes as authorized in the plan and approved by authority voters;

(b) Enter into agreements with federal, state, local, and regional entities and departments as necessary to accomplish authority purposes and protect the authority's investments;

(c) Accept gifts, grants, or other contributions of funds that will support the purposes and programs of the authority;

(d) Monitor and audit the progress and execution of fire protection service projects to protect the investment of the public and annually make public its findings;

(e) Pay for services and enter into leases and contracts, including professional service contracts;

(f) Hire, manage, and terminate employees; and

(g) Exercise other powers and duties as may be reasonable to carry out the purposes of the authority.

(2) An authority may acquire, hold, or dispose of real property.

(3) An authority may exercise the powers of eminent domain.

(4) An authority may enforce fire codes as provided under chapter 19.27 RCW. [2004 c 129 § 9.]

52.26.100 Transfer of responsibilities to authority.

(1) All powers, duties, and functions of a participating fire protection jurisdiction pertaining to providing fire protection

services may be transferred, by resolution, to the regional fire protection service authority.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the participating fire protection jurisdiction pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the regional fire protection service authority. All real property and personal property including cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the participating fire protection jurisdiction in carrying out the powers, functions, and duties transferred shall be made available to the regional fire protection service authority. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the regional fire protection service authority.

(b) Any appropriations made to the participating fire protection jurisdiction for carrying out the powers, functions, and duties transferred shall, on the effective date of the resolution, be transferred and credited to the regional fire protection service authority.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the governing body of the participating fire protection jurisdiction shall make a determination as to the proper allocation.

(3) All rules and all pending business before the participating fire protection jurisdiction pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the regional fire protection service authority. All existing contracts and obligations shall remain in full force and shall be performed by the regional fire protection service authority.

(4) The transfer of the powers, duties, functions, and personnel of the participating fire protection jurisdiction shall not affect the validity of any act performed before the effective date of the resolution.

(5) If apportionments of budgeted funds are required because of the transfers directed by the resolution, the treasurer under RCW 52.26.170 shall certify the apportionments.

(6) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified as provided by law. RCW 35.13.215 through 35.13.235 apply to the transfer of employees under this section. [2004 c 129 § 10.]

52.26.110 Withdrawal, reannexation of territory. (1)

As provided in this section, a regional fire protection service authority may withdraw areas from its boundaries or reannex into the authority areas that previously had been withdrawn from the authority under this section.

(2)(a) The withdrawal of an area is authorized upon: (i) Adoption of a resolution by the board approving the withdrawal and finding that, in the opinion of the board, inclusion of this area within the regional fire protection service authority will result in a reduction of the authority's tax levy rate under the provisions of RCW 84.52.010; or (ii) adoption of a

resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the governing body of the fire protection district within which the area is located approving the withdrawal, if the area is located outside of a city or town, but within a fire protection district.

(b) A withdrawal under this section is effective at the end of the day on the thirty-first day of December in the year in which the resolution under (a)(i) or (ii) of this subsection is adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the resolution.

(c) The withdrawal of an area from the boundaries of an authority does not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the authority existing at the time of withdrawal.

(3)(a) An area that has been withdrawn from the boundaries of a regional fire protection service authority under this section may be reannexed into the authority upon: (i) Adoption of a resolution by the board proposing the reannexation; and (ii) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the governing body of the fire protection district within which the area is located approving the reannexation, if the area is located outside of a city or town but within a fire protection district.

(b) A reannexation under this section shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the resolution under (a)(ii) of this subsection occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the resolution.

(c)(i) Referendum action on the proposed reannexation under this section may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or governing body of the fire protection district, within a thirty-day period after the adoption of the resolution under (a)(ii) of this subsection, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

(ii) If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in RCW 29A.04.330 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [2004 c 129 § 11.]

52.26.120 Dissolution of fire protection district—Election—Transfer of responsibilities.

Any fire protection district within the authority may be dissolved by a majority vote of the registered electors of the district at an election conducted by the election officials of the county or counties in which the district is located in accordance with the general election laws of the state. The proceedings for dissolution may be initiated by the adoption of a resolution by the board. The dissolution of the district shall not cancel outstanding

obligations of the district or of a local improvement district within the district, and the county legislative authority or authorities of the county or counties in which the district was located may make annual levies against the lands within the district until the obligations of the districts are paid. All powers, duties, and functions of a dissolved fire protection jurisdiction within the authority boundaries, pertaining to providing fire protection services may be transferred, by resolution, to the regional fire protection service authority. [2004 c 129 § 12.]

52.26.130 Debt and bonding. Unless contrary to this section, chapter 39.42 RCW applies to debt and bonding under this section. The authority may borrow money, but may not issue any debt of its own for more than ten years' duration. An authority may issue notes or other evidences of indebtedness with a maturity of not more than twenty years. An authority may, when authorized by the plan, enter into agreements with the state to pledge taxes or other revenues of the authority for the purpose of paying in part or whole principal and interest on bonds issued by the authority. The contracts pledging revenues and taxes are binding for the term of the agreement, but not to exceed twenty-five years, and no tax pledged by an agreement may be eliminated or modified if it would impair the pledge of the agreement. [2004 c 129 § 14.]

52.26.140 Levy of taxes—Limitations—Indebtedness. (1) To carry out the purposes for which a regional fire protection service authority is created, as authorized in the plan and approved by the voters, the governing board of an authority may annually levy the following taxes:

(a) An ad valorem tax on all taxable property located within the authority not to exceed fifty cents per thousand dollars of assessed value;

(b) An ad valorem tax on all property located within the authority not to exceed fifty cents per thousand dollars of assessed value and which will not cause the combined levies to exceed the constitutional or statutory limitations. This levy, or any portion of this levy, may also be made when dollar rates of other taxing units are released by agreement with the other taxing units from their authorized levies; and

(c) An ad valorem tax on all taxable property located within the authority not to exceed fifty cents per thousand dollars of assessed value if the authority has at least one full-time, paid employee, or contracts with another municipal corporation for the services of at least one full-time, paid employee. This levy may be made only if it will not affect dollar rates which other taxing districts may lawfully claim nor cause the combined levies to exceed the constitutional or statutory limitations or both.

(2) Levies in excess of the amounts provided in subsection (1) of this section or in excess of the aggregate dollar rate limitations or both may be made for any authority purpose when so authorized at a special election under RCW 84.52.052. Any such tax when levied must be certified to the proper county officials for the collection of the tax as for other general taxes. The taxes when collected shall be placed in the appropriate authority fund or funds as provided by law, and must be paid out on warrants of the auditor of the county

in which all, or the largest portion of, the authority is located, upon authorization of the governing board of the authority.

(3) Authorities are additionally authorized to incur general indebtedness and to issue general obligation bonds for capital purposes as provided in RCW 52.26.130. Authorities may provide for the retirement of general indebtedness by excess property tax levies, when the voters of the authority have approved a proposition authorizing such indebtedness and levies by an affirmative vote of three-fifths of those voting on the proposition at such an election, at which election the total number of persons voting shall constitute not less than forty percent of the voters in the authority who voted at the last preceding state general election. Elections must be held as provided in RCW 39.36.050. The maximum term of any bonds issued under the authority of this section may not exceed ten years and must be issued and sold in accordance with chapter 39.46 RCW.

(4) For purposes of this section, the term "value of the taxable property" has the same meaning as in RCW 39.36.015. [2004 c 129 § 15.]

52.26.150 Levy of taxes—To be made by county or counties where authority is located. At the time of making general tax levies in each year, the county legislative authority or authorities of the county or counties in which a regional fire protection service authority is located shall make the required levies for authority purposes against the real and personal property in the authority in accordance with the equalized valuations of the property for general tax purposes and as a part of the general taxes. The tax levies are part of the general tax roll and must be collected as a part of the general taxes against the property in the authority. [2004 c 129 § 16.]

52.26.160 Taxation of lands lying within authority and forest protection assessment area. In the event that lands lie within both a regional fire protection service authority and a forest protection assessment area they shall be taxed and assessed as follows:

(1) If the lands are wholly unimproved, they are subject to forest protection assessments but not to authority levies;

(2) If the lands are wholly improved, they are subject to authority levies but not to forest protection assessments; and

(3) If the lands are partly improved and partly unimproved, they are subject both to authority levies and to forest protection assessments. However, upon request, accompanied by appropriate legal descriptions, the county assessor shall segregate any unimproved portions which each consist of twenty or more acres, and thereafter the unimproved portion or portions are subject only to forest protection assessments. [2004 c 129 § 17.]

52.26.170 Collection of taxes. It is the duty of the county treasurer of the county in which the regional fire protection service authority created under this chapter is located to collect taxes authorized and levied under this chapter. However, when a regional fire protection service authority is located in more than one county, the county treasurer of each county in which the authority is located shall collect the regional fire protection service authority's taxes that are

imposed on property located within the county and transfer these funds to the treasurer of the county in which the majority of the authority lies. [2004 c 129 § 18.]

52.26.180 Benefit charges. (1) The governing board of a regional fire protection service authority may by resolution, as authorized in the plan and approved by the voters, for authority purposes authorized by law, fix and impose a benefit charge on personal property and improvements to real property which are located within the authority on the date specified and which have received or will receive the benefits provided by the authority, to be paid by the owners of the properties. A benefit charge does not apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization as, or including, a sanctuary or for purposes related to the bona fide religious ministries of the denomination or religious organization, including schools and educational facilities used for kindergarten, primary, or secondary educational purposes or for institutions of higher education and all grounds and buildings related thereto. However, a benefit charge does apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization for business operations, profit-making enterprises, or activities not including use of a sanctuary or related to kindergarten, primary, or secondary educational purposes or for institutions of higher education. The aggregate amount of these benefit charges in any one year may not exceed an amount equal to sixty percent of the operating budget for the year in which the benefit charge is to be collected. It is the duty of the county legislative authority or authorities of the county or counties in which the regional fire protection service authority is located to make any necessary adjustments to assure compliance with this limitation and to immediately notify the governing board of an authority of any changes thereof.

(2) A benefit charge imposed must be reasonably apportioned to the measurable benefits to property resulting from the services afforded by the authority. It is acceptable to apportion the benefit charge to the values of the properties as found by the county assessor or assessors modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the benefit charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly maintained fire protection equipment, the level of fire prevention services provided to the properties, or the need of the properties for specialized services, may be specified in the resolution and is subject to contest on the grounds of unreasonable or capricious action or action in excess of the measurable benefits to the property resulting from services afforded by the authority. The governing board of an authority may determine that certain properties or types or classes of properties are not receiving measurable benefits based on criteria they establish by resolution. A benefit charge authorized by this chapter is not applicable to the personal property or improvements to real property of any individual, corporation, partnership, firm, organization, or association maintaining a fire department and whose fire protection and training system has been accepted by a fire insurance underwriter

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maintaining a fire protection engineering and inspection service authorized by the state insurance commissioner to do business in this state, but the property may be protected by the authority under a contractual agreement.

(3) For administrative purposes, the benefit charge imposed on any individual property may be compiled into a single charge, provided that the authority, upon request of the property owner, provide an itemized list of charges for each measurable benefit included in the charge.

(4) For the purposes of this section and RCW 52.26.190 through 52.26.270, the following definitions apply:

(a)(i) "Personal property" includes every form of tangible personal property including, but not limited to, all goods, chattels, stock in trade, estates, or crops.

(ii) "Personal property" does not include any personal property used for farming, field crops, farm equipment, or livestock.

(b) "Improvements to real property" does not include permanent growing crops, field improvements installed for the purpose of aiding the growth of permanent crops, or other field improvements normally not subject to damage by fire. [2004 c 129 § 24.]

52.26.190 Benefit charges—Exemptions. All personal property not assessed and subjected to ad valorem taxation under Title 84 RCW, all property under contract or for which the regional fire protection service authority is receiving payment for as authorized by law, all property subject to chapter 54.28 RCW, and all property that is subject to a contract for services with an authority, is exempt from the benefit charge imposed under this chapter. [2004 c 129 § 25.]

52.26.200 Benefit charges—Resolution—County assessor's duties. (1) The resolution establishing benefit charges as specified in RCW 52.26.180 must specify, by legal geographical areas or other specific designations, the charge to apply to each property by location, type, or other designation, or other information that is necessary to the proper computation of the benefit charge to be charged to each property owner subject to the resolution.

(2) The county assessor of each county in which the regional fire protection service authority is located shall determine and identify the personal properties and improvements to real property that are subject to a benefit charge in each authority and shall furnish and deliver to the county treasurer of that county a listing of the properties with information describing the location, legal description, and address of the person to whom the statement of benefit charges is to be mailed, the name of the owner, and the value of the property and improvements, together with the benefit charge to apply to each. These benefit charges must be certified to the county treasurer for collection in the same manner that is used for the collection of fire protection charges for forest lands protected by the department of natural resources under RCW 76.04.610 and the same penalties and provisions for collection apply. [2004 c 129 § 26.]

52.26.210 Benefit charges—Administration and collection by county treasurer. Each regional fire protection service authority shall contract, prior to the imposition of a

benefit charge, for the administration and collection of the benefit charge by each county treasurer, who shall deduct a percentage, as provided by contract to reimburse the county for expenses incurred by the county assessor and county treasurer in the administration of the resolution and this chapter. The county treasurer shall make distributions each year, as the charges are collected, in the amount of the benefit charges imposed on behalf of each authority, less the deduction provided for in the contract. [2004 c 129 § 27.]

52.26.220 Benefit charges—Submission to voters—Renewal.

(1) Notwithstanding any other provision in this chapter to the contrary, any benefit charge authorized by this chapter is not effective unless a proposition to impose the benefit charge is approved by a sixty percent majority of the voters of the regional fire protection service authority voting at a general election or at a special election called by the authority for that purpose, held within the authority. An election held under this section must be held not more than twelve months prior to the date on which the first charge is to be assessed. A benefit charge approved at an election expires in six years or fewer as authorized by the voters, unless subsequently reapproved by the voters.

(2) The ballot must be submitted so as to enable the voters favoring the authorization of a regional fire protection service authority benefit charge to vote "Yes" and those opposed to vote "No." The ballot question is as follows:

"Shall the regional fire protection service authority composed of (insert the participating fire protection jurisdictions) be authorized to impose benefit charges each year for (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.26.140(1)(c)?"

YES NO

(3) Authorities renewing the benefit charge may elect to use the following alternative ballot:

"Shall the regional fire protection service authority composed of (insert the participating fire protection jurisdictions) be authorized to continue voter-authorized benefit charges each year for (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.26.140(1)(c)?"

YES NO

[2004 c 129 § 28.]

52.26.230 Benefit charges—Establishment—Public hearings—Notice to property owners. (1) Not fewer than ten days nor more than six months before the election at which the proposition to impose the benefit charge is submit-

ted as provided in this chapter, the governing board of the regional fire protection service authority shall hold a public hearing specifically setting forth its proposal to impose benefit charges for the support of its legally authorized activities that will maintain or improve the services afforded in the authority. A report of the public hearing shall be filed with the county treasurer of each county in which the property is located and be available for public inspection.

(2) Prior to November 15th of each year the governing board of the authority shall hold a public hearing to review and establish the regional fire protection service authority benefit charges for the subsequent year.

(3) All resolutions imposing or changing the benefit charges must be filed with the county treasurer or treasurers of each county in which the property is located, together with the record of each public hearing, before November 30th immediately preceding the year in which the benefit charges are to be collected on behalf of the authority.

(4) After the benefit charges have been established, the owners of the property subject to the charge must be notified of the amount of the charge. [2004 c 129 § 29.]

52.26.240 Benefit charges—Limitation on imposition of property tax.

A regional fire protection service authority that imposes a benefit charge under this chapter shall not impose all or part of the property tax authorized under RCW 52.26.140(1)(c). [2004 c 129 § 30.]

52.26.250 Benefit charges—Complaints—Review board.

After notice has been given to the property owners of the amount of the charge, the governing board of a regional fire protection service authority imposing a benefit charge under this chapter shall form a review board for at least a two-week period and shall, upon complaint in writing of an aggrieved party owning property in the authority, reduce the charge of a person who, in their opinion, has been charged too large a sum, to a sum or amount as they believe to be the true, fair, and just amount. [2004 c 129 § 31.]

52.26.260 Benefit charges—Model resolution—Assistance by Washington fire commissioners association.

The Washington fire commissioners association, as soon as practicable, shall draft a model resolution to impose the regional fire protection service authority benefit charge authorized by this chapter and may provide assistance to authorities in the establishment of a program to develop benefit charges. [2004 c 129 § 32.]

52.26.270 Benefit charges—Additional exemption.

A person who is receiving the exemption contained in RCW 84.36.381 through 84.36.389 is exempt from any legal obligation to pay a portion of the benefit charge imposed under this chapter as follows:

(1) A person who meets the income limitation contained in RCW 84.36.381(5)(a) and does not meet the income limitation contained in RCW 84.36.381(5)(b) (i) or (ii) is exempt from twenty-five percent of the charge;

(2) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(i) is exempt from fifty percent of the charge; and

(3) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(ii) shall be exempt from seventy-five percent of the charge. [2004 c 129 § 33.]

52.26.900 Captions not law—2004 c 129. Captions used in this act are not any part of the law. [2004 c 129 § 35.]

52.26.901 Severability—2004 c 129. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2004 c 129 § 37.]

Chapter 52.30 RCW

MISCELLANEOUS PROVISIONS

Sections

52.30.020	Property of public agency included within district—Contracts for services.
52.30.040	Civil service for employees.
52.30.050	Residency not grounds for discharge of civil service employees.
52.30.060	Change of district name—Resolution.

52.30.020 Property of public agency included within district—Contracts for services. Wherever a fire protection district has been organized which includes within its area or is adjacent to, buildings and equipment, except those leased to a nontax exempt person or organization, owned by the legislative or administrative authority of a state agency or institution or a municipal corporation, the agency or institution or municipal corporation involved shall contract with such district for fire protection services necessary for the protection and safety of personnel and property pursuant to the provisions of chapter 39.34 RCW, as now or hereafter amended: PROVIDED, That nothing in this section shall be construed to require that any state agency, institution, or municipal corporation contract for services which are performed by the staff and equipment of such state agency, institution, or municipal corporation: PROVIDED FURTHER, That nothing in this section shall apply to state agencies or institutions or municipal corporations which are receiving fire protection services by contract from another municipality, city, town or other entities: AND PROVIDED FURTHER, That school districts shall receive fire protection services from the fire protection districts in which they are located without the necessity of executing a contract for such fire protection services: PROVIDED FURTHER, That prior to September 1, 1974 the superintendent of public instruction, the insurance commissioner, the director of financial management, and the executive director of the Washington fire commissioners association, or their designees, shall develop criteria to be used by the insurance commissioner in establishing uniform rates governing payments to fire districts by school districts for fire protection services. On or before September 1, 1974, the insurance commissioner shall establish such rates to be payable by school districts on or before January 1st of each year commencing January 1, 1975, payable July 1, 1975: AND PROVIDED FURTHER, That beginning with the 1975-77 biennium and in each biennium thereafter the superintendent of public instruction shall

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present in his budget submittal to the governor an amount sufficient to reimburse affected school districts for the monies necessary to pay the costs of the uniform rates established by the insurance commissioner. [1979 c 151 § 164; 1974 ex.s. c 88 § 1; 1973 1st ex.s. c 64 § 1; 1941 c 139 § 1; Rem. Supp. 1941 § 5654-143a. Formerly RCW 52.36.020.]

Effective date—1974 ex.s. c 88: "This 1974 amendatory act shall take effect on July 1, 1974." [1974 ex.s. c 88 § 2.]

Effective date—1973 1st ex.s. c 64: "This 1973 amendatory act shall take effect on July 1, 1974." [1973 1st ex.s. c 64 § 2.]

Fire, medical, or other emergency services provided to county by political subdivision—Financial assistance authorized: RCW 36.32.470.

Fire protection services for state-owned facilities: RCW 35.21.775.

52.30.040 Civil service for employees. A fire protection district with a fully-paid fire department may, by resolution of its board of fire commissioners, provide for civil service in its fire department in the same manner, with the same powers, and with the same force and effect as provided by chapter 41.08 RCW for cities, towns, and municipalities, including restrictions against the discharge of an employee because of residence outside the limits of the fire protection district. [1984 c 230 § 79; 1971 ex.s. c 256 § 2; 1949 c 72 § 1; Rem. Supp. 1949 § 5654-120a. Formerly RCW 52.36.060.]

52.30.050 Residency not grounds for discharge of civil service employees. Residence of an employee outside the limits of a fire protection district is not grounds for discharge of any regularly-appointed civil service employee otherwise qualified. [1984 c 230 § 80; 1971 ex.s. c 256 § 1. Formerly RCW 52.36.065.]

52.30.060 Change of district name—Resolution. The name of a fire protection district shall be changed, as proposed by resolution of the board of fire commissioners of the district, upon the adoption of a resolution approving the change by the county legislative authority of the county in which all, or the largest portion, of a fire protection district is located. [1989 c 63 § 34.]

Title 53

PORT DISTRICTS

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- 53.06 Coordination of administrative programs and operations.**
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Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Title to certain second class shorelands vested in port districts: RCW 79.94.230.

Vacation of streets or alleys abutting on bodies of water by city or town prohibited with specified exceptions such as when the vacated property is to be used for port, recreational, educational, etc. purposes: RCW 35.79.035.

Chapter 53.04 RCW

FORMATION

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- 53.04.015 Port districts in areas lacking appropriate bodies of water—Authorized—Purposes.
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53.04.010 Port districts authorized—Purposes—Powers—Public hearing. (1) Port districts are hereby authorized to be established in the various counties of the state for the purposes of acquisition, construction, maintenance, operation, development and regulation within the district of harbor improvements, rail or motor vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and terminal facilities, or any combination of such transfer and terminal facilities, and other commercial transportation, transfer, handling, storage and terminal facilities, and industrial improvements.

(2) Powers of a port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, shall be exercised within the district, except as otherwise provided by statute or pursuant to an interlocal cooperation agreement with another public agency as defined in chapter 39.34 RCW. In addition to other requirements of chapter 39.34 RCW, such an interlocal cooperation agreement may involve the exercise of a port district's powers for a port district that is located in a county that has contiguous borders with another state, and a population between fifty and seventy thousand, outside the boundaries of the state of Washington in whole or in part only if found, by resolution of the port district commission exercising such authority, to be reasonably necessary for the effective exercise of the port district's statutory powers and for the benefit of the inhabitants of the district and the state of Washington. The resolution may be adopted only after a public hearing of which notice has been published in a newspaper of general circulation within the district at least ten days in advance. [1999 c 306 § 2; 1963 c 147 § 1; 1911 c 92 § 1; RRS § 9688.]

Purpose—1999 c 306: "Article VIII, section 8 of the Washington state Constitution authorizes the use of public funds by port districts in such manner as the legislature may prescribe for industrial development or trade promotion. The legislature recognizes a growing need for a Washington port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, to participate with other public agencies of this state and an adjoining state to attract, encourage, and develop industry and promote trade on both sides of their borders, for the economic benefit to the state of Washington. RCW 53.08.240 authorizes agreements between two or more port districts for the exercise of powers both within and outside their districts, and further authorizes contracts by port districts with other governmental entities. The interlocal cooperation act, chapter 39.34 RCW, also authorizes joint agreements and contracts between port districts and other state and local public agencies including political subdivisions of other states. However, there is uncertainty as to whether or not a port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, may exercise industrial development or trade promotion powers outside the district or state boundaries except jointly with another Washington port district.

The purpose of this act is to define and clarify the authority of a Washington port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, to exercise those powers jointly or in cooperation with other public agencies when found to be necessary and beneficial to the people of this state." [1999 c 306 § 1.]

Construction—1911 c 92: "This act shall not be construed to repeal, amend or modify any law heretofore enacted providing a method of harbor improvement, regulation or control in this state, but shall be held to be an additional and concurrent method providing for such purpose." [1911 c 92 § 14.]

Establishment of harbor lines: State Constitution Art. 15 § 1 (Amendment 15).

53.04.015 Port districts in areas lacking appropriate bodies of water—Authorized—Purposes. In areas which lack appropriate bodies of water so that harbor improvements cannot be established, port districts are hereby authorized to be established under the laws of the state, for the purposes for which port districts may be established under RCW 53.04.010, and such port districts shall have all of the powers, privileges and immunities conferred upon all other port districts under the laws of this state, including the same powers and rights relating to municipal airports that other port districts now have or hereafter may be granted. [1963 c 147 § 2; 1959 c 94 § 1.]

53.04.016 Port districts in areas lacking appropriate bodies of water—Authority an additional and concurrent method. RCW 53.04.015 shall not be construed to repeal, amend or modify any law heretofore enacted providing a method of harbor improvement, regulation or control; acquisition, maintenance and operation of municipal airports; or industrial development; but shall be held to be an additional and concurrent method providing such purposes. [1959 c 94 § 2.]

53.04.017 Port districts in areas lacking appropriate bodies of water—Elections. All elections with respect to any such port districts authorized by RCW 53.04.015 and 53.04.016 shall be held, conducted and the results canvassed in the same manner and at the same time as now or hereafter provided by law for other port districts. [1959 c 94 § 3.]

53.04.020 Formation of county-wide district. At any general election or at any special election which may be

called for that purpose, the county legislative authority of any county in this state may, or on petition of ten percent of the registered voters of such county based on the total vote cast in the last general county election, shall, by resolution submit to the voters of such county the proposition of creating a port district coextensive with the limits of such county. Such petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereof and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed port district. If such petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his or her certificate thereto. No person having signed such petition shall be allowed to withdraw his or her name therefrom after the filing of the same with the county auditor. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his or her certificate of sufficiency attached thereto, to the legislative authority of the county, who shall submit such proposition at the next general election or, if such petition so requests, the county legislative authority shall, at their first meeting after the date of such certificate, by resolution, call a special election to be held in accordance with *RCW 29.13.010 and 29.13.020. The notice of election shall state the boundaries of the proposed port district and the object of such election. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot substantially in the following terms:

"Port of, Yes." (giving the name of the principal seaport city within such proposed port district, or if there be more than one city of the same class within such district, such name as may be determined by the legislative authority of the county).

"Port of, No." (giving the name of the principal seaport city within such port district, or if there be more than one city of the same class within such district, such name as may be determined by the legislative authority of the county). [1992 c 147 § 1; 1990 c 259 § 15; 1986 c 262 § 1; 1971 ex.s. c 157 § 1; 1913 c 62 § 1; 1911 c 92 § 2; RRS § 9689. Formerly RCW 53.04.020 through 53.04.040.]

***Reviser's note:** RCW 29.13.010 and 29.13.020 were recodified as RCW 29A.04.320 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193.

Severability—1992 c 147: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 147 § 4.]

Effective date—1971 ex.s. c 157: "The effective date of this act shall be May 1, 1972." [1971 ex.s. c 157 § 4.]

53.04.023 Formation of less than county-wide district. A less than county-wide port district with an assessed valuation of at least one hundred fifty million dollars may be created in a county that already has a less than county-wide port district located within its boundaries. Except as provided in this section, such a port district shall be created in accor-

dance with the procedure to create a county-wide port district.

The effort to create such a port district is initiated by the filing of a petition with the county auditor calling for the creation of such a port district, describing the boundaries of the proposed port district, designating either three or five commissioner positions, describing commissioner districts if the petitioners propose that the commissioners represent districts, and providing a name for the proposed port district. The petition must be signed by voters residing within the proposed port district equal in number to at least ten percent of such voters who voted at the last county general election.

A public hearing on creation of the proposed port district shall be held by the county legislative authority if the county auditor certifies that the petition contained sufficient valid signatures. Notice of the public hearing must be published in the county's official newspaper at least ten days prior to the date of the public hearing. After taking testimony, the county legislative authority may make changes in the boundaries of the proposed port district if it finds that such changes are in the public interest and shall determine if the creation of the port district is in the public interest. No area may be added to the boundaries unless a subsequent public hearing is held on the proposed port district.

The county legislative authority shall submit a ballot proposition authorizing the creation of the proposed port district to the voters of the proposed port district, at any special election date provided in *RCW 29.13.020, if it finds the creation of the port district to be in the public interest.

The port district shall be created if a majority of the voters voting on the ballot proposition favor the creation of the port district. The initial port commissioners shall be elected at the same election, from districts or at large, as provided in the petition initiating the creation of the port district. The election shall be otherwise conducted as provided in RCW 53.12.172, but the election of commissioners shall be null and void if the port district is not created. [1997 c 256 § 1; 1994 c 223 § 84; 1993 c 70 § 1; 1992 c 147 § 2.]

***Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Effective date—1997 c 256: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 1997]." [1997 c 256 § 2.]

Severability—1992 c 147: See note following RCW 53.04.020.

53.04.031 Initiating petition, commissioner district descriptions—Initial election of commissioners. Three commissioner districts, each with approximately the same population, shall be described in the petition proposing the creation of a port district under RCW 53.04.020, if the process to create the port district was initiated by voter petition, or shall be described by the county legislative authority, if the process to initiate the creation of the port district was by action of the county legislative authority. However, commissioner districts shall not be described if the commissioner districts of the proposed port district shall be the same as the county legislative authority districts.

The initial port commissioners shall be elected as provided in RCW 53.12.172. [1994 c 223 § 83.]

53.04.060 District declared formed. Within five days after an election held under the provisions of RCW 53.04.020, the board of county commissioners shall canvass the returns, and if at such election a majority of the voters voting upon the proposition shall vote in favor of the formation of the district, the board of county commissioners shall so declare in its canvass of the returns of such election, and the port district shall then be and become a municipal corporation of the state of Washington and the name of such port district shall be "Port of" (inserting the name appearing on the ballot). [1959 c 17 § 2. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.04.070 Expense of election. All expenses of elections for the formation of such port districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the port district, if formed. [1959 c 17 § 6. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.04.080 Annexation of territory—Petition—Election. At any general election or at any special election which may be called for that purpose the county legislative authority of any county in this state in which there exists a port district which is not coextensive with the limits of the county, shall on petition of the commissioners of such port district, by resolution, submit to the voters residing within the limits of any territory which the existing port district desires to annex or include in its enlarged port district, the proposition of enlarging the limits of such existing port districts so as to include therein the whole of the territory embraced within the boundaries of such county, or such territory as may be described in the petition by legal subdivisions. Such petition shall be filed with the county auditor, who shall forthwith transmit the same to the county legislative authority, who shall submit such proposition at the next general election, or, if such petition so request, the county legislative authority, shall at their first meeting after the date of filing such petition, by resolution, call a special election to be held in accordance with *RCW 29.13.010 and 29.13.020. The notice of election shall state the boundaries of the proposed enlarged port district and the object of the special election. In submitting the question to the voters of the territory proposed to be annexed or included for their approval or rejection, the proposition shall be expressed on the ballots substantially in the following terms:

"Enlargement of the port of, yes." (Giving then [the] name of the port district which it is proposed to enlarge);

"Enlargement of the port of, no." (Giving the name of the port district which it is proposed to enlarge).

Such election, whether general or special, shall be held in each precinct wholly or partially embraced within the limits of the territory proposed to be annexed or included and shall be conducted and the votes cast thereat counted, canvassed, and the returns thereof made in the manner provided by law for holding general or special county elections. [1990 c 259 § 16; 1935 c 16 § 1; 1921 c 130 § 1; RRS § 9707. Formerly RCW 53.04.080 and 53.04.090.]

*Reviser's note: RCW 29.13.010 and 29.13.020 were recodified as RCW 29A.04.320 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193.

Elections: Title 29A RCW.

53.04.085 Petition for annexation to port district. If an area, not currently part of an existing port district desires to be annexed to a port district in the same county, upon receipt of a petition bearing the names of ten percent of the registered voters residing within the proposed boundaries of the area desiring to be annexed who voted in the last general municipal election, the commissioners of such port district shall petition the county legislative authority to annex such territory, as provided in RCW 53.04.080. [1990 c 259 § 17; 1971 ex.s. c 157 § 2.]

Effective date—1971 ex.s. c 157: See note following RCW 53.04.020.

53.04.100 Order of annexation—Liability of area annexed. If a majority of all the votes cast at any such election upon the proposition of enlarging such port district shall be for the "Enlargement of the port of, yes" then and in that event the board of county commissioners shall enter an order declaring such port district enlarged so as to embrace within the limits thereof the territory described in the petition for such election, and thereupon the boundaries of said port district shall be so enlarged and the commissioners thereof shall have jurisdiction over the whole of said district as enlarged to the same extent, and with like power and authority, as though the additional territory had been originally embraced within the boundaries of the existing port district: PROVIDED, HOWEVER, That none of the lands or property embraced within the territory added to and incorporated within such port district shall be liable to assessment for the payment of any outstanding bonds, warrants or other indebtedness of such original port district, but such outstanding bonds, warrants or other indebtedness, together with interest thereon, shall be paid exclusively from assessments levied and collected on the lands and property embraced within the boundaries of the preexisting port district. [1921 c 130 § 2; RRS § 9708.]

53.04.110 Change of name. Any port district now existing or which may hereafter be organized under the laws of the state of Washington is hereby authorized to change its corporate name under the following conditions and in the following manner:

(1) On presentation, at least forty-five days before any general port election to be held in the port district, of a petition to the commissioners of any port district now existing or which may hereafter be established under the laws of the state of Washington, signed by at least ten percent of the total number of voters of the port district who voted at the last general port election and asking that the corporate name of the port district be changed, it shall be the duty of the commissioners to submit to the voters of the port district the proposition as to whether the corporate name of the port shall be changed. The proposition shall be submitted at the next general port election.

(2) The petition shall contain the present corporate name of the port district and the corporate name which is proposed to be given to the port district.

(3) On submitting the proposition to the voters of the port district it shall be the duty of the port commissioners to cause to be printed on the official ballot used at the election the following proposition:

"Shall the corporate name, 'Port of ' be changed to 'Port of ' YES
"Shall the corporate name, 'Port of ' be changed to 'Port of 'NO"

(4) At the time when the returns of the general election shall be canvassed by the commissioners of the port district, it shall be the duty of the commissioners to canvass the vote upon the proposition so submitted, recording in their record the result of the canvass.

(5) Should a majority of the registered voters of the port district voting at the general port election vote in favor of the proposition it shall be the duty of the port commissioners to certify the fact to the auditor of the county in which the port district shall be situated and to the secretary of state of the state of Washington, under the seal of the port district. On and after the filing of the certificate with the county auditor as aforesaid and with the secretary of state of the state of Washington, the corporate name of the port district shall be changed, and thenceforth the port district shall be known and designated in accordance therewith. [1998 c 240 § 1; 1990 c 259 § 18; 1929 c 140 § 1; RRS § 9689-1.]

53.04.120 Transfer of port district property to adjacent district—Procedure—Boundary changes—Jurisdiction. Property may be acquired and owned by any port district, at least one boundary of which property is contiguous to or within one-quarter air mile of such port district and is also located in an adjacent port district, and such property may be transferred to the owning port district upon unanimous resolution of the boards of commissioners of both port districts authorizing the same. The resolution of the port district within which such property is located shall be a resolution to permit the acquisition and to make the transfer, while the resolution of the port district which owns the property shall be a resolution to acquire and own the property and to accept the transferred property. Upon the filing of both official resolutions with the legislative authority and the auditor of the county or counties within which such port districts lie, together with maps showing in reasonable detail the boundary changes made, such acquisition and ownership shall be lawful and such transfer shall be effective and the commissioners of the port district acquiring, owning and receiving such property shall have jurisdiction over the whole of said enlarged port district to the same extent, and with like power and authority, as though the additional territory had been owned by and originally embraced within the boundaries of the port district. [1979 c 72 § 1; 1977 ex.s. c 91 § 1.]

Validity—Ratification—1979 c 72: "Any purchase or other acquisition of such property by any port district which occurred prior to the enactment of this 1979 amendatory act is hereby confirmed and ratified and shall not be deemed to have been ultra vires." [1979 c 72 § 2.]

Severability—1979 c 72: "If any provision of this 1979 amendatory act or its application to any person or circumstance is held invalid, the remainder

of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 72 § 4.]

53.04.150 Alternative annexation methods—Petition for resolution—Districts authorized to use—Petition requirements. A port district that is less than county-wide, and that is located in a county with a population of less than ninety thousand and located in either the Interstate 5 or Interstate 90 corridor, may petition for annexation of an area that is contiguous to its boundaries, is not located within the boundaries of any other port district, and contains no registered voters. The petition must be in writing, addressed to and filed with the port commission, and signed by the owners of not less than seventy-five percent of the property value in the area to be annexed, according to the assessed value for general taxation. The petition must contain a legal description of the property according to government legal subdivisions or legal plats, or a sufficient metes and bounds description, and must be accompanied by a plat outlining the boundaries of the property to be annexed. [2000 c 200 § 2; 1999 c 250 § 2.]

Intent—1999 c 250 §§ 2-5: "The legislature intends annexation procedures set forth in sections 2 through 5 of this act to be alternative methods available to port districts that are less than county-wide. The legislature does not intend the alternative procedures to supersede any other method authorized by chapter 53.04 RCW or other law for annexation of territory to a port district." [1999 c 250 § 1.]

53.04.160 Alternative annexation methods—Petition for resolution—Where filed—Commission's duties. If a petition meeting the requirements set forth in RCW 53.04.150 is filed with the commission, the commission shall determine a date, time, and location for a hearing on the petition and shall provide public notice of that hearing and its nature by publishing the notice in one issue of a newspaper of general circulation in the district and by posting the notice in three public places within the territory proposed for annexation. The commission may require proof of a petition's authenticity before complying with notice requirements imposed by this section and may require the signers of a petition to bear the costs of publishing and posting notice. [1999 c 250 § 3.]

Intent—1999 c 250 §§ 2-5: See note following RCW 53.04.150.

53.04.170 Alternative annexation methods—Petition for resolution—Hearing—Resolution. At the hearing, the commission may determine to annex all or any portion of the proposed area described in the petition. Following the hearing, the commission shall by resolution approve or disapprove annexation. Upon passage of the resolution, the commission shall file, with the board of county commissioners of the county in which the annexed property is located, a certified copy of the resolution. On the date fixed in the resolution, the area annexed becomes part of the district. [1999 c 250 § 4.]

Intent—1999 c 250 §§ 2-5: See note following RCW 53.04.150.

53.04.180 Alternative annexation methods—Annexation by written consent—Districts authorized to use—Resolution. (1) By a majority vote of the commission, and with the written consent of all the owners of the property to be annexed, a port commission of a district that is less than

county-wide, and that is located in a county with a population of less than ninety thousand and located in either the Interstate 5 or Interstate 90 corridor, may annex, for industrial development or other port district purposes, property contiguous to the district's boundaries and not located within the boundaries of any other port district.

(2) The written consent required by subsection (1) of this section must contain a full and correct legal description of the property to be annexed, must include the signature of all owners of the property to be annexed, and must be addressed to and filed with the commission.

(3) If the commission approves annexation under this section, it shall do so by resolution and shall file a certified copy of the resolution with the board of county commissioners of the county in which the annexed property is located. Upon the date fixed in the resolution, the area annexed becomes part of the district. [2000 c 200 § 1; 1999 c 250 § 5.]

Intent—1999 c 250 §§ 2-5: See note following RCW 53.04.150.

53.04.190 Alternative annexation methods—Outstanding indebtedness. No property within the territory annexed under RCW 53.04.150 through 53.04.180 may be taxed or assessed for the payment of any outstanding indebtedness of the port district as it existed before the annexation unless another law requires the tax or assessment. [1999 c 250 § 6.]

Chapter 53.06 RCW

COORDINATION OF ADMINISTRATIVE PROGRAMS AND OPERATIONS

Sections

53.06.010	Declaration of necessity.
53.06.020	Actions required of commissions—Joint reports to governor and legislature.
53.06.030	Washington public ports association as coordinating agency—Purposes, powers, and duties.
53.06.040	Dues and assessments may be paid association from district funds—Limitation on amount.
53.06.050	Further action by commissions authorized—Meetings.
53.06.060	Financial records of association and any nonprofit corporation utilized by port districts subject to audit by state auditor.
53.06.070	Federation of Washington ports authorized—Purposes.
53.06.080	Implementation of economic development programs—Use of nonprofit corporations—Transfer of funds.
53.06.090	Nonprofit corporations—Legislative recognition.

53.06.010 Declaration of necessity. The necessity and desirability of coordinating the administration programs and operations of all the port districts in this state is recognized and declared as a matter of legislative determination. [1961 c 31 § 1.]

53.06.020 Actions required of commissions—Joint reports to governor and legislature. It shall be the duty of the port district commissions in the state to take such action to effect the coordination of the administrative programs and operations of each port district in the state and to submit to the governor and the legislature biennially a joint report or joint reports containing the recommendations for procedural changes which would increase the efficiency of the respective port districts. [1994 c 75 § 1; 1989 c 425 § 3; 1961 c 31 § 2.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.06.030 Washington public ports association as coordinating agency—Purposes, powers, and duties. The port district commissions in this state are empowered to designate the Washington public ports association as a coordinating agency through which the duties imposed by RCW 53.06.020 may be performed, harmonized or correlated. The purposes of the Washington public ports association shall be:

(1) To initiate and carry on the necessary studies, investigations and surveys required for the proper development and improvement of the commerce and business generally common to all port districts, and to assemble and analyze the data thus obtained and to cooperate with the state of Washington, port districts both within and without the state of Washington, and other operators of terminal and transportation facilities for this purpose, and to make such expenditures as are necessary for these purposes, including the proper promotion and advertising of all such properties, utilities and facilities;

(2) To establish coordinating and joint marketing bodies comprised of association members, including but not limited to establishment of a federation of Washington ports as described in RCW 53.06.070, as may be necessary to provide effective and efficient marketing of the state's trade, tourism, and travel resources;

(3) To exchange information relative to port construction, maintenance, operation, administration and management;

(4) To promote and encourage port development along sound economic lines;

(5) To promote and encourage the development of transportation, commerce and industry;

(6) To operate as a clearing house for information, public relations and liaison for the port districts of the state and to serve as a channel for cooperation among the various port districts and for the assembly and presentation of information relating to the needs and requirements of port districts to the public. [1989 c 425 § 4; 1961 c 31 § 3.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.06.040 Dues and assessments may be paid association from district funds—Limitation on amount. Each port district which designates the Washington public ports association as the agency through which the duties imposed by RCW 53.06.020 may be executed is authorized to pay dues and/or assessments to said association from port district funds in any calendar year in an amount not exceeding a sum equal to the amount which would be raised by a levy of one cent per thousand dollars of assessed value against the taxable property within the port district. [1973 1st ex.s. c 195 § 55; 1970 ex.s. c 47 § 3; 1961 c 31 § 4.]

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

53.06.050 Further action by commissions authorized—Meetings. The port district commissions are authorized to take such further action as they deem necessary to comply with the intent of this chapter, including the atten-

dance at state and district meetings which may be required to formulate the reports provided for in RCW 53.06.020. [1961 c 31 § 5.]

53.06.060 Financial records of association and any nonprofit corporation utilized by port districts subject to audit by state auditor. The financial records of the Washington public ports association shall be subject to audit by the state auditor. The financial records of any nonprofit corporation utilized by port districts shall be subject to audit by the state auditor to determine compliance with the contractual terms and conditions under which payments or reimbursements are received under chapter 53.06 RCW. [2000 c 198 § 4; 1995 c 301 § 74; 1961 c 31 § 6.]

53.06.070 Federation of Washington ports authorized—Purposes. The Washington public ports association is authorized to create a federation of Washington ports to enable member ports to strengthen their international trading capabilities and market the region's products worldwide. Such a federation shall maintain the authority of individual ports and have the following purposes:

(1) To operate as an export trading company under the provisions enumerated in chapter 53.31 RCW;

(2) To provide a network to market the services of the members of the Washington public ports association;

(3) To provide expertise and assistance to businesses interested in export markets;

(4) To promote cooperative efforts between ports and local associate development organizations to assist local economic development efforts and build local capacity; and

(5) To assist in the efficient marketing of the state's trade, tourism, and travel resources. [1994 c 75 § 2; 1989 c 425 § 2.]

Findings—1989 c 425: "The legislature finds: (1) That the continuous development of Washington's ports should be a long-term goal for the state of Washington; (2) that Washington's ports are a valuable economic development resource, whose strength as a combined, coordinated entity for the purpose of trade and tourism development would far exceed their individual strength's in those areas; and (3) that, therefore, the ports should work together as a federation, coordinating their efforts further still with other public entities as well as the private sector.

The legislature concurs with the 1989 report of the economic development board on a long-term economic development strategy for Washington state as follows: (a) Competition for tourism dollars, as well as dollars to purchase Washington's goods and services, is global in nature and to compete, the state must identify its unique market niches, and market its trade, travel, and tourism assets aggressively; (b) the ports of the state of Washington are an integral part of the technological and physical infrastructure needed to help the state compete in the international marketplace; and (c) links among public agencies, associate development organizations, including ports, universities, and industry-oriented organizations must be strengthened in an effort to improve coordination, prevent duplication, and build local capacity." [1989 c 425 § 1.]

Severability—1989 c 425: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 425 § 12.]

53.06.080 Implementation of economic development programs—Use of nonprofit corporations—Transfer of funds. Port districts are authorized to utilize the services of a nonprofit corporation for the purposes of providing training, education, and general improvement to the public sector management skills necessary to implement the economic

development programs of port districts. Actions taken under this section must be implemented pursuant to the powers granted in chapter 39.84 RCW. Any nonprofit corporation utilized pursuant to this section must be a tax exempt nonprofit corporation, may be a nonprofit corporation created by the Washington public ports association, and must be created for the sole purposes of education and training for port district officials and employees. Port districts are authorized to transfer to a qualified nonprofit corporation utilized pursuant to this section any funds received from an industrial development corporation created by a port district under RCW 39.84.130.

Nothing in this section shall be construed to prohibit the receipt of additional public or private funds by a nonprofit corporation established under this section. The coordination of these programs and the transfers and expenditures of funds shall be deemed to be for industrial development and trade promotion as provided for in Article VIII, section 8 of the Washington state Constitution. [2000 c 198 § 1.]

53.06.090 Nonprofit corporations—Legislative recognition. In carrying out the purposes described in this and other chapters of this title, the legislature recognizes that any nonprofit corporation created or re-created for the purposes of this chapter, is a private nonprofit corporation contracting to provide services to which port districts may subscribe. [2000 c 198 § 3.]

Chapter 53.08 RCW POWERS

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Acquisition of vacated waterways: RCW 79.93.060.

Actions by and against public corporations: RCW 4.08.110 and 4.08.120.

Airport zoning: Chapter 14.12 RCW.

Deferral of special assessments: Chapter 84.38 RCW.

Emergency public works: Chapter 39.28 RCW.

Heating systems authorized: RCW 35.97.020.

Industrial development revenue bonds: Chapter 39.84 RCW.

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

Municipal airports: Chapters 14.07 and 14.08 RCW.

Permits to use waterways within a port district: RCW 79.93.040.

Public contracts: Chapters 39.04 through 39.32 RCW.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

53.08.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Rural port district" means a port district formed under chapter 53.04 RCW and located in a county with an average population density of fewer than one hundred persons per square mile.

(3) "Telecommunications" has the same meaning as contained in RCW 80.04.010.

(4) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

(5) "Wholesale telecommunications services" means the provision of telecommunications services or facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers. [2000 c 81 § 6.]

Findings—2000 c 81: "The legislature makes the following findings:

(1) Access to telecommunications facilities and services is essential to the economic well-being of both rural and urban areas.

(2) Many persons and entities, particularly in rural areas, do not have adequate access to telecommunications facilities and services.

(3) Public utility districts and rural port districts may be well-positioned to construct and operate telecommunications facilities." [2000 c 81 § 1.]

53.08.010 Acquisition of property—Levy of assessments. A port district may acquire by purchase, for cash or on deferred payments for a period not exceeding twenty years, or by condemnation, or both, all lands, property, property rights, leases, or easements necessary for its purposes and may exercise the right of eminent domain in the acquisition or damaging of all such lands, property, and property rights, and may levy and collect assessments upon property for the payment of all damages and compensation in carrying out its purposes, and such right shall be exercised in the same manner and by the same procedure as provided for cities of the first class insofar as consistent with this title, and in connection therewith the county treasurer shall perform the duties of the treasurers of such cities. [1983 c 24 § 1; 1955 c 65 § 2. Prior: 1953 c 171 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

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

Eminent domain by cities: Chapter 8.12 RCW.

53.08.015 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

53.08.020 Acquisition and operation of facilities. A port district may construct, condemn, purchase, acquire, add to, maintain, conduct, and operate sea walls, jetties, piers, wharves, docks, boat landings, and other harbor improvements, warehouses, storehouses, elevators, grain-bins, cold storage plants, terminal icing plants, bunkers, oil tanks, ferries, canals, locks, tidal basins, bridges, subways, tramways, cableways, conveyors, administration buildings, fishing terminals, together with modern appliances and buildings for the economical handling, packaging, storing, and transporting of freight and handling of passenger traffic, rail and motor vehicle transfer and terminal facilities, water transfer

and terminal facilities, air transfer and terminal facilities, and any combination of such transfer and terminal facilities, commercial transportation, transfer, handling, storage and terminal facilities, and improvements relating to industrial and manufacturing activities within the district, and in connection with the operation of the facilities and improvements of the district, it may perform all customary services including the handling, weighing, measuring and reconditioning of all commodities received. A port district may also construct, condemn, purchase, acquire, add to and maintain facilities for the freezing or processing of goods, agricultural products, meats or perishable commodities. A port district may also construct, purchase and operate belt line railways, but shall not acquire the same by condemnation. [1963 c 147 § 3; 1961 c 126 § 1; 1955 c 65 § 3. Prior: 1953 c 171 § 2; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—1961 c 126: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 126 § 2.]

Essential rail assistance account, distribution of moneys to port districts: RCW 47.76.250.

53.08.030 Operation of foreign trade zones. A district may apply to the United States for permission to establish, operate, and maintain foreign trade zones within the district: PROVIDED, That nothing herein shall be construed to prevent such zones from being operated and financed by a private corporation(s) on behalf of such district acting as zone sponsor: PROVIDED FURTHER, That when the money so raised is to be used exclusively for the purpose of acquiring land for sites and constructing warehouses, storage plants, and other facilities to be constructed within the zone for use in the operation and maintenance of the zones, the district may contract indebtedness and issue general bonds therefor in an amount, in addition to the three-fourths of one percent hereinafter fixed, of one percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015, such additional indebtedness only to be incurred with the assent of three-fifths of the voters of the district voting thereon. [1977 ex.s. c 196 § 7; 1970 ex.s. c 42 § 31; 1955 c 65 § 4. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Effective date—1977 ex.s. c 196: See note following RCW 24.46.010.

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

Foreign trade zones: Chapter 24.46 RCW.

53.08.040 Improvement of lands for industrial and commercial purposes—Providing sewer and water utilities—Providing pollution control facilities. A district may improve its lands by dredging, filling, bulkheading, providing waterways or otherwise developing such lands for industrial and commercial purposes. A district may also acquire, construct, install, improve, and operate sewer and water utilities to serve its own property and other property owners under terms, conditions, and rates to be fixed and approved by the port commission. A district may also acquire, by pur-

chase, construction, lease, or in any other manner, and may maintain and operate other facilities for the control or elimination of air, water, or other pollution, including, but not limited to, facilities for the treatment and/or disposal of industrial wastes, and may make such facilities available to others under terms, conditions and rates to be fixed and approved by the port commission. Such conditions and rates shall be sufficient to reimburse the port for all costs, including reasonable amortization of capital outlays caused by or incidental to providing such other pollution control facilities: PROVIDED, That no part of such costs of providing any pollution control facility to others shall be paid out of any tax revenues of the port: AND PROVIDED FURTHER, That no port shall enter into an agreement or contract to provide sewer and/or water utilities or pollution control facilities if substantially similar utilities or facilities are available from another source (or sources) which is able and willing to provide such utilities or facilities on a reasonable and nondiscriminatory basis unless such other source (or sources) consents thereto.

In the event that a port elects to make such other pollution control facilities available to others, it shall do so by lease, lease purchase agreement, or other agreement binding such user to pay for the use of said facilities for the full term of the revenue bonds issued by the port for the acquisition of said facilities, and said payments shall at least fully reimburse the port for all principal and interest paid by it on said bonds and for all operating or other costs, if any, incurred by the port in connection with said facilities: PROVIDED, HOWEVER, That where there is more than one user of any such facilities, each user shall be responsible for its pro rata share of such costs and payment of principal and interest. Any port intending to provide pollution control facilities to others shall first survey the port district to ascertain the potential users of such facilities and the extent of their needs. The port shall conduct a public hearing upon the proposal and shall give each potential user an opportunity to participate in the use of such facilities upon equal terms and conditions. [1989 c 298 § 1; 1972 ex.s. c 54 § 1; 1967 c 131 § 1; 1955 c 65 § 5. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—1972 ex.s. c 54: "If any provision of this 1972 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this 1972 amendatory act are declared to be severable." [1972 ex.s. c 54 § 5.]

Assessments and charges against state lands: Chapter 79.44 RCW.

53.08.041 Pollution control facilities or other industrial development actions—Validation—Implementation of Article 8, section 8 of the Constitution. All actions heretofore taken by port districts in conformity with the provisions of this chapter, and the provisions of chapter 6, Laws of 1975 hereby made applicable thereto, relating to pollution control facilities or other industrial development, including, but not limited to, all bonds issued for such purposes, shall be deemed to have been taken pursuant to Article 8, section 8 of the Washington state Constitution and are hereby declared to be valid, legal and binding in all respects. All provisions of Title 53 RCW directly or indirectly relating to pollution con-

trol facilities or other industrial development are hereby found and declared to be legislation implementing the provisions of Article 8, section 8 of the Washington state Constitution. [1975 c 6 § 5.]

Severability—1975 c 6: See RCW 70.95A.940.

Construction—1975 c 6: See RCW 70.95A.912.

53.08.043 Powers relative to systems of sewerage. A port district may exercise all the powers relating to systems of sewerage authorized by RCW 35.67.010 and 35.67.020 for cities and towns. [1997 c 447 § 15.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

53.08.045 Facilities constructed under authority of chapter subject to taxation of leasehold interest. Facilities constructed by a port district under authority of this chapter will be subject to taxation of leasehold interest pursuant to applicable laws as now or hereafter enacted. [1972 ex.s. c 54 § 3.]

Severability—1972 ex.s. c 54: See note following RCW 53.08.040.

53.08.047 Chapter not to be construed as restricting or limiting powers of district under other laws. Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which a district might otherwise have under any laws of this state, but shall be construed as cumulative. [1972 ex.s. c 54 § 4.]

Severability—1972 ex.s. c 54: See note following RCW 53.08.040.

53.08.049 Community revitalization financing—Public improvements. In addition to other authority that a port district possesses, a port district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a port district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 18.]

Severability—2001 c 212: See RCW 39.89.902.

53.08.050 Local improvement districts—Assessments—Bonds. (1) A district may establish local improvement districts within the district, and levy special assessments, in annual installments extending over a period not exceeding ten years on all property specially benefited by the local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of the local improvement, and issue local improvement bonds to be paid from local improvement assessments. The levy and collection of such assessments and issuance of such bonds shall be as provided for the levy and collection of local improvement assessments and the issuance of local improvement bonds by cities and towns, insofar as consistent with this title: PROVIDED, That the duties of the treasurers of such cities and towns in connection therewith shall be performed by the county treasurer. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter

39.46 RCW. [1983 c 167 § 132; 1955 c 65 § 6. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Assessments and charges against state lands: Chapter 79.44 RCW.

Cities

issuance of local improvement bonds: Chapter 35.45 RCW.

levy and collection of local improvement assessments: Chapters 35.44, 35.49 RCW.

Local improvements, supplemental authority: Chapter 35.51 RCW.

Public lands subject to local assessments: RCW 79.44.010.

53.08.055 Local improvement districts—Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 8.]

53.08.060 Improvement of waters and waterways. A district may improve navigable and nonnavigable waters of the United States and the state of Washington within the district; create and improve for harbor purposes new waterways within the district; and regulate and control all such waters and all natural or artificial waterways within the district and remove obstructions therefrom, and straighten, widen, deepen, and otherwise improve any water, watercourses, bays, lakes or streams, whether navigable or otherwise, flowing through or located within the district. [1979 ex.s. c 30 § 8; 1955 c 65 § 7. Prior: 1943 c 171 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

53.08.070 Rates and charges—Government contracts. A district may fix, without right of appeal therefrom the rates of wharfage, dockage, warehousing, and port and terminal charges upon all improvements owned and operated by it, and the charges of ferries operated by it.

It may fix, subject to state regulation, rates of wharfage, dockage, warehousing, and all necessary port and terminal charges upon all docks, wharves, warehouses, quays, and piers owned by it and operated under lease from it.

Notwithstanding any provision of this section, a port district may enter into any contract for wharfage, dockage, warehousing, or port or terminal charges, with the United States or any governmental agency thereof or with the state of Washington or any political subdivision thereof under such terms as the commission may, in its discretion, negotiate. [1995 c 146 § 1; 1955 c 65 § 8. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Utilities and transportation commission: Chapter 80.01 RCW.

53.08.080 Lease of property—Authorized—Duration. A district may lease all lands, wharves, docks and real and personal property owned and controlled by it, for such

purposes and upon such terms as the port commission deems proper: PROVIDED, That no lease shall be for a period longer than fifty years with option for extensions for up to an additional thirty years, except where the property involved is or is to be devoted to airport purposes the port commission may lease said property for such period as may equal the estimated useful life of such work or facilities, but not to exceed seventy-five years: PROVIDED FURTHER, That where the property is held by the district under lease from the United States government or the state of Washington, or any agency or department thereof, the port commission may sublease said property, with option for extensions, up to the total term and extensions thereof permitted by such lease, but in any event not to exceed ninety years. [1989 c 298 § 2; 1983 c 64 § 1; 1973 c 87 § 1; 1961 ex.s. c 8 § 1; 1959 c 157 § 1; 1955 c 65 § 9. Prior: 1953 c 243 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Lease of

county property for airport purposes: RCW 36.34.180.

municipal property for airport purposes: RCW 14.08.120.

Restrictions on leases of harbor areas: State Constitution Art. 15 § 2.

53.08.085 Lease of property—Security for rent. Every lease of all lands, wharves, docks, and real and personal property of a port district for a term of more than one year shall have the rent secured by rental insurance, bond, or other security satisfactory to the port commission, in an amount equal to one-sixth the total rent, but in no case shall such security be less than an amount equal to one year's rent or more than an amount equal to three years' rent. Evidence of the existence of such insurance, bonds, or security shall be on file with the commission at all times during the term of the lease: PROVIDED, That nothing in this section shall prevent the port commission from requiring additional security on leases or provisions thereof, or on other agreements to use port facilities: PROVIDED FURTHER, That any security agreement may provide for termination on the anniversary date of such agreement on not less than one year's written notice to the port if said lease is not in default at the time of said notice: PROVIDED FURTHER, That if the security as required herein is not maintained throughout the full term of the lease, said lease shall be considered in default: PROVIDED, HOWEVER, That the port commission may in its discretion waive the rent security requirement or lower the amount of such requirement on the lease of real and/or personal port property. [1981 c 125 § 1; 1977 c 41 § 1; 1973 c 87 § 2.]

53.08.090 Sale of property. (1) A port commission may, by resolution, authorize the managing official of a port district to sell and convey port district property of ten thousand dollars or less in value. The authority shall be in force for not more than one calendar year from the date of resolution and may be renewed from year to year. Prior to any such sale or conveyance the managing official shall itemize and list the property to be sold and make written certification to the commission that the listed property is no longer needed for district purposes. Any large block of the property having a value in excess of ten thousand dollars shall not be broken down into components of ten thousand dollars or less value

and sold in the smaller components unless the smaller components be sold by public competitive bid. A port district may sell and convey any of its real or personal property valued at more than ten thousand dollars when the port commission has, by resolution, declared the property to be no longer needed for district purposes, but no property which is a part of the comprehensive plan of improvement or modification thereof shall be disposed of until the comprehensive plan has been modified to find the property surplus to port needs. The comprehensive plan shall be modified only after public notice and hearing provided by RCW 53.20.010.

Nothing in this section shall be deemed to repeal or modify procedures for property sales within industrial development districts as set forth in chapter 53.25 RCW.

(2) The ten thousand dollar figures in subsection (1) of this section shall be adjusted annually based upon the governmental price index established by the department of revenue under RCW 82.14.200. [1994 c 26 § 1; 1981 c 262 § 1; 1969 ex.s. c 30 § 1; 1965 c 23 § 1; 1955 c 65 § 10. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Restriction on sale of harbor rights and property: State Constitution Art. 15 § 1 (Amendment 15).

53.08.091 Sale of property—Contract sales—Terms and conditions. Except in cases where the full purchase price is paid at the time of the purchase, every sale of real property or personal property under authority of RCW 53.08.090 or 53.25.110 shall be subject to the following terms and conditions:

(1) The purchaser shall enter into a contract with the district in which the purchaser shall covenant that he will make the payments of principal and interest when due, and that he will pay all taxes and assessments on such property. Upon failure to make payments of principal, interest, assessments or taxes when due all rights of the purchaser under said contract may, at the election of the district, after notice to said purchaser, be declared to be forfeited. When the rights of the purchaser are declared forfeited, the district shall be released from all obligation to convey land covered by the contract, and in the case of personal property, the district shall have all rights granted to a secured party under *chapter 62A.9 RCW;

(2) The district may, as it deems advisable, extend the time for payment of principal and interest due or to become due;

(3) The district shall notify the purchaser in each instance when payment is overdue, and that the purchaser is liable to forfeiture if payment is not made within thirty days from the time the same became due, unless the time be extended by the district;

(4) Not less than four percent of the total purchase price shall be paid on the date of execution of the contract for sale and not less than four percent shall be paid annually thereafter until the full purchase price has been paid, but any purchaser may make full payment at any time. All unpaid deferred payments shall draw interest at a rate not less than six percent per annum.

Nothing in this section shall be deemed to supersede other provisions of law more specifically governing sales of port district property. It is the purpose of this section to pro-

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vide additional authority and procedures for sale of port district property no longer needed for port purposes. [1982 c 75 § 1; 1969 ex.s. c 11 § 1; 1965 c 23 § 2.]

***Reviser's note:** Chapter 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see chapter 62A.9A RCW.

53.08.092 Sale of property—Taxes and assessments against property sold by contract. A copy of all contract sales of port district property shall be filed with the county assessor within thirty days after the first payment is received by the port. The assessor shall place such property on the tax rolls of the county and the purchaser of such property shall become liable for all levies and assessments against such property. The port shall not be liable for any taxes or assessments, but if any outstanding taxes are not paid the property may be sold by the county as with other property with delinquent taxes due. Any amounts accruing from such a sale by the county, not required to pay outstanding and delinquent taxes or assessments and foreclosure costs, shall be paid to the port district. [1965 c 23 § 3.]

53.08.110 Gifts—Improvement. Port commissioners of any port district are hereby authorized to accept for and on behalf of said port district gifts of real and personal property and to expend in improvements and betterment such amount as may be necessary. [1921 c 39 § 4; RRS § 9705.]

53.08.120 Contracts for labor and material—Small works roster. All material required by a port district may be procured in the open market or by contract and all work ordered may be done by contract or day labor. All such contracts for work, the estimated cost of which exceeds two hundred thousand dollars, shall be let at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for sealed bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

However, a port district may let contracts using the small works roster process under RCW 39.04.155 in lieu of calling for sealed bids. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster. [2000 c 138 § 210; 1999 c 29 § 1; 1998 c 278 § 6; 1993 c 198 § 13; 1988 c 235 § 1; 1982 c 92 § 1; 1975 1st ex.s. c 47 § 1; 1955 c 348 § 2. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Severability—1955 c 348: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1955 c 348 § 7.]

53.08.130 Notice—Award of contract—Low bidder claiming error. The notice shall state generally the nature of the work to be done and require that bids be sealed and filed with the commission at a time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, money order, or surety bid bond to the commission for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named the bids shall be publicly opened and read and the commission shall proceed to canvass the bids and, except as otherwise in this section provided, shall let the contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all such bid proposal deposits shall be returned to the bidders; but if the contract is let, then all bid proposal deposits shall be returned to the bidders, except that of the successful bidder which shall be retained until a contract is entered into for the purchase of such materials or doing such work, and a bond given to the port district for the performance of the contract and otherwise conditioned as required by law, with sureties satisfactory to the commission, in an amount to be fixed by the commission, but not in any event less than twenty-five percent of the contract price. If the bidder fails to enter into the contract in accordance with his or her bid and furnish such bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or money order and the amount thereof shall be forfeited to the port district or the port district shall recover the amount of the surety bid bond. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. [1996 c 18 § 11; 1971 ex.s. c 258 § 2; 1955 c 348 § 3. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Severability—1971 ex.s. c 258: See note following RCW 28B.10.350.

Severability—1955 c 348: See note following RCW 53.08.120.

Contractor's bond: Chapter 39.08 RCW.

Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.

53.08.135 Construction projects over forty thousand dollars—Contracting out. Port districts shall determine if any construction project over forty thousand dollars can be accomplished less expensively by contracting out. If contracting out is less expensive, the port district may contract out such project. [1982 c 92 § 2.]

53.08.140 Leases or contracts without bond. Port districts may enter into leases and contracts of every kind and nature with the United States of America or any of its departments, the state of Washington or any of its departments, or

its political subdivisions or with any municipal corporation or quasi municipal corporation of the state of Washington, without requiring said port district or public bodies to provide bonds to secure the performance thereof. All such leases or contracts heretofore entered into are hereby ratified. [1943 c 136 § 1; Rem. Supp. 1943 § 9710.]

53.08.145 Insurance—Determination of risks, hazards, liabilities—Acquisition of appropriate insurance. (Expires December 31, 2006.) Each port district shall determine risks, hazards, and liabilities associated with facilities and projects authorized under this chapter in order to obtain insurance consistent with these determinations. This insurance may include any types of insurance covering, and for the benefit of, one or more parties with whom the port district contracts for any purpose, and insurance for the benefit of its commissioners, commissions, and employees to insure against liability for acts or omissions while performing or in good faith purporting to perform their official duties. All insurance obtained for port district projects may be acquired by bid or by negotiation. In order to allow the port district flexibility to secure appropriate insurance by negotiation, the port district is exempt from RCW 48.30.270 for projects in excess of one hundred million dollars. [2000 c 143 § 1.]

Expiration date—2000 c 143: "This act expires December 31, 2006." [2000 c 143 § 3.]

53.08.150 Notices when no newspaper in county. Notices required in port districts in which no newspaper is published may be given by publication in any newspaper of general circulation in the county. [1921 c 39 § 3; RRS § 9704.]

53.08.160 Studies, investigations, surveys—Promotion of facilities. All port districts organized under the provisions of this act shall be, and they are hereby, authorized and empowered to initiate and carry on the necessary studies, investigations and surveys required for the proper development, improvement and utilization of all port properties, utilities and facilities, and for industrial development within the district when such agricultural and industrial development is carried out by a public agency, institution, or body for a public purpose, and to assemble and analyze the data thus obtained and to cooperate with the state of Washington, other port districts and other operators of terminal and transportation facilities for these purposes, and to make such expenditures as are necessary for said purposes, and for the proper promotion, advertising, improvement and development of such port properties, utilities and facilities: PROVIDED HOWEVER, That nothing in this section shall authorize a port district to develop its properties as an agricultural or dairy farm. [1973 1st ex.s. c 55 § 1; 1947 c 24 § 2; Rem. Supp. 1947 § 9692A.]

53.08.170 Employment—Wages—Benefits—Agents—Insurance for port district commissioners. The port commission shall have authority to create and fill positions, to fix wages, salaries and bonds thereof, to pay costs and assessments involved in securing or arranging to secure employees, and to establish such benefits for employees,

including holiday pay, vacations or vacation pay, retirement and pension benefits, medical, surgical or hospital care, life, accident, or health disability insurance, and similar benefits, already established by other employers of similar employees, as the port commissioner shall by resolution provide: PROVIDED, That any district providing insurance benefits for its employees in any manner whatsoever may provide health and accident insurance, life insurance with coverage not to exceed that provided district employees, and business related travel, liability, and errors and omissions insurance, for its commissioners, which insurance shall not be considered to be compensation.

Subject to chapter 48.62 RCW, the port commission shall have authority to provide or pay such benefits directly, or to provide for such benefits by the purchase of insurance policies or entering into contracts with and compensating any person, firm, agency or organization furnishing such benefits, or by making contributions to vacation plans or funds, or health and welfare plans and funds, or pension plans or funds, or similar plans or funds, already established by other employers of similar employees and in which the port district is permitted to participate for particular classifications of its employees by the trustees or other persons responsible for the administration of such established plans or funds: PROVIDED FURTHER, That no port district employee shall be allowed to apply for admission to or be accepted as a member of the state employees' retirement system after January 1, 1965, if admission to such system would result in coverage under both a private pension system and the state employees' retirement system, it being the purpose of this proviso that port districts shall not at the same time contribute for any employee to both a private pension or retirement plan and to the state employees' retirement system. The port commission shall have authority by resolution to utilize and compensate agents for the purpose of paying, in the name and by the check of such agent or agents or otherwise, wages, salaries and other benefits to employees, or particular classifications thereof, and for the purpose of withholding payroll taxes and paying over tax moneys so withheld to appropriate government agencies, on a combined basis with the wages, salaries, benefits, or taxes of other employers or otherwise; to enter into such contracts and arrangements with and to transfer by warrant such funds from time to time to any such agent or agents so appointed as are necessary to accomplish such salary, wage, benefit, or tax payments as though the port district were a private employer, notwithstanding any other provision of the law to the contrary. The funds of a port district transferred to such an agent or agents for the payment of wages or salaries of its employees in the name or by the check of such agent or agents shall be subject to garnishment with respect to salaries or wages so paid, notwithstanding any provision of the law relating to municipal corporations to the contrary.

Notwithstanding any provision in this section, the governing body of a port district may enter into an agreement in writing with one or more of its officers or employees or a group of such officers and employees, authorizing deductions from the officer's or employee's salary or wages of the amount of any premium specified in writing by the officer or employee, for contribution to any private pension plan, without loss of eligibility for membership in the state employees' retirement system, and may agree to remit that amount to the

management of such private pension plan. However, no port district funds shall be contributed or paid to such private plan. When such authorized deductions are certified by the port commission to the port district's auditor, the auditor shall draw and issue a proper warrant or warrants, or check or checks if that method of payment is authorized by statute, directly to and in favor of the person, firm, corporation, or organization named in the authorization, for the total amount authorized to be deducted from the payroll, together with a list identifying the officers and employees for whom the payment is made.

Nothing in this section may be invoked to invalidate any private pension plan or any public or private contributions or payments thereto, or exclude members of any such private pension plan from membership in the state employees' retirement system, if such private plan was in operation on December 31, 2001. [2002 c 362 § 1; 1991 sp.s. c 30 § 22; 1987 c 50 § 1; 1985 c 81 § 1; 1973 1st ex.s. c 6 § 1; 1965 c 20 § 1; 1955 c 64 § 1.]

Effective date, implementation, application—Severability—1991 sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Garnishment: Chapter 6.27 RCW.

Hospitalization and medical insurance authorized: RCW 41.04.180.

Hospitalization and medical insurance not deemed additional compensation: RCW 41.04.190.

Payroll deductions: RCW 41.04.020.

Prevailing wages on public works: Chapter 39.12 RCW.

53.08.171 Employment relations—Collective bargaining and arbitration. See chapter 53.18 RCW.

53.08.175 Commissioners, officers, and employees—Reimbursement of expenses. Employees, officers, and commissioners of port districts shall, when engaged in official business of the port district, be entitled to receive their necessary and reasonable travel and other business expenses incurred on behalf of the port district. Reimbursement of such expenses may be granted, whether incurred within or without the port district, when submitted on a voucher with appropriate evidence of payment by such employee or official. [1965 c 101 § 1.]

Section headings—1965 c 101: "Section headings as used in this act do not constitute any part of the law." [1965 c 101 § 3.]

53.08.176 Commissioners, officers, and employees—Regulation of expenses. Each port district shall adopt a resolution (which may be amended from time to time) which shall establish the basic rules and regulations governing methods and amount of reimbursement payable to such port officials and employees for travel and other business expenses incurred on behalf of the district. The resolution shall, among other things, establish procedures for approving such expenses; set forth the method of authorizing the direct purchase of transportation; the form of the voucher; and requirements governing the use of credit cards issued in the name of the port district. Such regulations may provide for payment of per diem in lieu of actual expenses when travel requires overnight lodging: PROVIDED, That in all cases any per diem payment shall not exceed twenty-five dollars per day. The state auditor shall, as provided by general law,

cooperate with the port district in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses. [1965 c 101 § 2.]

Section headings—1965 c 101: See note following RCW 53.08.175.

53.08.180 Federal old age and survivors' insurance for employees. As used in RCW 53.08.180 through 53.08.200, the term "employees" shall be as defined in RCW 41.48.020 and no distinction shall be made for the purposes of coverage under the social security act, between persons employed by a port district on a casual or temporary basis, or on a regular or steady basis, or between persons paid hourly wages and persons paid wages on a weekly, monthly, or other periodic basis. It being the intent of RCW 53.08.180 through 53.08.200 that all employees shall be entitled to the coverage of the federal social security act for work performed in the service of a port district, which is not covered by the state employees' retirement system. [1955 c 219 § 1.]

Public employees' retirement system: Chapter 41.40 RCW.

53.08.190 Federal old age and survivors' insurance for employees—Plan for extension of benefits. Each port district, which has not previously done so, shall within thirty days of June 8, 1955, submit for approval by the governor a plan for extending the benefits of Title II of the federal social security act, as amended, in conformity with applicable provisions of said act as set forth in chapter 41.48 RCW, to employees of such port district who are employed in positions not covered by the employees' retirement system of the state of Washington. The plan required to be submitted by this section shall be as set forth in RCW 41.48.050 and shall be in conformance therewith. [1955 c 219 § 2.]

53.08.200 Federal old age and survivors' insurance for employees—Contributions. All port districts are authorized to make contributions on employees' wages, and to impose upon their employees contributions with respect to their wages in accordance with RCW 41.48.030 through 41.48.050. [1955 c 219 § 3.]

53.08.205 Liability insurance for officials and employees. The board of commissioners of each port district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 4.]

53.08.207 Liability insurance for officers and employees authorized. See RCW 36.16.138.

53.08.208 Actions against officer, employee, or agent—Defense and costs provided by port district—Exception. Whenever any action, claim or proceeding is instituted against any person who is or was an officer, employee, or agent of a port district established under this title arising out of the performance or failure of performance of duties for, or employment with any such district, the commission of the district may grant a request by such person that

the attorney of the district's choosing be authorized to defend said claim, suit or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the district's funds: PROVIDED, That costs of defense and/or judgment or settlement against such person shall not be paid in any case where the court has found that such person was not acting in good faith or within the scope of his employment with or duties for the district. [1975 c 60 § 1.]

53.08.210 Quorum. See RCW 53.12.246.

53.08.220 Regulations authorized—Adoption as part of ordinance or resolution of city or county, procedure—Enforcement—Penalty for violation. (1) A port district may formulate all needful regulations for the use by tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, shippers, business visitors, and members of the general public of any properties or facilities owned or operated by it, and request the adoption, amendment, or repeal of such regulations as part of the ordinances of the city or town in which such properties or facilities are situated, or as part of the resolutions of the county, if such properties or facilities be situated outside any city or town. The port commission shall make such request by resolution after holding a public hearing on the proposed regulations, of which at least ten days' notice shall be published in a legal newspaper of general circulation in the port district. Such regulations must conform to and be consistent with federal and state law. As to properties or facilities situated within a city or town, such regulations must conform to and be consistent with the ordinances of the city or town. As to properties or facilities situated outside any city or town, such regulations must conform to and be consistent with county resolutions. Upon receiving such request, the governing body of the city, town, or county, as the case may be, may adopt such regulations as part of its ordinances or resolutions, or amend or repeal such regulations in accordance with the terms of the request.

(2)(a) Except as otherwise provided in this subsection, any violation of the regulations described in subsection (1) of this section is a misdemeanor which shall be redressed in the same manner as other police regulations of the city, town, or county, and it shall be the duty of all law enforcement officers to enforce such regulations accordingly.

(b) Except as provided in (c) of this subsection, violation of such a regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(c) Violation of such a regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 286; 1979 ex.s. c 136 § 103; 1961 c 38 § 1.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

53.08.230 Making motor vehicle and other police regulations applicable to district property—Filing plat with county auditor—Duty of law enforcement officers. A port district may at its option file with the county auditor a

plat of any of its properties or facilities, showing thereon such private streets, alleys, access roads, parking areas, parks and other places as the port district may wish to have treated as public for purposes of motor vehicle or other police regulations. Such plat may be amended at any time by the filing of an amendatory plat, and may be vacated at any time by the filing of a resolution of vacation. So long as any such plat or amendatory plat is on file and not vacated, the motor vehicle or other police regulations of the state, and the motor vehicle regulations of the city, town or county, as the case may be, in which the areas described in the plat are situated, shall apply to such areas as though they were public streets, alleys, access roads, parking areas, parks or other places, and it shall be the duty of all state and local law enforcement officers to enforce such regulations accordingly. [1961 c 38 § 2.]

53.08.240 Joint exercise of powers and joint acquisition of property—Contracts with other governmental entities. (1) Any two or more port districts shall have the power, by mutual agreement, to exercise jointly all powers granted to each individual district, and in the exercise of such powers shall have the right and power to acquire jointly all lands, property, property rights, leases, or easements necessary for their purposes, either entirely within or partly within or partly without or entirely without such districts: PROVIDED, That any two or more districts so acting jointly, by mutual agreement, shall not acquire any real property or real property rights in any other port district without the consent of such district.

(2) A district may enter into any contract with the United States, or any state, county, or municipal corporation, or any department of those entities, for carrying out any of the powers that each of the contracting parties may by law exercise separately.

(3)(a) A port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, may enter into any contract that each of the contracting parties may by law exercise separately with, including but not limited to, municipal corporations of adjoining states.

(b) In addition to other powers granted by statute, a port district that is located in a county that has a contiguous border with another state, and a population between fifty and seventy thousand, may enter into agreements with the United States or any of its agencies, or with any state, or with any municipal corporation of this state or of an adjoining state, for exercising jointly or cooperatively within or outside the district, in whole or in part, any of the powers that each of the contracting parties may by law exercise separately, for the promotion or development of trade or industry. Such powers may be exercised outside the boundaries of this state only after a public hearing of which notice has been published in a newspaper of general circulation within the district at least ten days in advance, and pursuant to findings and a resolution by the port district's commission that: (i) The undertaking and the district's participation in it will substantially benefit the district and the state of Washington; and (ii) the districts' share of the cost will not exceed an amount calculated by dividing the total cost of the undertaking by the number of participants. [1999 c 306 § 3; 1961 c 24 § 1.]

(2004 Ed.)

Purpose—1999 c 306: See note following RCW 53.04.010.

53.08.245 Economic development programs authorized. It shall be in the public purpose for all port districts to engage in economic development programs. In addition, port districts may contract with nonprofit corporations in furtherance of this and other acts relating to economic development. [1985 c 125 § 1.]

53.08.250 Participation in world fairs or expositions authorized. See chapter 35.60 RCW.

53.08.255 Tourism promotion authorized. Any port district in this state, acting through its commission, has power to expend moneys and conduct promotion of resources and facilities in the district or general area by advertising, publicizing, or otherwise distributing information to attract visitors and encourage tourist expansion. [1984 c 122 § 10.]

53.08.260 Park and recreation facilities. A port district may construct, improve, maintain, and operate public park and recreation facilities when such facilities are necessary to more fully utilize boat landings, harbors, wharves and piers, air, land, and water passenger and transfer terminals, waterways, and other port facilities authorized by law pursuant to the port's comprehensive plan of harbor improvements and industrial development. [1965 c 81 § 1.]

Harbor improvement plan: RCW 53.20.010.

53.08.270 Park and recreation facilities—Approval of other agencies. Before undertaking any such plan for the acquisition and operation of any park or recreational facility the proposed plan therefor shall be first submitted in writing to the director of the parks and recreation commission and to the governing body of any county or municipal park agency having jurisdiction in the area. The state director and/or such county or municipal park agency shall examine the port's proposed plan, and may disapprove such proposed plan if it is found to be in conflict with state or local park and recreation plans for the same area. If such proposed port plan is disapproved the port district shall not proceed further with such plan. If the state director or the governing body of the county or municipal agency does not respond in writing to the port within sixty days, it shall be deemed that approval has been granted. [1965 c 81 § 2.]

53.08.280 Police officers—Appointment authorized—Jurisdiction. Any port district operating an airport with a police department as authorized by RCW 14.08.120 or designated as a port of entry by the federal government is authorized to appoint police officers with full police powers to enforce all applicable federal, state, or municipal statutes, rules, regulations, or ordinances upon any port-owned or operated properties or operations: PROVIDED, That such police officers must have successfully graduated from a recognized professional police academy or training institution. [1981 c 97 § 1; 1974 ex.s. c 62 § 1.]

53.08.290 Intermodal movement of interstate and foreign cargo—Restrictions. In addition to the other pow-

ers under this chapter, a port district, in connection with the operation of facilities and improvements of the district, may perform all necessary activities related to the intermodal movement of interstate and foreign cargo: PROVIDED, That nothing contained herein shall authorize a port district to engage in the transportation of commodities by motor vehicle for compensation outside the boundaries of the port district. A port district may, by itself or in conjunction with public or private entities, acquire, construct, purchase, lease, contract for, provide, and operate rail services, equipment, and facilities inside or outside the port district: PROVIDED, That such authority may only be exercised outside the boundaries of the port district if such extraterritorial rail services, equipment, or facilities are found, by resolution of the commission of the port district exercising such authority, to be reasonably necessary to link the rail services, equipment, and facilities within the port district to an interstate railroad system; however, if such extraterritorial rail services, equipment, or facilities are in or are to be located in one or more other port districts, the commission of such other port district or districts must consent by resolution to the proposed plan of the originating port district which consent shall not be unreasonably withheld: PROVIDED FURTHER, That no port district shall engage in the manufacture of rail cars for use off port property. [1981 c 47 § 1; 1980 c 110 § 2.]

Purpose—1980 c 110: "The purpose of this act is to:

(1) Clarify existing law as to the authority of port districts to perform certain cargo movement activities and to contract for or otherwise provide facilities for rail service for the movement of such cargo; and

(2) Provide authority for port districts to assist in development of the recreation-tourism industry by acquiring and operating certain watercraft in limited areas." [1980 c 110 § 1.]

53.08.295 Passenger carrying watercraft. A port district may acquire, lease, construct, purchase, maintain, and operate passenger carrying vessels on interstate navigable rivers of the state and intrastate waters of adjoining states. Service provided shall be under terms, conditions, and rates to be fixed and approved by the port commission. Operation of such vessels shall be subject to applicable state and federal laws pertaining to such service. [1980 c 110 § 3.]

Purpose—1980 c 110: See note following RCW 53.08.290.

53.08.300 Rewards for arrest and conviction of persons committing criminal offenses against port district authorized. See RCW 10.85.030.

53.08.310 Moorage facilities—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 53.08.320.

(1) "Port charges" mean charges of a moorage facility operator for moorage and storage, and all other charges owing or to become owing under a contract between a vessel owner and the moorage facility operator, or under an officially adopted tariff including, but not limited to, costs of sale and related legal expenses.

(2) "Vessel" means every species of watercraft or other artificial contrivance capable of being used as a means of transportation on water and which does not exceed two hundred feet in length. "Vessel" includes any trailer used for the transportation of watercraft.

(3) "Moorage facility" means any properties or facilities owned or operated by a moorage facility operator which are capable of use for the moorage or storage of vessels.

(4) "Moorage facility operator" means any port district, city, town, metropolitan park district, or county which owns and/or operates a moorage facility.

(5) "Owner" means every natural person, firm, partnership, corporation, association, or organization, or agent thereof, with actual or apparent authority, who expressly or impliedly contracts for use of a moorage facility.

(6) "Transient vessel" means a vessel using a moorage facility and which belongs to an owner who does not have a moorage agreement with the moorage facility operator. Transient vessels include, but are not limited to: Vessels seeking a harbor of refuge, day use, or overnight use of a moorage facility on a space-as-available basis. [1986 c 260 § 1; 1983 c 188 § 1.]

Construction—Savings—1983 c 188: "Nothing contained in RCW 53.08.310 and 53.08.320 may be construed as a limitation of any rights, privileges, or remedies previously existing under any applicable laws of port districts, cities, towns, metropolitan park districts, or counties." [1983 c 188 § 3.]

Severability—1983 c 188: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 188 § 5.]

53.08.320 Moorage facilities—Rules authorized—Port charges, delinquency—Abandoned vessels, public sale. A moorage facility operator may adopt all rules necessary for rental and use of moorage facilities and for the expeditious collection of port charges. The rules may also establish procedures for the enforcement of these rules by port district, city, county, metropolitan park district or town personnel. The rules shall include the following:

(1) Procedures authorizing moorage facility personnel to take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the moorage facility so that the vessels are in the possession and control of the moorage facility operator and cannot be removed from the moorage facility. These procedures may be used if an owner mooring or storing a vessel at the moorage facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay the port charges owed or to commence legal proceedings. Notification shall be by registered mail to the owner at his or her last known address. In the case of a transient vessel, or where no address was furnished by the owner, the moorage facility operator need not give such notice prior to securing the vessel. At the time of securing the vessel, an authorized moorage facility employee shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached;

(b) A statement that if the account is not paid in full within ninety days from the time the notice is attached, the vessel may be sold at public auction to satisfy the port charges; and

(c) The address and telephone number where additional information may be obtained concerning release of the vessel.

After a vessel is secured, the operator shall make a reasonable effort to notify the owner by registered mail in order to give the owner the information contained in the notice.

(2) Procedures authorizing moorage facility personnel at their discretion to move moored vessels ashore for storage within properties under the operator's control or for storage with private persons under their control as bailees of the moorage facility, if the vessel is, in the opinion of port personnel a nuisance, if the vessel is in danger of sinking or creating other damage, or is owing port charges. Costs of any such procedure shall be paid by the vessel's owner. If the owner is not known, or unable to reimburse the moorage facility operator for the costs of these procedures, the mooring facility operators may seek reimbursement of seventy-five percent of all reasonable and auditable costs from the derelict vessel removal account established in RCW 79.100.100.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the moorage facility operator for port charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the moorage facility operator for the immediate removal of the vessel from the moorage facility or for authorized moorage; and

(b) Making payment to the moorage facility operator of all port charges, or by posting with the moorage facility operator a sufficient cash bond or other acceptable security, to be held in trust by the moorage facility operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the moorage facility operator shall receive so much of the bond or other security as is agreed, or as is necessary to satisfy any judgment, costs, and interest as may be awarded to the moorage facility operator. The balance shall be refunded immediately to the owner at his or her last known address.

(4) If a vessel has been secured by the moorage facility operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this section, the vessel shall be conclusively presumed to have been abandoned by the owner.

(5) If a vessel moored or stored at a moorage facility is abandoned, the moorage facility operator may, by resolution of its legislative authority, authorize the public sale of the vessel by authorized personnel to the highest and best bidder for cash as prescribed by this subsection (5). Either a minimum bid may be established or a letter of credit may be required, or both, to discourage the future reabandonment of the vessel.

(a) Before the vessel is sold, the owner of the vessel shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of port charges owed with respect to the vessel. The notice of sale shall be published at

least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the moorage facility is located. Such notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The moorage facility operator may bid all or part of its port charges at the sale and may become a purchaser at the sale.

(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of the port charges owing. Such lawsuit must be commenced within ten days of the date the notification was provided pursuant to subsection (1) of this section, or the right to a hearing shall be deemed waived and the owner shall be liable for any port charges owing the moorage facility operator. In the event of litigation, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall first be applied to the payment of port charges. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the moorage facility operator within one year of the date of the sale, the excess funds from the sale shall revert to the derelict vessel removal account established in RCW 79.100.100. If the sale is for a sum less than the applicable port charges, the moorage facility operator is entitled to assert a claim for a deficiency.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the moorage facility operator.

(6) The rules authorized under this section shall be enforceable only if the moorage facility has had its tariff containing such rules conspicuously posted at its moorage facility at all times. [2002 c 286 § 23; 1986 c 260 § 2; 1985 c 7 § 124; 1983 c 188 § 2.]

Severability—Effective date—2002 c 286: See RCW 79.100.900 and 79.100.901.

Severability—Construction—Savings—1983 c 188: See notes following RCW 53.08.310.

53.08.330 Streets, roads, and highways—Construction, upgrading, improvement, and repair authorized.

Any port district in this state, acting through its commission, may expend port funds toward construction, upgrading, improvement, or repair of any street, road, or highway that serves port facilities. [1990 c 5 § 1.]

53.08.340 Streets, roads, and highways—Expenditure of funds.

The funds authorized by RCW 53.08.330 may be expended by the port commission in conjunction with any plan of improvements undertaken by the state of Washington, an adjoining state, or a county or municipal government of either, in combination with any of said public entities, and without regard to whether expenditures are made for a road located within the state of Washington or an adjoining state. [1990 c 5 § 2.]

53.08.350 Moratorium on runway construction or extension, or initiation of new service—Certain counties affected. No city, county, or county-wide port district in a county in the western part of Washington state as divided by the summit of the Cascade mountain range, with a population of one hundred fifty thousand or more on January 1, 1992, and contiguous to a county with a population of four hundred thousand or more may construct a runway of one thousand feet or more, or cause a runway to be extended, or permit an air carrier to initiate new service at any airport not presently receiving commercial service that is affected by this section, before the air transportation commission has submitted its final report to the legislative transportation committee, which shall occur no later than December 1, 1994. [1992 c 190 § 2.]

53.08.360 Annexation of port district property—Transfer of employees engaged in fire fighting. (1) When a port district provides its own fire protection services with port district employees, and port district property is included as part of an annexation, incorporation, consolidation, or merger by a city, town, or fire protection district, and fire protection services for this port district property will be furnished by the city, town, or fire protection district, an eligible employee may transfer employment to the city, town, or fire protection district in the same manner and under the same conditions that a fire fighter may transfer employment into a fire protection district pursuant to RCW 52.04.111, 52.04.121, and 52.04.131.

(2) "Eligible employee" means an employee of the port district who (a) was at the time of the annexation, merger, consolidation, or incorporation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire department of the city, town, or fire protection district, (b) will, as a direct consequence of the annexation, merger, consolidation, or incorporation, be separated from the employ of the port district, and (c) can perform the duties and meet the minimum requirements of the position to be filled. [1994 c 74 § 2.]

Intent—1994 c 74: "The legislature recognizes that it passed comprehensive legislation in 1986 to provide protection to fire fighters who risk losing their jobs as a result of an annexation, incorporation, merger, or consolidation by a city, town, or fire protection district. The legislation did not, however, grant these same protections to fire fighters who are employed by port districts. It is the intent of the legislature that fire fighters who are employed by port districts should have the same transfer rights as other local government fire fighters in the event of an annexation, consolidation, merger, or incorporation by a city, town, or fire protection district." [1994 c 74 § 1.]

53.08.370 Telecommunications facilities—Construct, purchase, acquire, etc.—Purposes—Limitations—Eminent domain. (1) A rural port district in existence on June 8, 2000, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(a) For the district's own use; and

(b) For the provision of wholesale telecommunications services within the district's limits. Nothing in this subsection shall be construed to authorize rural port districts to provide telecommunications services to end users.

(2) A rural port district providing wholesale telecommunications services under this section shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a rural port district offering such rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) When a rural port district establishes a separate utility function for the provision of wholesale telecommunications services, it shall account for any and all revenues and expenditures related to its wholesale telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations. Any revenues received from the provision of wholesale telecommunications services must be dedicated to the utility function that includes the provision of wholesale telecommunications services for costs incurred to build and maintain the telecommunications facilities until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance the telecommunications facilities are discharged or retired.

(4) When a rural port district establishes a separate utility function for the provision of wholesale telecommunications services, all telecommunications services rendered by the separate function to the district for the district's internal telecommunications needs shall be charged at its true and full value. A rural port district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services.

(5) A rural port district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(6) Except as otherwise specifically provided, a rural port district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws of 2000 limits any existing authority of a rural port district under this title. [2000 c 81 § 7.]

Findings—2000 c 81: See note following RCW 53.08.005.

53.08.380 Wholesale telecommunications services—Petition for review of rates, terms, conditions. (1) A person or entity that has requested wholesale telecommunications services from a rural port district may petition the commission under the procedures set forth in RCW 80.04.110 (1) through (3) if it believes the district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential. The person or entity shall provide the district notice of its intent to petition the commission and an opportunity to review within thirty days the rates, terms, and conditions as applied to it prior to submitting its petition. In determining whether a district is providing discriminatory or preferential rates, terms, and conditions, the commission may consider such matters as service quality, technical feasibility of connection points on the district's telecommunications facilities, time of response to service requests, system capacity, and

other matters reasonably related to the provision of wholesale telecommunications services. If the commission, after notice and hearing, determines that a rural port district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential, it shall issue a final order finding noncompliance with this section and setting forth the specific areas of apparent noncompliance. An order imposed under this section shall be enforceable in any court of competent jurisdiction.

(2) The commission may order a rural port district to pay a share of the costs incurred by the commission in adjudicating or enforcing this section.

(3) Without limiting other remedies at law or equity, the commission and prevailing party may also seek injunctive relief to compel compliance with an order.

(4) Nothing in this section shall be construed to affect the commission's authority and jurisdiction with respect to actions, proceedings, or orders permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56). [2000 c 81 § 9.]

Findings—2000 c 81: See note following RCW 53.08.005.

53.08.390 Grays Harbor pilotage district—Conditions on pilotage service. A countywide port district located in part or in whole within the Grays Harbor pilotage district, as defined by RCW 88.16.050(2), may commence pilotage service with the following powers and subject to the conditions contained in this section.

(1) Persons employed to perform the pilotage service of a port district must be licensed under chapter 88.16 RCW to provide pilotage.

(2) Before establishing pilotage service, a port district shall give at least sixty days' written notice to the chairman of the board of pilotage commissioners to provide pilotage.

(3) A port district providing pilotage service under this section requiring additional pilots may petition the board of pilotage commissioners to qualify and license as a pilot a person who has passed the examination and is on the waiting list for the training program for the district. If there are no persons on the waiting list, the board shall solicit applicants and offer the examination.

(4) In addition to the power to employ or contract with pilots, a port district providing pilotage services under this section has such other powers as are reasonably necessary to accomplish the purpose of this section including, but not limited to, providing through ownership or contract pilots launches, dispatcher services, or ancillary tug services required for operations or safety.

(5) A port district providing pilotage services under this section may recommend to the board of pilotage commissioners rules of service, rates, and tariffs governing its pilotage services for consideration and adoption pursuant to RCW 88.16.035. The rules, rates, and tariffs recommended by the port district must have been approved in open meetings of the port district ten or more days after published notice in a newspaper of general circulation and after mailing a copy of the notice to the chairman of the board of pilotage commissioners.

(6) A pilot providing pilotage services under this section must comply with all requirements of the pilotage act, chapter 88.16 RCW, and all rules adopted thereunder. [2001 2nd sp.s. c 22 § 1.]

ter 88.16 RCW, and all rules adopted thereunder. [2001 2nd sp.s. c 22 § 1.]

Construction—2001 2nd sp.s. c 22: "Nothing in this act is intended to amend chapter 88.16 RCW." [2001 2nd sp.s. c 22 § 3.]

Effective date—2001 2nd sp.s. c 22: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 13, 2001]." [2001 2nd sp.s. c 22 § 4.]

53.08.400 District may exercise powers of community renewal agency. A port district may enter into a contract with any city, town, or county for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW. [2002 c 218 § 27.]

Severability—Savings—Construction—2002 c 218: See notes following RCW 35.81.005.

53.08.410 Abandoned or derelict vessels. A port district has the authority, subject to the processes and limitation outlined in chapter 79.100 RCW, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above publicly or privately owned aquatic lands within the jurisdiction of the port district. [2002 c 286 § 18.]

Severability—Effective date—2002 c 286: See RCW 79.100.900 and 79.100.901.

53.08.420 Cooperative watershed management. In addition to the authority provided in this chapter, a port district may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 16.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

53.08.430 Provision of consulting services—Limitations. (Expires July 1, 2008.) A port district may provide advisory consulting services for compensation on matters within the scope of this title or Title 14 RCW. A port district may provide these services only to other public agencies and governments, including foreign governments and government-sponsored organizations. A port district providing consulting services must create and maintain an open roster of Washington firms interested in bidding on opportunities generated as a result.

By enacting this legislation, the legislature intends to enhance the ability of Washington port districts to facilitate economic opportunities for the benefit of Washington businesses. Nothing in this section is intended to authorize direct competition by port districts with private business. [2004 c 78 § 1.]

Expiration date—2004 c 78: "This act expires July 1, 2008." [2004 c 78 § 2.]

Chapter 53.12 RCW COMMISSIONERS—ELECTIONS

Sections

53.12.005 Definition—"Gross operating revenue."

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- 53.12.260 Compensation.
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Elections: Title 29A RCW.

Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on, request for review of, certification, remand—Sanctions when review request frivolous: RCW 29A.76.010.

53.12.005 Definition—"Gross operating revenue."

For purposes of this chapter, "gross operating revenue" means the total of all revenues received by a port district. [1992 c 147 § 5.]

Severability—1992 c 147: See note following RCW 53.04.020.

53.12.010 Port commission—Number of commissioners, districts. (1) The powers of the port district shall be exercised through a port commission consisting of three or, when permitted by this title, five members. Every port district that is not coextensive with a county having a population of five hundred thousand or more shall be divided into the same number of commissioner districts as there are commissioner positions, each having approximately equal population, unless provided otherwise under subsection (2) of this section. Where a port district with three commissioner positions is coextensive with the boundaries of a county that has a population of less than five hundred thousand and the county has three county legislative authority districts, the port commissioner districts shall be the county legislative authority districts. In other instances where a port district is divided into commissioner districts, the port commission shall divide the port district into commissioner districts unless the commissioner districts have been described pursuant to RCW 53.04.031. The commissioner districts shall be altered as provided in chapter 53.16 RCW.

Commissioner districts shall be used as follows: (a) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district; and (b) only the voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire port district may vote at a general election to elect a person as a commissioner of the commissioner district.

(2)(a) In port districts with five commissioners, two of the commissioner districts may include the entire port district if approved by the voters of the district either at the time of formation or at a subsequent port district election at which the

issue is proposed pursuant to a resolution adopted by the board of commissioners and delivered to the county auditor.

(b) In a port district with five commissioners, where two of the commissioner districts include the entire port district, the port district may be divided into five commissioner districts if proposed pursuant to a resolution adopted by the board of commissioners or pursuant to a petition by the voters and approved by the voters of the district at the next general or special election occurring sixty or more days after the adoption of the resolution. A petition proposing such an increase must be submitted to the county auditor of the county in which the port district is located and signed by voters of the port district at least equal in number to ten percent of the number of voters in the port district who voted at the last general election.

Upon approval by the voters, the commissioner district boundaries shall be redrawn into five districts within one hundred twenty days and submitted to the county auditor pursuant to RCW 53.16.015. The new commissioner districts shall be numbered one through five and the three incumbent commissioners representing the three former districts shall represent commissioner districts one through three. The two at large incumbent commissioners shall represent commissioner districts four and five. If, as a result of redrawing the district boundaries more than one of the incumbent commissioners resides in one of the new commissioner districts, the commissioners who reside in the same commissioner district shall determine by lot which of the numbered commissioner districts they shall represent for the remainder of their respective terms. [2002 c 51 § 1; 1994 c 223 § 81; 1992 c 146 § 1; 1991 c 363 § 128; 1965 c 51 § 1; 1959 c 17 § 3. Prior: 1913 c 62 § 2; 1911 c 92 § 3; RRS § 9690.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

53.12.021 Elimination of commissioner districts.

Any less than county-wide port district that uses commissioner districts may cease using commissioner districts as provided in this section.

A ballot proposition authorizing the elimination of commissioner districts shall be submitted to the voters of a less than county-wide port district that is divided into commissioner districts if (1) a petition is submitted to the port commission proposing that the port district cease using commissioner districts, that is signed by registered voters of the port district equal in number to at least ten percent of the number of voters who voted at the last district general election; or (2) the port commissioners adopt a resolution proposing that the port district cease using commissioner districts. The port commission shall transfer the petition or resolution immediately to the county auditor who shall, when a petition is submitted, review the signatures and certify its sufficiency. A ballot proposition authorizing the elimination of commissioner districts shall be submitted at the next district general election occurring sixty or more days after a petition with sufficient signatures was submitted. If the ballot proposition authorizing the port district to cease using commissioner districts is approved by a simple majority vote, the port district shall cease using commissioner districts at all subsequent elections. [1994 c 223 § 82.]

53.12.061 Elections to conform with general election law. All elections relating to a port district shall conform with general election law, except as expressly provided in Title 53 RCW. [1992 c 146 § 5.]

53.12.115 Increasing number of commissioners—Resolution, petition—Ballot proposition. A ballot proposition shall be submitted to the voters of any port district authorizing an increase in the number of port commissioners to five whenever the port commission adopts a resolution proposing the increase in number of port commissioners or a petition proposing such an increase has been submitted to the county auditor of the county in which the port district is located that has been signed by voters of the port district at least equal in number to ten percent of the number of voters in the port district who voted at the last general election. The ballot proposition shall be submitted at the next general or special election occurring sixty or more days after the petition was submitted or resolution was adopted.

At the next general or special election following the election in which an increase in the number of port commissioners was authorized, candidates for the two additional port commissioner positions shall be elected as provided in RCW 53.12.130, and the voters may be asked to approve the nomination of commissioners from district-wide commissioner districts as permitted in RCW 53.12.010(2). [1994 c 223 § 86; 1992 c 146 § 7.]

53.12.120 Increasing number of commissioners—Population requirements—Ballot proposition—Election of added commissioners. When the population of a port district that has three commissioners reaches five hundred thousand, in accordance with the latest United States regular or special census or with the official state population estimate, there shall be submitted to the voters of the district, at the next district general election or at a special port election called for that purpose, the proposition of increasing the number of commissioners to five.

At the next district general election following the election in which an increase in the number of port commissioners was authorized, candidates for the two additional port commissioner positions shall be elected as provided in RCW 53.12.130. [1994 c 223 § 87; 1992 c 146 § 8; 1982 c 219 § 1; 1965 c 51 § 7; 1959 c 175 § 3; 1959 c 17 § 10. Prior: 1953 c 198 § 1; 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.130 Increasing number of commissioners—Election of additional commissioners—Commencement and terms of office. Two additional port commissioners shall be elected at the next district general election following the election at which voters authorized the increase in port commissioners to five members.

The port commissioners shall divide the port district into five commissioner districts prior to the first day of June in the year in which the two additional commissioners shall be elected, unless the voters approved the nomination of the two additional commissioners from district-wide commissioner districts as permitted in RCW 53.12.010(2). The new commissioner districts shall be numbered one through five and the three incumbent commissioners shall represent commis-

sioner districts one through three. If, as a result of redrawing the district boundaries two or three of the incumbent commissioners reside in one of the new commissioner districts, the commissioners who reside in the same commissioner district shall determine by lot which of the first three numbered commissioner districts they shall represent for the remainder of their respective terms. A primary shall be held to nominate candidates from districts four and five where necessary and commissioners shall be elected from commissioner districts four and five at the general election. The persons elected as commissioners from commissioner districts four and five shall take office immediately after qualification as defined under *RCW 29.01.135.

In a port district where commissioners are elected to four-year terms of office, the additional commissioner thus elected receiving the highest number of votes shall be elected to a four-year term of office and the other additional commissioner thus elected shall be elected to a term of office of two years, if the election is held in an odd-numbered year, or the additional commissioner thus elected receiving the highest number of votes shall be elected to a term of office of three years and the other shall be elected to a term of office of one year, if the election is held in an even-numbered year. In a port district where the commissioners are elected to six-year terms of office, the additional commissioner thus elected receiving the highest number of votes shall be elected to a six-year term of office and the other additional commissioner shall be elected to a four-year term of office, if the election is held in an odd-numbered year, or the additional commissioner receiving the highest number of votes shall be elected to a term of office of five-years and the other shall be elected to a three-year term of office, if the election is held in an even-numbered year. The length of terms of office shall be computed from the first day of January in the year following this election.

Successor commissioners from districts four and five shall be elected to terms of either six or four years, depending on the length of terms of office to which commissioners of that port district are elected. [1994 c 223 § 88; 1992 c 146 § 9; 1965 c 51 § 8; 1959 c 17 § 11. Prior: 1953 c 198 § 2; 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

***Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

53.12.140 Vacancies. A vacancy in the office of port commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the port commission for a period of sixty days unless excused by the port commission. A vacancy on a port commission shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 54; 1959 c 17 § 9. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.172 Port commissioner terms of office. (1) In every port district the term of office of each port commissioner shall be four years in each port district that is county-wide with a population of one hundred thousand or more, or either six or four years in all other port districts as provided in RCW 53.12.175, and until a successor is elected and qualified and assumes office in accordance with *RCW 29.04.170.

(2) The initial port commissioners shall be elected at the same election as when the ballot proposition is submitted to

voters authorizing the creation of the port district. If the port district is created the persons elected at this election shall serve as the initial port commission. No primary shall be held. The person receiving the greatest number of votes for commissioner from each commissioner district shall be elected as the commissioner of that district.

(3) The terms of office of the initial port commissioners shall be staggered as follows in a port district that is county-wide with a population of one hundred thousand or more: (a) The two persons who are elected receiving the two greatest numbers of votes shall be elected to four-year terms of office if the election is held in an odd-numbered year, or three-year terms of office if the election is held in an even-numbered year, and shall hold office until successors are elected and qualified and assume office in accordance with *RCW 29.04.170; and (b) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year, or a one-year term of office if the election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with *RCW 29.04.170.

(4) The terms of office of the initial port commissioners in all other port districts shall be staggered as follows: (a) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or to a five-year term of office if the election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with *RCW 29.04.170; (b) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or to a three-year term of office if the election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with *RCW 29.04.170; and (c) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year, and shall hold office until a successor is elected and qualified and assumes office in accordance with *RCW 29.04.170.

(5) The initial port commissioners shall take office immediately after being elected and qualified, but the length of their terms shall be calculated from the first day in January in the year following their elections. [1994 c 223 § 85. Prior: 1992 c 146 § 2; (1992 c 146 § 14 repeal deleted by 1994 c 223 § 93); 1979 ex.s. c 126 § 34; 1951 c 68 § 2; prior: (i) 1935 c 133 § 2; RRS § 9691A-2. (ii) 1935 c 133 § 3; RRS § 9691A-3. (iii) 1935 c 133 § 4; RRS § 9691A-4. (iv) 1935 c 133 § 5; RRS § 9691A-5. (v) 1935 c 133 § 6; RRS § 9691A-6. (vi) 1935 c 133 § 7; RRS § 9691A-7.]

***Reviser's note:** RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

53.12.175 Reducing port commissioner terms—Ballot proposition. A ballot proposition to reduce the terms of office of port commissioners from six years to four years shall be submitted to the voters of any port district that otherwise would have commissioners with six-year terms of office upon either resolution of the port commissioners or petition

of voters of the port district proposing the reduction in terms of office, which petition has been signed by voters of the port district equal in number to at least ten percent of the number of voters in the port district voting at the last general election. The petition shall be submitted to the county auditor. If the petition was signed by sufficient valid signatures, the ballot proposition shall be submitted at the next general or special election that occurs sixty or more days after the adoption of the resolution or submission of the petition.

If the ballot proposition reducing the terms of office of port commissioners is approved by a simple majority vote of the voters voting on the proposition, the commissioner or commissioners who are elected at that election shall be elected to four-year terms of office. The terms of office of the other commissioners shall not be reduced, but each successor shall be elected to a four-year term of office. [1994 c 223 § 89; 1992 c 146 § 3.]

53.12.221 Terms—Districts covering entire county with populations of one hundred thousand or more. Port commissioners of county-wide port districts with populations of one hundred thousand or more who are holding office as of June 11, 1992, shall retain their positions for the remainder of their terms until their successors are elected and qualified, and assume office in accordance with *RCW 29.04.170. Their successors shall be elected to four-year terms of office except as otherwise provided in RCW 53.12.130. [1992 c 146 § 4.]

***Reviser's note:** RCW 29.04.170 was recodified as RCW 29A.20.040 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

53.12.245 Organization of commission—Powers and duties—Record of proceedings. The port commission shall organize by the election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the port commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records. [1955 c 348 § 6.]

Severability—1955 c 348: See note following RCW 53.08.120.

Public records: Title 40 RCW, chapter 42.17 RCW.

53.12.246 Quorum. A majority of the persons holding the office of port commissioner at any time shall constitute a quorum of the port commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted unless there are in office at least a majority of the full number of commissioners fixed by law. [1959 c 17 § 12. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690.]

53.12.260 Compensation. (1) Each commissioner of a port district shall receive seventy dollars per day or portion thereof spent (a) in actual attendance at official meetings of the port district commission, or (b) in performance of other service in behalf of the district. The total per diem compensation of a port commissioner shall not exceed six thousand seven hundred twenty dollars in a year, or eight thousand four

hundred dollars in any year for a port district with gross operating income of twenty-five million or more in the preceding calendar year.

(2) Port commissioners shall receive additional compensation as follows: (a) Each commissioner of a port district with gross operating revenues of twenty-five million dollars or more in the preceding calendar year shall receive a salary of five hundred dollars per month; and (b) each commissioner of a port district with gross operating revenues of from one million dollars to less than twenty-five million dollars in the preceding calendar year shall receive a salary of two hundred dollars per month.

(3) In lieu of the compensation specified in this section, a port commission may set compensation to be paid to commissioners.

(4) For any commissioner who has not elected to become a member of public employees retirement system before May 1, 1975, the compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state nor shall attendance at such meetings or other service on behalf of the district constitute service as defined in RCW 41.40.010(9): PROVIDED, That in the case of a port district when commissioners are receiving compensation and contributing to the public employees retirement system, these benefits shall continue in full force and effect notwithstanding the provisions of RCW 53.12.260 and 53.12.265. [1998 c 121 § 3; 1992 c 146 § 12; 1985 c 330 § 3; 1975 1st ex.s. c 187 § 1.]

53.12.265 Waiver of compensation. A commissioner of any port district may waive all or any portion of his compensation payable under RCW 53.12.260 as to any month or months during his term of office, by a written waiver filed with the secretary of the commission. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which said compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. [1975 1st ex.s. c 187 § 2.]

53.12.270 Delegation of powers to managing official of port district. The commission may delegate to the managing official of a port district such administrative powers and duties of the commission as it may deem proper for the efficient and proper management of port district operations. Any such delegation shall be authorized by appropriate resolution of the commission, which resolution must also establish guidelines and procedures for the managing official to follow. [1975 1st ex.s. c 12 § 1.]

Chapter 53.16 RCW

REVISION OF COMMISSIONER DISTRICTS

Sections

- 53.16.015 Redrawing commissioner district boundaries—Conditions.
- 53.16.020 Notice of hearing on revision.
- 53.16.030 Change not to affect term of office.

53.16.015 Redrawing commissioner district boundaries—Conditions. The port commission of a port district that uses commissioner districts may redraw the commis-

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sioner district boundaries as provided in *chapter 29.70 RCW at any time and submit the redrawn boundaries to the county auditor if the port district is not coterminous with a county that has the same number of county legislative authority districts as the port has port commissioners. The new commissioner districts shall be used at the next election at which a port commissioner is regularly elected that occurs at least one hundred eighty days after the redrawn boundaries have been submitted. Each commissioner district shall encompass as nearly as possible the same population. [1994 c 223 § 90; 1992 c 146 § 10.]

*Reviser's note: Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

53.16.020 Notice of hearing on revision. The revision of boundary lines provided for in this chapter shall be made only at a meeting of the board of port commissioners with attendance of all of the members of the commission, which meeting shall be public, following notice of said meeting, and the purpose thereof published in a newspaper of general circulation within the port district, or, if there be no such newspaper published within the district, in a newspaper published at the county seat of the county in which such port district is located. Such notice shall be published not less than twice, the date of the first publication to be not less than fifteen nor more than twenty days prior to the date fixed for said hearing, and shall state the time, place and purpose of the hearing. [1933 c 145 § 3; RRS § 9708-3.]

53.16.030 Change not to affect term of office. Any change of boundary lines provided for in this chapter shall not affect the term for which a commissioner shall hold office at the time the change is made. [1992 c 146 § 11; 1933 c 145 § 4; RRS § 9704-8.]

Chapter 53.18 RCW

EMPLOYMENT RELATIONS—COLLECTIVE BARGAINING AND ARBITRATION

Sections

- 53.18.010 Definitions.
- 53.18.015 Application of public employees' collective bargaining act.
- 53.18.020 Agreements authorized.
- 53.18.030 Criteria for choice of employee organization—Procedures for resolution of controversy.
- 53.18.040 Incidental powers of district.
- 53.18.050 Agreements—Authorized provisions.
- 53.18.060 Restraints on agreement.

53.18.010 Definitions. "Port district" shall mean a municipal corporation of the state of Washington created pursuant to Title 53 RCW. Said port districts may also be hereinafter referred to as the "employer."

"Employee" shall include all port employees except managerial, professional, and administrative personnel, and their confidential assistants.

"Employee organization" means any lawful association, labor organization, union, federation, council, or brotherhood, having as its primary purpose the representation of employees on matters of employment relations.

"Employment relations" includes, but is not limited to, matters concerning wages, salaries, hours, vacation, sick

leave, holiday pay and grievance procedures. [1967 c 101 § 1.]

53.18.015 Application of public employees' collective bargaining act. Port districts and their employees shall be covered by the provisions of chapter 41.56 RCW except as provided otherwise in this chapter. [1983 c 287 § 1.]

Severability—1983 c 287: See note following RCW 41.56.450.

53.18.020 Agreements authorized. Port districts may enter into labor agreements or contracts with employee organizations on matters of employment relations: PROVIDED, That nothing in this chapter shall be construed to authorize any employee, or employee organization to cause or engage in a strike or stoppage of work or slowdown or similar activity against any port district. [1967 c 101 § 2.]

53.18.030 Criteria for choice of employee organization—Procedures for resolution of controversy. In determining which employee organization will represent them, employees shall have maximum freedom in exercising their right of self-organization.

Controversies as to the choice of employee organization within a port shall be submitted to the public employment relations commission. Employee organizations may agree with the port district to independently resolve jurisdictional disputes: PROVIDED, That when no other procedure is available the procedures of RCW 49.08.010 shall be followed in resolving such disputes. In such case the chairman of the public employment relations commission shall, at the request of any employee organization, arbitrate any dispute between employee organizations and enter a binding award in such dispute. [1975 1st ex.s. c 296 § 38; 1967 c 101 § 3.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Powers and duties of public employment relations commission: Chapter 41.58 RCW.

53.18.040 Incidental powers of district. Port districts exercising the authority granted by RCW 53.18.020 may take any of the following actions as incidental thereto: Make necessary expenditures; act jointly with other ports or employers; engage technical assistance; make appearances before and utilize the services of state or federal agencies, boards, courts, or commissions; make retroactive payments of wages where provided by agreements; and exercise all other necessary powers to carry this chapter into effect, including the promulgation of rules and regulations to effectuate the purposes of this chapter. [1967 c 101 § 4.]

53.18.050 Agreements—Authorized provisions. A labor agreement signed by a port district may contain:

(1) Provisions that the employee organization chosen by a majority of the employees in a grouping or unit will be recognized as the representative of all employees in the classification included in such grouping or unit;

(2) Maintenance of membership provisions including dues check-off arrangements; and

(3) Provisions providing for binding arbitration, the expenses being equally borne by the parties, in matters of

contract interpretation and the settlement of jurisdictional disputes. [1967 c 101 § 5.]

53.18.060 Restraints on agreement. No labor agreement or contract entered into by a port district shall:

(1) Restrict the right of the port district in its discretion to hire;

(2) Limit the right of the port to secure its regular or steady employees from the local community; and

(3) Include within the same agreements: (a) Port security personnel, or (b) port supervisory personnel. [1967 c 101 § 6.]

Chapter 53.20 RCW

HARBOR IMPROVEMENTS

Sections

53.20.010	Adoption of harbor improvement plan.
53.20.020	Improvement to follow plans adopted.
53.20.030	Improvements—Ownership of.
53.20.040	Fifty percent of cost of local improvement may be paid from general fund.
53.20.050	Local improvements upon majority petition.

Joint improvement of navigable rivers: RCW 88.32.240 and 88.32.250.

53.20.010 Adoption of harbor improvement plan. It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive scheme of harbor improvement in the port district, after a public hearing thereon, of which notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the port district, and no expenditure for the carrying on of any harbor improvements shall be made by the port commission other than the necessary salaries, including engineers, clerical and office expenses of the port district, and the cost of engineering, surveying, preparation and collection of data necessary for the making and adoption of a general scheme of harbor improvements in the port district, unless and until the comprehensive scheme of harbor improvement has been so officially adopted by the port commission. [1985 c 469 § 51; 1943 c 166 § 3; 1913 c 62 § 6; 1911 c 92 § 6; Rem. Supp. 1943 § 9694.]

53.20.020 Improvement to follow plans adopted. When such general plans shall have been adopted or approved, as aforesaid, every improvement to be made by said commission shall be made substantially in accordance therewith unless and until such general plans shall have been officially changed by the port commission after a public hearing thereon, of which at least ten days' notice shall be published in a newspaper in general circulation in such port district. [1947 c 24 § 1; 1913 c 62 § 7; 1911 c 92 § 7; Rem. Supp. 1947 § 9695.]

53.20.030 Improvements—Ownership of. No improvements shall be acquired or constructed, by the port district, unless such improvements shall, when completed, be the property of such port district, the county in which such port district is located, any city within such port district, the state of Washington or the United States of America, and the funds of such port district may be expended in the acquire-

ment or construction of any harbor improvement embraced in such general plan adopted as in this chapter provided in conjunction with the county in which such port district is located, any city in such port district, the state of Washington or the United States of America, or all or any of them. [1979 ex.s. c 30 § 9; 1913 c 62 § 8; 1911 c 92 § 8; RRS § 9696.]

53.20.040 Fifty percent of cost of local improvement may be paid from general fund. Whenever any improvement shall be ordered, payment for which shall be made in part from assessments against property specially benefited, not more than fifty percent of the cost thereof shall ever be borne by the entire port district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed [exceeding] such amount, unless a majority vote of the electors of the port district shall consent to or ratify the making of such expenditure. [1911 c 92 § 11; RRS § 9698.]

53.20.050 Local improvements upon majority petition. Whenever a petition signed by one hundred freeholders in the district to be therein described, shall be filed with the port commission, asking that any portion of the general plan adopted be ordered, and defining the boundaries of a local improvement district to be assessed in whole or in part to pay the cost thereof, it shall be the duty of the port commission to fix a date for hearing on the petition, after which it may alter the boundaries of the proposed district and prepare and adopt detail plans of any such local improvement, declare the estimated cost thereof, what proportion of the cost shall be borne by the proposed local improvement district, and what proportion of the cost, if any, but in any event not to exceed fifty percent, shall be borne by the entire port district. At any time within two years thereafter, upon petition of the owners of a majority of the lands in the proposed local improvement district, fixed by the port commission, as shown in the office of the auditor of the county, asking that the improvement be ordered, the port commission shall forthwith by resolution order the improvement, provide the general funds of the port district to be applied thereto, acquire all lands necessary therefor, pay all damages caused thereby, and commence in the name of the port district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle the port district to proceed with such work, and shall thereafter proceed with the work, and shall make and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within the local improvement district in proportion to the special benefits to be derived by the property in the local improvement district from the improvement. Before the approval of the roll a notice shall be published once a week for two consecutive weeks in one or more newspapers of general circulation in the local improvement district, stating that the roll is on file and open to inspection in the office of the clerk of the port commission, and fixing a time not less than fifteen nor more than thirty days from the date of the first publication of the notice within which protests must be filed with the clerk of the port commission against any assessments shown thereon, and fixing a time

when a hearing shall be held by the commission on the protests. After the hearing the port commission may alter any and all assessments shown on the roll and may then by resolution approve the same, but in the event of any assessment being raised a new notice similar to the first notice shall be given, after which final approval of the roll may be made by the port commission. Any person feeling aggrieved by any such assessments shall perfect an appeal to the superior court of the county within ten days after the approval in the manner now provided by law for appeals from assessments levied by cities of the first class in this state. Engineering and office expenses in all cases shall be borne by the general district. [1985 c 469 § 52; 1911 c 92 § 10; RRS § 9697. Formerly RCW 53.20.050 through 53.20.080.]

Appeal from assessments: RCW 35.44.200 through 35.44.270.

Special assessments for local improvement: State Constitution Art. 7 § 9.

Chapter 53.25 RCW

INDUSTRIAL DEVELOPMENT DISTRICTS— MARGINAL LANDS

Sections

53.25.010	Marginal lands—Declaration of policies and purposes.
53.25.020	Marginal lands—Further declaration.
53.25.030	"Marginal lands" defined.
53.25.040	Industrial development districts authorized—Boundaries—Deletion of land area.
53.25.050	Tax title lands may be conveyed to district.
53.25.060	Private lands may be conveyed to district—Cancellation of taxes.
53.25.070	Discharge of trust.
53.25.080	When lands revert to county.
53.25.090	Conditions precedent to making improvements.
53.25.100	Powers as to industrial development districts.
53.25.110	Sale authorized in industrial development district.
53.25.120	Notice of hearing on sale—Hearing—Plans and specifications—Conditions—Devotion of property to public use.
53.25.130	Findings and determination—Record—Appeal.
53.25.140	Action on determination—Sale by competitive bid or negotiation.
53.25.150	Competitive bids—Conditions—Acceptance.
53.25.160	Devotion of property to intended use—Remedy—Restraint on alienation.
53.25.170	Covenant running with the land—Forfeiture.
53.25.190	Eminent domain.
53.25.200	Advances of general fund moneys or credit.
53.25.210	Determination that land sought by eminent domain is marginal.
53.25.900	Repeal and saving.
53.25.910	Severability—1955 c 73.

53.25.010 Marginal lands—Declaration of policies and purposes. It is hereby declared to be the public policy of the legislature of the state of Washington, that it is in the public interest to employ the power of eminent domain and advance and expend public moneys for the purposes herein contained, and to provide for means by which marginal area properties may be developed or redeveloped in accordance with the legislative policies hereinafter stated:

(1) A sound development of the economic security of the peoples of the state of Washington is dependent upon proper development and redevelopment of marginal properties, and the general welfare of the inhabitants of the port districts in which they exist require the remedying of such injurious conditions marginal properties are now subjected to; and

(2) The development and redevelopment of such marginal area properties cannot be accomplished by private enterprise alone without public participation and assistance in

the acquisition of land and planning and in the financing of land assembly in the work of clearance, development and redevelopment, and in the making of improvements necessary therefor.

(3) To protect and promote sound development and redevelopment of marginal lands as hereinafter defined, and the general welfare of the inhabitants of the port districts in which they exist, to remedying such injurious conditions through the employment of all appropriate means.

(4) That whenever the development or redevelopment of such marginal lands cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land and planning and in financing of land assembly in the work of clearance, development and redevelopment, and in the making of improvements necessary therefor, it is in the public interest to employ the power of eminent domain, to advance and expend public moneys for those purposes, and to provide for means by which such marginal lands may be developed or redeveloped.

(5) That the development or redevelopment of such marginal lands and the provision of appropriate continuing land use constitute public uses and purposes for which public moneys may be advanced or expended and private property acquired, and are governmental functions and are of state concern in the interest of health, safety and welfare of the state of Washington, and of the communities in which such areas exist.

(6) That the necessity in the public interest for the provision of this chapter is declared to be a matter of legislative determination. [1955 c 73 § 1.]

53.25.020 Marginal lands—Further declaration. It is further found and declared that:

(1) The existence of such marginal lands characterized by any or all of such conditions constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety, and welfare of the people of the communities in which they exist and of the people of the state.

(2) Such marginal lands present difficulties and handicaps which are beyond remedy and control solely by regulatory processes in the exercise of the police power.

(3) They contribute substantially and increasingly to the problems of, and necessitate excessive and disproportionate expenditures for, crime prevention, correction, prosecution and punishment, the treatment of juvenile delinquency, the preservation of the public health and safety, and the maintaining of adequate police, fire and accident protection and other public services and facilities.

(4) This menace is becoming increasingly direct and substantial in its significance and effect.

(5) The benefits which will result from the remedying of such conditions and the redevelopment of such marginal lands will accrue to all the inhabitants and property owners of the communities in which they exist.

(6) Such conditions of marginal lands tend to further obsolescence, deterioration, and disuse because of the lack of incentive to the individual landowner and his inability to improve, modernize, or rehabilitate his property while the condition of the neighboring properties remains unchanged.

(7) As a consequence the process of deterioration of such marginal lands frequently cannot be halted or corrected except by redeveloping the entire area, or substantial portions of it.

(8) Such conditions of marginal lands are chiefly found in areas subdivided into small parcels, held in divided and widely scattered ownerships, frequently under defective titles, and in many such instances the private assembly of the land areas for redevelopment is so difficult and costly that it is uneconomic and as a practical matter impossible for owners to undertake because of lack of the legal power and excessive costs.

(9) The remedying of such conditions may require the public acquisition at fair prices of adequate areas, the redevelopment of the areas suffering from such conditions under proper supervision, with appropriate planning, and continuing land use.

(10) The development or redevelopment of land, or both, acquired under the authority of this chapter constitute a public use and are governmental functions, and that the sale or leasing of such land after the same has been developed or redeveloped is merely incidental to the accomplishment of the real or fundamental purpose, that is, to remove the condition which caused said property to be marginal property as in this chapter defined. [1955 c 73 § 2.]

53.25.030 "Marginal lands" defined. "Marginal lands" is defined and characterized by any one or more of the following described conditions:

(1) An economic dislocation, deterioration, or disuse resulting from faulty planning.

(2) The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.

(3) The laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions.

(4) The existence of inadequate streets, open spaces, and utilities.

(5) The existence of lots or other areas which are subject to being submerged by water.

(6) By a prevalence of depreciated values, impaired investments, and social and economic maladjustment to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered.

(7) In some parts of marginal lands, a growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety and welfare.

(8) In other parts of marginal lands, a loss of population and reduction of proper utilization of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.

(9) Property of an assessed valuation of insufficient amount to permit the establishment of a local improvement district for the construction and installation of streets, walks, sewers, water and other utilities.

(10) Lands within an industrial area which are not devoted to industrial use but which are necessary to industrial development within the industrial area. [1955 c 73 § 3.]

53.25.040 Industrial development districts authorized—Boundaries—Deletion of land area. (1) A port commission may, after a public hearing thereon, of which at least ten days' notice shall be published in a newspaper of general circulation in the port district, create industrial development districts within the district and define the boundaries thereof, if it finds that the creation of the industrial development district is proper and desirable in establishing and developing a system of harbor improvements and industrial development in the port district.

(2) The boundaries of an industrial development district created by subsection (1) of this section may be revised from time to time by resolution of the port commission, to delete land area therefrom, if the land area to be deleted was acquired by the port district with its own funds or by gift or transfer other than pursuant to RCW 53.25.050 or 53.25.060.

As to any land area to be deleted under this subsection that was acquired or improved by the port district with funds obtained through RCW 53.36.100, the port district shall deposit funds equal to the fair market value of the lands and improvements into the fund for future use described in RCW 53.36.100 and such funds shall be thereafter subject to RCW 53.36.100. The fair market value of the land and improvements shall be determined as of the effective date of the port commission action deleting the land from the industrial development district and shall be determined by an average of at least two independent appraisals by professionally designated real estate appraisers as defined in RCW 74.46.020 or licensed real estate brokers. The funds shall be deposited into the fund for future use described in RCW 53.36.100 within ninety days of the effective date of the port commission action deleting the land area from the industrial district. Land areas deleted from an industrial development district under this subsection shall not be further subject to the provisions of this chapter. This subsection shall apply to presently existing and future industrial development districts. Land areas deleted from an industrial development district under this subsection that were included within such district for less than two years, if the port district acquired the land through condemnation or as a consequence of threatened condemnation, shall be offered for sale, for cash, at the appraised price, to the former owner of the property from whom the district obtained title. Such offer shall be made by certified or registered letter to the last known address of the former owner. The letter shall include the appraised price of the property and notice that the former owner must respond in writing within thirty days or lose the right to purchase. If this right to purchase is exercised, the sale shall be closed by midnight of the sixtieth day, including nonbusiness days, following close of the thirty-day period. [1989 c 167 § 1; 1985 c 469 § 53; 1955 c 73 § 4. Prior: 1943 c 166 § 1; 1939 c 45 § 1; Rem. Supp. 1943 § 9709-1; RCW 53.24.010.]

53.25.050 Tax title lands may be conveyed to district. Any lands in an industrial development district acquired by the county by tax foreclosure, may, if the county commissioners deem the lands chiefly valuable for industrial development purposes, be conveyed to the port district. The lands shall be held in trust by the port district and may be managed, developed, leased, or sold by it as provided in this chapter.

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From the proceeds of the sale or lease of the lands, the district shall first reimburse itself for any expense incurred by it in managing and developing the lands and any balance shall be paid to the county, which shall distribute it the same as general taxes collected in that year. [1955 c 73 § 5. Prior: 1939 c 45 § 2; RRS § 9709-2; RCW 53.24.020.]

53.25.060 Private lands may be conveyed to district—Cancellation of taxes. With the approval of the county commissioners, any lands in an industrial development district, owned privately, which the port commission deems valuable for industrial development purposes, may be deeded to and accepted by the port district, subject to delinquent general taxes thereon. When the commission has recorded the deed and notified the county commissioners thereof, the county commissioners shall order all taxes assessed against the lands canceled and the county treasurer shall record the cancellation, and remove the lands from the tax rolls. Thereafter the lands shall be held in trust, managed, developed, leased, and sold by the district, and the proceeds therefrom disposed of in the same manner as hereinabove provided. [1955 c 73 § 6. Prior: 1939 c 45 § 3; RRS § 9709-3; RCW 53.24.030.]

53.25.070 Discharge of trust. With the approval of the county commissioners, a port district may free any lands acquired by it pursuant to this chapter from the trust imposed upon it herein, by paying to the county the amount of the delinquent taxes against the land at the time the county acquired it by tax foreclosure, or the amount of the delinquent taxes against it when it was conveyed to the district by the private owner. [1955 c 73 § 7. Prior: 1939 c 45 § 4; RRS § 9709-4; RCW 53.24.040.]

53.25.080 When lands revert to county. Ten years from the date of its acquisition, property acquired by a port district pursuant to this chapter shall revert to the county to be used the same as property acquired by tax foreclosure, and upon demand by the county commissioners the port commission shall convey the property to the county, unless before the expiration of the ten year period, the port district has adopted a comprehensive plan of harbor improvement which provides for the improvement of an industrial development district which includes such lands or the district has freed the land from the trust imposed upon it as provided in this chapter. [1955 c 73 § 8. Prior: 1939 c 45 § 8; RRS § 9709-8; RCW 53.24.050.]

53.25.090 Conditions precedent to making improvements. No expenditure for improvement of property in an industrial development district, other than the expense of preparing and submitting a plan of improvement shall be made by a port district, and no property shall be acquired by it therefor except as provided for hereinbefore until it has been made a part of the comprehensive scheme of harbor improvements and industrial developments or amendments thereto.

That said comprehensive scheme or amendments thereto shall provide for the development or redevelopment of those marginal lands acquired and a provision for the continuing of the land uses which are hereby declared to constitute public

uses and the purposes for which public moneys may be advanced and provide property acquired. [1955 c 73 § 9. Prior: 1939 c 45 § 5; RRS § 9709-5; RCW 53.24.060.]

53.25.100 Powers as to industrial development districts. All port districts wherein industrial development districts have been established are authorized and empowered to acquire by purchase or condemnation or both, all lands, property and property rights necessary for the purpose of the development and improvement of such industrial development district and to exercise the right of eminent domain in the acquirement or damaging of all lands, property and property rights and the levying and collecting of assessments upon property for the payment of all damages and compensation in carrying out the provisions for which said industrial development district has been created; to develop and improve the lands within such industrial development district to make the same suitable and available for industrial uses and purposes; to dredge, bulkhead, fill, grade, and protect such property; to provide, maintain, and operate water, light, power and fire protection facilities and services, streets, roads, bridges, highways, waterways, tracks, and rail and water transfer and terminal facilities and other harbor and industrial improvements; to execute leases of such lands or property or any part thereof; to establish local improvement districts within such industrial development districts which may, but need not, be coextensive with the boundaries thereof, and to levy special assessments, under the mode of annual installments, over a period not exceeding ten years, on all property specially benefited by any local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of any improvement ordered in such local improvement district; to issue local improvement bonds in any such local improvement district; to be repaid by the collection of local improvement assessments; and generally to exercise with respect to and within such industrial development districts all the powers now or hereafter conferred by law upon port districts in counties with a population of one hundred twenty-five thousand or more: PROVIDED, That the exercise of powers hereby authorized and granted shall be in the manner now and hereafter provided by the laws of the state for the exercise of such powers by port districts under the general laws relating thereto insofar as the same shall not be inconsistent with this chapter. [1991 c 363 § 132; 1955 c 73 § 10. Prior: 1939 c 45 § 6; RRS § 9709-6; RCW 53.24.070.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); Title 8 RCW.

53.25.110 Sale authorized in industrial development district. When a port commission deems it for the best interests of the district and the people thereof and in furtherance of its general plan of harbor improvement, or industrial development, or both, it may sell and convey any property or part thereof owned by it within an industrial district. This section shall not be limited by chapter 53.08 RCW, pertaining to powers of port districts. [1955 c 73 § 11. Prior: 1939 c 45 § 9; RRS § 9709-9; RCW 53.28.010.]

Harbor improvement plan: RCW 53.20.010.

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53.25.120 Notice of hearing on sale—Hearing—Plans and specifications—Conditions—Devotion of property to public use. The port commission shall give notice of the proposed sale by publication in a newspaper of general circulation in the county, and by posting in three public places in the port district at least ten days before the date fixed for the hearing thereon.

The notice shall describe the property to be sold and state that at the time and place specified therein, the commission will meet at its usual meeting place, designating it, to hear and determine the advisability of the sale.

The hearing shall be held not more than twenty days from the publication of notice. At the hearing the commission shall hear the reasons of any taxpayer in the port district, for or against the sale.

No sales shall be made, however, of the property of any industrial development district until the purchaser thereof shall have submitted to the port commission plans and specifications for the development of the property, and the plans and specifications shall be approved in writing before the property shall be conveyed, and the conditions upon which the properties are conveyed shall be set forth in the instrument conveying title thereof with the further condition that all of the conditions set forth shall be covenants running with the land. All properties acquired in the manner herein set forth shall be devoted to the public use herein provided for. [1985 c 469 § 54; 1963 c 138 § 1; 1955 c 73 § 12. Prior: 1939 c 45 § 10; RRS § 9709-10; RCW 53.28.020.]

Validating—1963 c 138: "All sales made prior to the effective date of this amendatory act which are otherwise valid except for compliance with the limitation in section 12, chapter 73, Laws of 1955, which provided that the hearing shall be held not more than ten days from the publication of notice, are hereby ratified and validated.

All sales made prior to the effective date of this amendatory act under the provisions of section 18, chapter 73, Laws of 1955 and RCW 53.25.180 are hereby ratified and validated." [1963 c 138 § 3.]

53.25.130 Findings and determination—Record—Appeal. Within three days after the hearing the commission shall make its findings and determination on the advisability of making the sale and enter its determination in its records. Any aggrieved party may appeal the determination of the commission by filing appeal with the superior court of the county in which the district is located within twenty days of the entry of the determination but no appeal shall be allowed except on the grounds that the action of the commission was arbitrary, capricious, or unlawful. [1955 c 73 § 13. Prior: 1939 c 45 § 11; RRS § 9709-11; RCW 53.28.030.]

53.25.140 Action on determination—Sale by competitive bid or negotiation. If the determination is against the sale, all proceedings thereon shall terminate. If the commission determines in favor of the sale by at least a two-thirds vote of the full commission, it shall in its discretion, either enter an order fixing a period, not less than twenty nor more than thirty days from the date of the order, during which bids will be received for the property or any part thereof, and give notice thereof in the same manner as for the hearing on the proposal to sell or negotiate the sale with an appropriate purchaser, provided that in any such negotiated sale the purchase price must not be less than the fair market value of the property which shall be determined by an average of at least two

independent appraisals performed by licensed real estate brokers or professionally designated real estate appraisers as defined in RCW 74.46.020. Whether the property is sold by competitive bidding or negotiation, other real property conveyed by the purchaser to the commission may constitute all or a portion of the consideration for the sale. [1984 c 195 § 1; 1955 c 73 § 14. Prior: 1939 c 45 § 12; RRS § 9709-12; RCW 53.28.040.]

53.25.150 Competitive bids—Conditions—Acceptance. If the commission chooses to sell the property through competitive bidding under RCW 53.25.140:

(1) Bids may be submitted for the property or any part of it, shall state the use which the bidder intends to make of it, and the commission may require the successful bidder to file additional information as to the intended use, and may require of him security as assurance that the property will be used for that purpose;

(2) All sales shall be made to the best bidder, and in determining the best bid, the commission may also consider the nature of the proposed use and the relation thereof to the improvement of the harbor and the business and facilities thereof;

(3) Within thirty days after the last day for submitting bids, the commission shall decide which if any bids it accepts. All sales shall be made upon such terms and conditions as the commission may prescribe. [1984 c 195 § 2; 1955 c 73 § 15. Prior: 1939 c 45 § 13, part; RRS § 9709-13, part; RCW 53.28.050.]

53.25.160 Devotion of property to intended use—Remedy—Restraint on alienation. The purchaser shall, within one year from the date of purchase, devote the property to its intended use, or shall commence work on the improvements thereon to devote it to such use, and if he fails to do so, the port commission may cancel the sale and return the money paid on the purchase price, and title to the property shall revert to the district. This remedy shall be in addition to any other remedy under the terms of the sale. No purchaser shall transfer title to such property within one year from the date of purchase. [1955 c 73 § 16. Prior: 1939 c 45 § 13, part; RRS § 9709-13, part; RCW 53.28.060.]

53.25.170 Covenant running with the land—Forfeiture. All sales made in accordance with the provisions of this chapter shall have incorporated in the instrument of conveyance of title the conditions of this chapter relating to the use of the land as a covenant running with the land. Any violation of such covenant shall result in a right by the commission, as grantee, to forfeit the land. [1955 c 73 § 17.]

53.25.190 Eminent domain. All port districts of the state of Washington which have created or may hereafter create industrial development districts in the manner provided by law, in addition to all powers possessed by such port districts, be and are hereby granted power of eminent domain to acquire real property within the limits of such industrial development district which property is marginal lands as the term is herein defined. The exercise of the power granted in this section shall be exercised in the same manner and by the

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same procedure as in or may be provided by law for cities of the first class except insofar as such duties may be inconsistent with the provisions of this chapter and the duties devolving upon the city treasurer under said law be and the same are hereby imposed upon the county treasurer for the purposes of this chapter. [1955 c 73 § 19.]

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

Eminent domain by cities: Chapter 8.12 RCW.

53.25.200 Advances of general fund moneys or credit. Port districts are hereby granted the power to advance their general fund moneys or credit, or both, without interest to accomplish the objects and purposes of this chapter, which fund shall be repaid from the sale or lease, or both, of such developed or redeveloped lands, provided, if the money advanced for such development or redevelopment was obtained from the sale of general obligation bonds of the port, then such advances shall bear the same rate of interest that said bonds bore. [1955 c 73 § 20.]

53.25.210 Determination that land sought by eminent domain is marginal. The determination that property sought by eminent domain proceedings is marginal lands as herein defined is a judicial question, provided that a duly adopted resolution of the commissioners of the port district that the property sought is marginal lands as the term is herein defined, setting forth the characteristics of the lands sought to be acquired which constitutes the marginal lands as herein defined, shall be prima facie evidence that such land is marginal lands as defined in this chapter. [1955 c 73 § 21.]

53.25.900 Repeal and saving. Chapter 53.24 RCW and chapter 53.28 RCW and chapter 45, Laws of 1939, as last amended by section 1, chapter 166, Laws of 1943 are repealed: PROVIDED, That nothing herein contained shall be construed as affecting any existing right acquired under the provisions of said act. [1955 c 73 § 22.]

53.25.910 Severability—1955 c 73. Should any section or provision of this chapter be held invalid by any court of competent jurisdiction, the same shall not affect the validity of the chapter as a whole or any part thereof other than the portion held to be invalid. [1955 c 73 § 23.]

Chapter 53.29 RCW TRADE CENTER ACT

Sections

53.29.010	Declaration of purpose.
53.29.015	Definitions.
53.29.020	Power to establish trade centers—Facilities authorized.
53.29.030	Cooperation with other entities—Annual service fee for support of local government.
53.29.900	Short title—Liberal construction—Powers cumulative.
53.29.910	Severability—1967 c 56.

53.29.010 Declaration of purpose. It is declared to be the finding of the legislature of the state of Washington that:

(1) The servicing functions and activities connected with the oceanborne and overseas airborne trade and commerce of port districts, including customs clearance, shipping negotia-

tions, cargo routing, freight forwarding, financing, insurance arrangements and other similar transactions which are presently performed in various, scattered physical and electronic locations in the districts should be centralized to provide for more efficient and economical transportation of persons and more efficient and economical physical or electronic facilities and services for the exchange and buying, selling and transportation of commodities and other property in world trade and commerce;

(2) Unification, at a single, centrally located physical or electronic site of a facility of commerce, i.e., a trade center, accommodating the functions and activities described in subsection (1) of this section and the appropriate governmental, administrative and other services connected with or incidental to transportation and security of persons and property and the promotion and protection of port commerce, and providing a central locale for exhibiting, and otherwise promoting the exchange and buying and selling of commodities and property in world trade and commerce, will materially assist in preserving the material and other benefits of a prosperous port community;

(3) The undertaking of the aforesaid unified trade center project by a port district or the Washington public ports association has the single object of preserving, and will aid in the promotion, security, and preservation of, the economic well-being of port districts and the state of Washington and is found and determined to be a public purpose. [2002 c 145 § 1; 1989 c 425 § 5; 1967 c 56 § 1.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.015 Definitions. The definitions in this section apply throughout RCW 53.29.020 and 53.29.030 unless the context clearly requires otherwise.

(1) "Person" has the same meaning as defined in the electronic signatures in global and national commerce act (15 U.S.C. Sec. 7006 (8)) in effect on June 13, 2002.

(2) "Transaction" has the same meaning as defined in the electronic signatures in global and national commerce act (15 U.S.C. Sec. 7006 (13)) in effect on June 13, 2002. However, "transaction" also includes actions relating to governmental affairs. [2002 c 145 § 4.]

53.29.020 Power to establish trade centers—Facilities authorized. In addition to all other powers granted to port districts, any such district, the Washington public ports association, or the federation of Washington ports as described in RCW 53.06.070 may acquire, as provided for other port properties in RCW 53.08.010, construct, develop, operate and maintain all land or other property interests, buildings, structures or other improvements, and may participate in transactions necessary to provide, electronically or otherwise, facilities or to exercise powers or purposes of a trade center including but not limited to the following electronic or physical facilities:

(1) A facility consisting of one or more structures, improvements and areas for the centralized accommodation of public and private agencies, persons and facilities in order to afford improved service to waterborne and airborne import and export trade and commerce;

(2) Facilities for the promotion of such import and export trade and commerce, inspection, testing, display and appraisal facilities, foreign trade zones, terminal and transportation facilities, office meeting rooms, auditoriums, libraries, language translation services, storage, warehouse, marketing and exhibition facilities, facilities for federal, state, county and other municipal and governmental agencies providing services relating to the foregoing and including, but not being limited to, customs houses and customs stores, and other incidental facilities and accommodations. [2002 c 145 § 2; 1989 c 425 § 6; 1967 c 56 § 2.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.030 Cooperation with other entities—Annual service fee for support of local government. (1) In carrying out the powers authorized by this chapter and chapter 53.06 RCW, port districts and the Washington public ports association are authorized to cooperate, act, and invest jointly with other public and private agencies and persons, including, but not limited to, the federal government, the state, other ports and municipal corporations, other states and their political subdivisions, and private nonprofit trade promotion groups and associate development organizations.

(2) Port districts operating trade center buildings or operating association or federation trade centers, shall pay an annual service fee to the county treasurer wherein the center is located for municipal services rendered to the trade center building. The measure of such service fee shall be equal to three percent of the gross rentals received from the nongovernmental tenants of such trade center building. Such proceeds shall be distributed by the county treasurer as follows: Forty percent to the school district, forty percent to the city, and twenty percent to the county wherein the center is located: PROVIDED, That if the center is located in an unincorporated area, twenty percent shall be allocated to the fire district, forty percent to the school district, and forty percent to the county. [2002 c 145 § 3; 1989 c 425 § 7; 1967 c 56 § 3.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.900 Short title—Liberal construction—Powers cumulative. This chapter, which may be known and cited as the "Trade Center Act", shall be liberally construed, its purpose being to provide port districts, and their related association and federation, with additional powers to provide trade centers and to promote and encourage trade, tourism, travel, and economic development in a coordinated and efficient manner through the ports of the state of Washington. The powers herein granted shall be in addition to all others granted to port districts. [1989 c 425 § 8; 1967 c 56 § 4.]

Findings—Severability—1989 c 425: See notes following RCW 53.06.070.

53.29.910 Severability—1967 c 56. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons and circumstances is not affected. [1967 c 56 § 5.]

Chapter 53.31 RCW

EXPORT TRADING COMPANIES

Sections

53.31.010	Legislative findings—Intent.
53.31.020	Definitions.
53.31.030	Export trading companies—Authorized—Adoption of business plan.
53.31.040	Export trading companies—Powers—Formation—Dissolution.
53.31.050	Confidentiality of records supplied by private persons.
53.31.060	Certificate of review under federal export trading company act—Authorized.
53.31.901	Severability—1986 c 276.

53.31.010 Legislative findings—Intent. It is declared to be the public policy of the state to promote and preserve the economic well-being of the citizens of this state by creating opportunities for expanded participation in international trade by state businesses and expanding international trade through state ports. Increased international trade of state products creates and retains jobs, increases the state's tax base, and diversifies the state's economy. Port districts, through economies of scale, are uniquely situated to promote and expand international trade and provide greater opportunities for state businesses to participate in international trade.

The legislature finds that significant public benefit, in the form of increased employment and tax revenues, can be realized through export trading companies without lending the credit of port districts, and without capital investment of public funds by port districts. The legislature finds that the use of port district funds to promote and establish export trading companies under this chapter constitutes trade promotion and industrial development within the meaning of Article VIII, section 8 of the state Constitution.

It is the purpose of this chapter: (1) To stimulate greater participation by private businesses in international trade; (2) to authorize port districts to promote and facilitate international trade more actively; (3) to make export services more widely available; (4) to generate revenue for port districts; and (5) to develop markets for Washington state goods and services. Port sponsored export trading companies can also assist small to medium-sized companies in achieving economies of scale in order to expand into the export market.

It is the intent of this chapter to enhance export trade and not to create outside competition for existing Washington state businesses. The primary intent of a port sponsored export trading company is to increase exports of Washington state products.

This chapter shall not be construed as modifying or restricting any other powers granted to port districts by law. The legislature does not intend by the enactment of this chapter for port districts to use export trading companies to create unfair competition with private business. [1986 c 276 § 1.]

53.31.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Port district" means any port district other than a county-wide port district in a county with a population of two hundred ten thousand or more, established under Title 53 RCW.

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(2) "Export services" means the following services when provided in order to facilitate the export of goods or services through Washington ports: International market research, promotion, consulting, marketing, legal assistance, trade documentation, communication and processing of foreign orders to and for exporters and foreign purchasers, financing, and contracting or arranging for transportation, insurance, warehousing, foreign exchange, and freight forwarding.

(3) "Export trading company" means an entity created by a port district under RCW 53.31.040.

(4) "Obligations" means bonds, notes, securities, or other obligations or evidences of indebtedness.

(5) "Person" means any natural person, firm, partnership, association, private or public corporation, or governmental entity. [1991 c 363 § 133; 1986 c 276 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

53.31.030 Export trading companies—Authorized—Adoption of business plan. (1) Public port districts, formed under chapter 53.04 RCW are authorized to establish export trading companies and a company so formed may contract with other public ports, financial institutions, freight forwarders, and public or private concerns within or outside the state to carry out the purposes of this chapter. A port district may participate financially in only one export trading company.

(2) A port district proposing to establish an export trading company shall adopt a business plan with safeguards and limitations to ensure that any private benefit to be realized from the use of funds of the export trading company are incidental to the purposes of this chapter. The business plan shall be adopted only after public hearing and shall be reviewed at least once every two years. Amendments to the plan shall be adopted only after public hearing. The business plan shall include:

(a) A description of export promotion activities to be conducted during the period of the plan;

(b) A proposed budget of operations which shall include an itemized list of estimated revenues and expenditures;

(c) A description of the safeguards and limitations which ensure that the export trading company will best be used to enhance international trade and produce public benefit in the form of employment, capital investment, and tax revenues;

(d) A description of private competitors which may be capable of providing the functions in the business plan; and

(e) Such other matters as may be determined by the port district.

(3) A port district, for the purpose of establishing or promoting an export trading company under this chapter, may provide financial assistance to the export trading company. A port district may not provide such assistance or services for more than five years or in an amount greater than five hundred thousand dollars. [1986 c 276 § 3.]

53.31.040 Export trading companies—Powers—Formation—Dissolution. (1) For the purpose of promoting international trade, export trading companies formed under this chapter may provide export services through:

(a) Holding and disposing of goods in international trade;

(b) Taking title to goods.

All such activities engaged in or pursued by an export trading company shall be charged for in accordance with the customs of the trade at competitive market rates.

(2) Nothing contained in this chapter may be construed to authorize an export trading company to own or operate directly or indirectly any business which provides freight-forwarding, insurance, foreign exchange, or warehousing services. Nothing contained in this chapter may be construed to permit an export trading company to engage in the business of transporting commodities by motor vehicle, barge, ship, or rail for compensation.

(3)(a) Proceedings to form a public corporation designated as an export trading company shall be initiated by a resolution of the board of commissioners of a port district adopting a charter for the corporation. The charter shall contain such provisions as are authorized by law and include provisions for a board of directors which shall conduct the affairs of the export trading company. The board of directors shall include no fewer than three nor more than five members, all appointed by the port district board of commissioners. Commissioners of the port shall be eligible to serve as members of the board and shall constitute a majority of the board of directors at all times. Unless a later date is specified, the resolution shall take effect on the thirtieth day after adoption. The corporation shall be deemed formed for all purposes upon filing in the office of the secretary of state a certified copy of the effective resolution and the charter adopted by the resolution.

(b) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the corporation, the corporation is conclusively presumed to be established and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the resolution creating the corporation by the governing body. A copy of the resolution duly certified by the secretary of the port district commission shall be admissible in evidence in any suit, action, or proceeding.

(c) A corporation created by a port district pursuant to this chapter may be dissolved by the district if the corporation (i) has no property to administer, other than funds or property, if any, to be paid or transferred to the district by which it was established; and (ii) all its outstanding obligations have been satisfied. Such a dissolution shall be accomplished by the governing body of the port district adopting a resolution providing for the dissolution.

(d) The creating port district may, at its discretion and at any time, alter or change the structure, organizational programs, or activities of the corporation, including termination of the corporation if contracts entered into by the corporation are not impaired. Subject to any contractual obligations, any net earnings of the corporation shall inure only to the benefit of the creating port district. Upon dissolution of the corporation, all assets and title to all property owned by the corporation shall vest in the creating port district.

(4) A port district may contract with an export trading company to provide services on a reimbursement basis at current business rates to the export trading company, including but not limited to accounting, legal, clerical, technical, and other administrative services. Separate accounting records prepared according to generally accepted accounting principles shall be maintained by the export trading company.

(5) Any obligation of an export trading company shall not in any manner be an obligation of the port district nor a charge upon any revenues or property of the port district.

(6) An export trading company may borrow money or contract indebtedness and pledge, in whole or in part, any of its revenues or assets not subject to prior liens or pledges. An export trading company may not pledge any revenue or property of a port district or other municipal corporation and no port district or other municipal corporation may pledge its revenues or property to the payment thereof. An export trading company has no power to issue general obligation bonds, levy taxes, or exercise power of eminent domain. [1989 c 11 § 23; 1986 c 276 § 4.]

Severability—1989 c 11: See note following RCW 9A.56.220.

53.31.050 Confidentiality of records supplied by private persons. All financial and commercial information and records supplied by private persons to an export trading company with respect to export projects shall be kept confidential unless such confidentiality shall be waived by the party supplying the information or by all parties engaged in the discussion. [1986 c 276 § 5.]

53.31.060 Certificate of review under federal export trading company act—Authorized. An export trading company may apply for and hold a certificate of review provided for under 15 U.S.C. Secs. 4001 through 4021, the federal export trading company act of 1982. [1986 c 276 § 6.]

53.31.901 Severability—1986 c 276. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 276 § 11.]

Chapter 53.34 RCW TOLL FACILITIES

Sections

53.34.010	Toll bridges, tunnels authorized—Highway approaches.
53.34.020	Contracts for use of projects—Regulations—Controversies.
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53.34.040	Revenue bonds and notes—Resolution—Security—Form, interest, payment, etc.
53.34.050	Covenants to safeguard and secure bonds and notes.
53.34.060	Notes.
53.34.070	Bonds and notes payable solely from revenues, etc.—Adequate rates and charges to be established.
53.34.080	Special funds and accounts—Disposition.
53.34.090	Pledge of moneys, when binding—When lien attaches.
53.34.100	No personal liability on bonds or notes.
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53.34.010 Toll bridges, tunnels authorized—Highway approaches. In addition to all other powers granted to port districts, any such district may, with the consent of the department of transportation, acquire by condemnation, purchase, lease, or gift, and may construct, reconstruct, maintain, operate, furnish, equip, improve, better, add to, extend, and lease to others in whole or in part and sell in whole or in part any one or more of the following port projects, within or without or partially within and partially without the corporate limits of the district whenever the commission of the district determines that any one or more of such projects are necessary for or convenient to the movement of commercial freight and passenger traffic a part of which traffic moves to, from, or through the territory of the district:

- (1) Toll bridges;
- (2) Tunnels under or upon the beds of any river, stream, or other body of water, or through mountain ranges.

In connection with the acquisition or construction of any one or more of such projects the port districts may, with the consent of the state department of transportation, further acquire or construct, maintain, operate, or improve limited or unlimited access highway approaches of such length as the commission of such district deems advisable to provide means of interconnection of the facilities with public highways and of ingress and egress to any such project, including plazas and toll booths, and to construct and maintain under, along, over, or across any such project telephone, telegraph, or electric transmission wires and cables, fuel lines, gas transmission lines or mains, water transmission lines or mains, and other mechanical equipment not inconsistent with the appropriate use of the project, all for the purpose of obtaining revenues for the payment of the cost of the project. [1984 c 7 § 365; 1959 c 236 § 1.]

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

53.34.020 Contracts for use of projects—Regulations—Controversies. The district shall have the power to enter into a contract or contracts for the use of said projects, their approaches and equipment and from time to time to amend such contracts, with persons and with private and public corporations, and by said contracts to give such persons or corporations the right to use said projects, their approaches and equipment for the transmission of power for telephone and telegraph lines, for the transportation of water, gas, petroleum, and other products, for railroad and railway purposes, and for any other purpose to which the same may be adapted: PROVIDED, That no such contract shall be for a period longer than ninety-nine years, and that the projects shall be put to the largest possible number of uses consistent with the purposes for which such projects are constructed.

In making such contract or contracts and providing for payments and rentals thereunder the port district shall determine the value of the separate and different uses to which the projects are to be put and shall apportion the annual rentals and charges as nearly as possible according to the respective values of such uses. No such contract shall be made with any

person or corporation unless and until such person or corporation shall bind himself or itself to pay as rental therefor an amount determined by the port district and specified in the contract which shall be a fair and just proportion of the total amount required to pay interest on the bonds provided for in this chapter, plus a just proportion of the amount necessary for their retirement, and plus the cost of maintenance of the projects, their approaches and equipment.

The port district may require any of such contracts to be entered into before beginning the construction of said projects or before the expenditure of funds under the provisions of this chapter if in its judgment it is deemed expedient.

There shall be no monopoly of the use of said projects, and their approaches by any one use, or by any person or corporation, private or public, in respect to the several uses, and the port district may continue to make separate, additional, and supplemental contracts for one or more uses until in the judgment of said port district the capacity of the projects and approaches for any such use has been reached. When such capacity has been reached contracts for the use of said projects shall be given preference in regard to such uses according to the public interest as determined by the port district, and subsequent contracts shall be subject to all existing and prior contracts. The port district shall have the power to prescribe regulations for the use of such facilities by the parties to contracts for such use, or any of them, and to hear and determine all controversies which may arise between such parties, under such rules as the port district may from time to time promulgate; and all contracts shall expressly reserve such power to the port district. [1959 c 236 § 2.]

53.34.030 Revenue bonds and notes—Authorized—Purposes—Sale, maturity, cost. Whenever any port district shall determine to acquire or construct any one or more projects authorized under the provisions of this chapter, the commission of such district shall have the power and is authorized to issue negotiable revenue bonds and notes from time to time in one or more series or installments in such principal amount as, in the opinion of the commission, shall be necessary to provide sufficient money for the acquisition, construction, reconstruction, extension or improvement thereof as set forth in RCW 53.34.010, including engineering, inspection, legal and financial fees and costs, working capital, interest on such bonds and notes during construction and for a reasonable period thereafter, establishment of reserves to secure such bonds and notes and all other expenditures of such district incidental, necessary or convenient to the establishment of such projects on a sound financial basis, and to issue negotiable revenue bonds and notes for the purpose of renewing or refunding such outstanding bonds and notes in whole or in part at or prior to maturity. All such revenue bonds or notes shall be negotiable instruments within the meaning and purposes of the negotiable instruments law and shall be sold by the commission in such manner and for such price as the commission deems for the best interests of the district: PROVIDED, That the bonds and warrants may be in any form, including bearer bonds or bearer notes, or registered bonds or registered notes as provided in RCW 39.46.030. The commission may provide in any contract for the construction or acquisition of all or any part of a project or projects or for the additions or betterments thereto or

extensions or improvements thereof that payment therefor shall be made only in such revenue bonds or notes. Any revenue bonds issued under the authority of chapter 236, Laws of 1959 shall have a final maturity not to exceed forty years from date of issue. [1983 c 167 § 133; 1970 ex.s. c 56 § 69; 1969 ex.s. c 232 § 79; 1959 c 236 § 3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.34.040 Revenue bonds and notes—Resolution—Security—Form, interest, payment, etc. (1) Revenue bonds and notes may be issued by one or more resolutions and may be secured by trust agreement by and between the district and one or more corporate trustees, depositories, or fiscal agents, which may be any trust company or state or national bank having powers of a trust company within or without the state of Washington. Such bonds or notes shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places within or without the state of Washington, and be subject to such terms of redemption and at such redemption premiums as such resolution, resolutions, or trust agreements may provide. No proceedings for the issuance of such bonds or notes shall be required other than those required by the provisions of this chapter, and none of the provisions of any other laws relative to the terms and conditions for the issuance, payment, redemption, registration, sale or delivery of bonds of public bodies, corporation, or political subdivisions of this state shall be applicable to bonds or notes issued by port districts pursuant to this chapter.

(2) Notwithstanding subsection (1) of this section, such bonds and notes may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 134; 1970 ex.s. c 56 § 70; 1969 ex.s. c 232 § 80; 1959 c 236 § 4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.34.050 Covenants to safeguard and secure bonds and notes. Any resolution, resolutions, or trust agreements authorizing the issuance of any bonds or notes of a port district may contain covenants and agreements on the part of the district to protect and safeguard the security and payment of such bonds or notes, which shall be a part of the contract with the owners of such obligations thereby authorized as to:

(1) Pledging all or any part of the revenues, income, receipts, profits and other moneys derived by the district issuing such obligations from the ownership, operation, management, lease, or sale of any one or more of the projects constructed from the proceeds thereof to secure the payment of bonds or notes;

(2) The establishment and collection of rates, rentals, tolls, charges, license, and other fees to be charged by the dis-

trict and the amounts to be raised in each year for the services and commodities sold, leased, furnished, or supplied by any one or more of the projects established from the proceeds of such obligations, and the deposit, use, and disposition of the revenues of the district received therefrom;

(3) The setting aside of reserves or sinking funds for such obligations, and the deposit, investment, and disposition thereof;

(4) Limitations on the purpose or purposes to which the proceeds of sale of any issue of bonds or notes then or thereafter issued payable from the revenues of any such project or projects may be applied, and pledging such proceeds to secure the payment of such bonds or notes;

(5) Limitations on the issuance of additional revenue bonds or notes of the district, the terms and conditions upon which such additional revenue bonds or notes may be issued and secured, and the refunding of outstanding or other bonds or notes;

(6) The procedure, if any, by which the terms of any contract with bond owners may be amended or abrogated, the amount of bonds or notes the owners of which must consent thereto, and the manner in which such consent may be given;

(7) Limitations on the amount of moneys derived from any project or projects to be expended for operating, administrative or other expenses of the district in connection with any such project or projects;

(8) The employment of independent auditors and engineers or other technical consultants to advise and assist the district in the operation, management, and improvement of any project or projects;

(9) Limitations or prohibitions on rendering free service in connection with any project or projects;

(10) Specifying conditions constituting events of default and vesting in one or more trustees including trustees which may be appointed by the bond owners and note owners, such special rights, property rights, powers, and duties with respect to the property and revenues of any project or projects as the commission of the district may deem advisable the better to secure the payment of such bonds and notes;

(11) Prescribing conditions controlling the acquisition, sale, lease, or other disposition of real and personal property used or useful in connection with any project or projects, the amount and kinds of policies of insurance to be carried by the district in connection therewith, and the use and disposition of the proceeds of policies of insurance; and

(12) Any other matters of like or different character which in any way affect the security or protection of bonds or notes of the district. [1983 c 167 § 135; 1959 c 236 § 5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

53.34.060 Notes. A district shall have power from time to time to issue bond anticipation revenue notes (herein referred to as notes), and from time to time to issue renewal notes, such notes in any case to mature not later than six years from the date of incurring the indebtedness represented thereby in an amount not exceeding in the aggregate at any time outstanding the amount of revenue bonds then or theretofore authorized but not issued. Payment of such notes shall be made from any moneys or revenue which the district may have available for such purpose or the proceeds of the sale of

revenue bonds of the district, or such notes may be exchanged for a like amount of such revenue bonds bearing the same or a lower or higher rate of interest than that borne by such notes.

All notes may be issued and sold in the same manner as revenue bonds. Any district shall have power to make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and the district shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of said notes, of revenue bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in amount deemed by the district sufficient to provide for the payment of the notes in full at the maturity thereof. The district may provide in such collateral agreement that the notes may be exchanged for revenue bonds held as collateral security for the notes, or that the trustee may sell the revenue bonds if the notes are not otherwise paid at maturity and apply the proceeds of such sale to the payment of the notes. Such notes shall bear interest at a rate or rates as authorized by the port commission. [1970 ex.s. c 56 § 71; 1969 ex.s. c 232 § 81; 1959 c 236 § 6.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.34.070 Bonds and notes payable solely from revenues, etc.—Adequate rates and charges to be established. Revenue bonds and notes issued under the provisions of this chapter shall be payable solely from the revenues, income, receipts, profits, charges, fees, rentals, and moneys received or derived by or through the ownership, operation, sale, lease, or other disposition in whole or in part of any project or projects authorized under the provisions of this chapter, or through the issuance of refunding bonds or notes, and the commission of any district issuing revenue bonds or notes under the authority of this chapter shall establish, maintain, and collect rates, tolls, rents, and charges from time to time so long as any of such revenue bonds are outstanding and unpaid for all services sold, furnished, or supplied by or through any such project or projects sufficient to produce an amount, together with any other moneys of the district available and dedicated to such purpose, to pay the principal of and interest and premium, if any, on all revenue bonds and notes payable from the revenues of any project or projects as the same may respectively fall due in accordance with the terms of the resolution or resolutions or trust agreement authorizing the issuance and securing the payment of such obligations. [1959 c 236 § 7.]

53.34.080 Special funds and accounts—Disposition. The resolution, resolutions, or trust agreement providing for the issuance of revenue bonds or notes pursuant to the provisions of this chapter shall create and establish a special fund of the district into which the district shall be obligated to deposit as collected all income, revenues, receipts, and profits derived by the district through the ownership and operation of any project or projects acquired or constructed from the proceeds of the sale of such revenue bonds or notes: PRO-

VIDED, That additional separate special funds or accounts may be created by such resolution or trust agreement into which the district may obligate itself to deposit the proceeds of the sale of such revenue bonds and notes, the proceeds of the sale or other disposition in whole or in part of any project or projects, the proceeds of any policies of insurance on such projects, and any other additional moneys received by the district and applicable to such projects. All such moneys shall be held by the district, the depositories and trustees of such funds and accounts, in trust for the equal and ratable benefit and security of the holders from time to time of the revenue bonds and notes issued pursuant to the resolution, resolutions, or trust agreement establishing such special funds or accounts, and shall be collected, held, deposited, and disbursed solely for the acquisition, construction, operation, maintenance, renewal, replacement, improvement, extension, and betterment of such project or projects and the payment of the principal of and interest and premium, if any, on the revenue bonds and notes issued pursuant to such resolution, resolutions, or trust agreements, and the creation and maintenance of reasonable reserves for all such purposes: PROVIDED, HOWEVER, That the district may in its discretion and subject to any agreements with the holders of such revenue bonds and notes expend amounts of such moneys as are not required for the purposes aforesaid for other corporate purposes of the district.

The district may pledge such moneys or revenues of the district subject to prior pledges thereof, if any, for the payment of such notes and may in addition secure the notes in the same manner as herein provided for revenue bonds. [1959 c 236 § 8.]

53.34.090 Pledge of moneys, when binding—When lien attaches. It is the intention hereof that any pledge of revenues, income, receipts, profits, charges, fees, or other moneys made by a district for the payment of bonds shall be valid and binding from the time of the adoption of any resolution or the execution of any trust agreement making such pledge notwithstanding the fact that there may not then be any simultaneous delivery thereof, that the revenues, income, receipts, profits, charges, fees, and other moneys so pledged shall as soon as received by the district immediately be subject to the lien of such pledge without the physical delivery thereof and without further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the district irrespective of whether such parties have notice thereof. Neither the resolution, resolutions, or trust agreement authorizing revenue bonds or notes nor any other instrument by which such a pledge is created need be recorded to be effective. [1959 c 236 § 9.]

53.34.100 No personal liability on bonds or notes. Neither the members of a commission nor any person executing revenue bonds or notes shall be liable personally on such bonds or notes, or be subject to any personal liability or accountability by reason of the issuance thereof. [1959 c 236 § 10.]

53.34.110 District may purchase bonds or notes. A district shall have power out of any funds available therefor to purchase revenue bonds or notes of such district. Any bonds or notes so purchased may be held, canceled, or resold by the district subject to and in accordance with any resolution or resolutions or trust agreements with bondholders. [1959 c 236 § 11.]

53.34.120 State not to limit or alter rights of district or impair rights or remedies of bond or note holders. The state of Washington does hereby covenant and agree with the holders of revenue bonds or notes issued by a district under the authority of this chapter that the state will not limit or alter the rights hereby vested in a district to acquire, maintain, construct, reconstruct, improve, extend, add to, better and operate the projects authorized to be constructed or acquired under the provisions hereof and to establish, collect, and pledge such rates, rentals, tolls, charges, license, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with holders of such revenue bonds and notes or in any way impair the rights and remedies of bondholders and noteholders until the bonds or notes together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully met and discharged. The provisions of this chapter and of the resolutions, trust agreements and proceedings authorizing revenue bonds and notes hereunder shall constitute a contract with the holders of said bonds and notes. [1959 c 236 § 12.]

53.34.130 Bonds, notes, obligations not state or district debt—No ad valorem taxes. The revenue bonds, revenue notes, and any other obligations of a district issued under the authority of this chapter shall not be a debt of the state of Washington or of any political subdivision of this state, nor shall such obligations be considered indebtedness of the port district issuing same within any constitutional, statutory, or other limitation of indebtedness, and neither the state nor any political subdivision thereof, including the port district issuing such revenue bonds or notes, shall ever become obligated to levy ad valorem taxes on any taxable property within the state for the payment of such revenue bonds and notes, but such revenue bonds and notes shall be payable solely from and shall be a charge only upon the revenues and other funds of the project or projects pledged to the payment thereof by the proceedings authorizing the issuance of such bonds and notes. [1959 c 236 § 13.]

53.34.140 Registration of bonds and notes—Prima facie validity. Prior to the issuance and delivery of revenue bonds or notes under the authority of this chapter, such revenue bonds or notes and a certified copy of the resolution, resolutions, or trust agreements authorizing such revenue bonds or notes shall be forwarded by the port commission to the state auditor together with any additional information requested by him, and when such revenue bonds or notes have been examined they shall be registered by the auditor in books to be kept by him for that purpose, and a certificate of

registration shall be endorsed upon each such revenue bond or note and signed by the auditor or a deputy appointed by him for that purpose.

Revenue bonds or notes so registered shall then be prima facie valid and binding obligations of the port district in accordance with the terms thereof, notwithstanding any defect or irregularity in the proceedings for the authorization and issuance of such revenue bonds or notes or in the sale, execution or delivery thereof or in the application of the proceeds thereof. [1959 c 236 § 14.]

53.34.150 Bonds and notes as legal investment and security. Revenue bonds and notes issued under the authority of this chapter are made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds and notes are also made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities, municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized. [1959 c 236 § 15.]

53.34.160 Projects declared public benefit and governmental function—Covenant by state with bond and note holders—Tax exemption. It is found, determined, and declared that the creation and establishment of projects authorized by this chapter are in all respects for the benefit of the people of the state of Washington, for the improvement of their welfare and prosperity, and for the promotion of intrastate, interstate, and foreign commerce, the transportation of freight, commercial, and passenger traffic, is a public purpose, that such projects operated by port districts are essential parts of the public transportation system, and that such districts will be performing essential governmental functions in the exercise of the powers conferred upon them by this chapter; and the state of Washington covenants with the holders of revenue bonds and notes that port districts shall not be required to pay any taxes or assessments, or other governmental charges in lieu thereof, upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision, upon the activities of port districts in the operation and maintenance of such projects, or upon any charges, fees, rentals, revenues, or other income received by such districts from such projects and that the revenue bonds and notes of port districts and the income therefrom shall at all times be exempt from all taxation in the state of Washington, except transfer, inheritance, and estate taxes. This section shall constitute a covenant and agreement with

the holders of all revenue bonds and notes issued by port districts pursuant to the provisions of this chapter. [1959 c 236 § 16.]

53.34.170 District's power to acquire property, rights, etc.—Gifts—Condemnation—Contracts by public agencies authorized. In the acquisition, construction, reconstruction, improvement, extension, or betterment of any project or projects authorized under the provisions of this chapter any port district creating and establishing any such project or projects may have and exercise all of the powers heretofore or hereafter granted to port districts for corporate purposes and, in addition thereto, may acquire by gift or grant, lease, purchase, or condemnation any public and private property, franchises and property rights, including state, county, and school lands and property, and littoral and water rights whether or not any such property is then devoted to public or quasi public proprietary or governmental use: PROVIDED, That the court shall find that the proposed condemnation of any property already devoted to a public use is for a higher public use, and may by appropriate contracts with any city, county, or other political subdivision of the state, with the state and any department of the government of the state (hereinafter referred to collectively as public agencies), or with any department, instrumentality or agency of the United States, acquire title to or the use of existing roads, streets, parkways, avenues, or highways or the closing of any roads, streets, parkways, avenues, or highways as may be necessary or convenient to the acquisition, construction, or operation of any such project or projects under such terms and conditions as may be mutually agreed upon. All public agencies are authorized to enter into contracts with port districts for the aforesaid purposes. [1959 c 236 § 17.]

53.34.180 Public agencies authorized to contract with district for contribution of money, property, services, etc. Any public agency, including without limitation the department of transportation, may contract with a port district that is constructing a project or projects under this chapter for the contribution of moneys or real or personal property in aid of the construction of the projects, or for the furnishing of engineering, legal, police, and fire protection, and all other services necessary or convenient to the acquisition, construction, reconstruction, operation, maintenance, renewal, replacement, improvement, additions to, or extension of the project or projects. The contracts shall run for such period of years and contain such terms and conditions as the parties thereto mutually agree upon. Any public agency, by resolution, may authorize the execution of the contracts with a port district and no other authorization on the part of the public agency is necessary, regardless of any provision of laws or of a city charter to the contrary. Obligations assumed by a public agency under the contracts entered into under this chapter shall be included and provided for in each annual budget of the public agency made thereafter until all the obligations have been fully discharged. [1984 c 7 § 366; 1959 c 236 § 18.]

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

(2004 Ed.)

53.34.190 Bylaws, rules for management, uses, charges—Penalty for violation. (1) Any port district establishing a project under the authority of this chapter may make such bylaws, rules, and regulations for the management and use of such project and for the collection of rentals, tolls, fees, and other charges for services or commodities sold, furnished or supplied through such project.

(2) The violation of any bylaw, rule, or regulation described in subsection (1) of this section is a misdemeanor punishable by fine not to exceed one hundred dollars or by imprisonment for not longer than thirty days, or both. [2003 c 53 § 287; 1959 c 236 § 19.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

53.34.200 Actions for damages, injuries, death—Allegation in complaint of presentment of claim. In every action against a district for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death arising in connection with the acquisition, construction, reconstruction, operation, or maintenance of a project authorized by the provisions of this chapter, the complaint shall contain an allegation that at least thirty days have elapsed since a demand, claim, or claims upon which such action is founded were presented to the secretary of the district, or to its chief executive officer, and that the district has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment. [1959 c 236 § 20.]

53.34.220 Chapter supplemental to other laws—Liberal construction. The powers and rights granted to port districts and public agencies by the provisions of this chapter are in addition and supplemental to and not in substitution of the powers and rights heretofore or hereafter granted to such districts and public agencies by any other law or city charter, and no limitations or restrictions or proceedings for the exercise of powers and rights by port districts and public agencies contained in any other laws or city charters shall apply to the exercise of powers and rights granted by the provisions of this chapter, and the provisions of this chapter shall be liberally construed to permit the accomplishment of the purposes hereof. [1959 c 236 § 22.]

53.34.900 Severability—1959 c 236. If any section, clause or provision of this chapter shall be declared unconstitutional or invalid in whole or in part, to the extent that this chapter is not unconstitutional or invalid this chapter shall be valid and effective, and no other section, clause, or provision hereof shall on account of such declaration be deemed invalid or ineffective. [1959 c 236 § 23.]

53.34.910 Chapter controls inconsistent acts. Insofar as the provisions of this chapter are inconsistent with the provisions of any other act or of any city charter, the provisions of this chapter shall be controlling. [1959 c 236 § 24.]

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Chapter 53.35 RCW BUDGETS

Sections

53.35.010	Preliminary budget.
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53.35.030	Hearing—Final budget.
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53.35.045	Alternate date for filing final budget.
53.35.050	Supplemental budgets.
53.35.060	Fiscal year.
53.35.070	Chapter exclusive method for budgets.
53.35.071	Expenditures for industrial development, trade promotion, or promotional hosting—Budgeting required.
53.35.900	Severability—1959 c 159.

53.35.010 Preliminary budget. On or before the 15th day of September of each year each port commission shall prepare a preliminary budget of the port district for the ensuing fiscal year showing the estimated expenditures and the anticipated available funds from which all expenditures are to be paid. [1959 c 159 § 1.]

53.35.020 Publication of notice of preliminary budget and hearing. Following the preparation of the preliminary budget, the port commission shall publish a notice stating that the preliminary budget of the port district has been prepared and placed on file at the office of the port district; that a copy thereof may be obtained by any taxpayer at an address set forth in the notice; that the commission will meet at a date, hour and place set forth in the notice, such date to be not earlier than September 15th and not later than the first Tuesday following the first Monday in October, for the purpose of fixing and adopting the final budget of the port district for the ensuing year. The notice shall be published once each week for two consecutive weeks in a legal newspaper of the district, or if there is none, in any newspaper of general circulation in the county, the first publication to be not less than nine days nor more than twenty days prior to the date of the hearing. [1959 c 159 § 2.]

53.35.030 Hearing—Final budget. On the day set by the notice provided for in RCW 53.35.020 the commission shall meet at the place and hour designated for the purpose of a hearing on the budget and adoption of a final budget. Any person may present objections to the preliminary budget following which the commission shall, by resolution adopt a final budget. [1959 c 159 § 3.]

53.35.040 Final budget to be filed with county commissioners. It shall be the duty of the commissioners of port districts, for the purpose of levying port district taxes, to file with the clerk of the board of county commissioners on or before the Wednesday next following the first Monday in October in each year a certified copy of such final budget which shall specify the amounts to be raised by taxation on the assessed valuation of the property in the port district. [1959 c 159 § 4.]

53.35.045 Alternate date for filing final budget. Notwithstanding any provision of law to the contrary, the board of commissioners of a port district may file with the clerk of the county legislative authority a certified copy of the port

district final budget, provided for in RCW 53.35.040, on the first Monday in December. The board of port commissioners may also set other dates relating to the budget process, including but not limited to the dates set in RCW 53.35.010 and 53.35.020 to conform to the alternate date for final budget filing. [1974 ex.s. c 19 § 1.]

53.35.050 Supplemental budgets. A port commission may adopt by resolution one or more supplemental budgets at any time during the fiscal year. Such supplemental budget shall be adopted only after public hearing. Notice of such hearing shall be given by a single publication of notice of the date, place and hour of the hearing in a legal newspaper of the district, or if there is none, in any newspaper of general circulation in the county, the publication of such notice to be at least five days and not more than fifteen days prior to the hearing date. [1959 c 159 § 5.]

53.35.060 Fiscal year. The fiscal year for a port district shall be the calendar year. [1959 c 159 § 6.]

53.35.070 Chapter exclusive method for budgets. The provisions of this chapter shall constitute the exclusive requirement and authority for the preparation, adoption, certification and filing of port district budgets. [1959 c 159 § 7.]

53.35.071 Expenditures for industrial development, trade promotion, or promotional hosting—Budgeting required. See RCW 53.36.120.

53.35.900 Severability—1959 c 159. Should any section or parts of sections of this chapter be declared unconstitutional it shall in no case affect the validity of other provisions of this chapter. [1959 c 159 § 8.]

Chapter 53.36 RCW FINANCES

Sections

53.36.010	District treasurer.
53.36.015	Payment of claims—Use of warrants and checks.
53.36.020	Tax levy—Limitation.
53.36.030	Indebtedness—Limitation.
53.36.040	Funds in anticipation of revenues—Warrants.
53.36.050	County treasurer—General and special funds—Depositories—Investment of excess funds.
53.36.060	Incidental expense fund.
53.36.070	Levy for dredging, canal construction, or land leveling or filling purposes.
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Accounting system and state examination: RCW 43.09.200 through 43.09.280.

Disposition of rentals from aquatic lands managed by a port district: RCW 79.90.475.

Tax district relief: Chapter 39.64 RCW.

Vouchers on public funds: Chapter 42.24 RCW.

53.36.010 District treasurer. The treasurer of the county in which a port district is located shall be treasurer of the district unless the commission of a port district which has for the last three consecutive years received annual gross operating revenues of one hundred thousand dollars or more, excluding tax revenues and grants for capital purposes, designates by resolution some other person having experience in financial or fiscal matters as treasurer of the port district to act with the same powers and under the same restrictions as provided by law for a county treasurer acting on behalf of a port district: PROVIDED, That any port district which was authorized by the county treasurer to appoint its own treasurer prior to July 24, 1983, may continue to appoint its own treasurer. The commission may, and if the treasurer is not the county treasurer it shall, require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on such bonds shall be paid by the district. All district funds shall be paid to the treasurer and shall be disbursed by him upon warrants signed by a port auditor appointed by the port commission, upon vouchers approved by the commission. [1983 c 250 § 1; 1974 ex.s. c 13 § 1; 1955 c 348 § 5. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Severability—1955 c 348: See note following RCW 53.08.120.

County treasurer, calling warrants: RCW 36.29.060.

53.36.015 Payment of claims—Use of warrants and checks. A port district that acts as its own treasurer as provided in RCW 53.36.010 may by resolution adopt a policy for the payment of claims or other obligations of the port district, which are payable out of solvent funds, electing either to pay obligations by warrant or by check. However, no check shall be issued when the applicable fund is not solvent at the time payment is ordered, but a warrant shall be issued instead. When checks are to be used, the port commission shall designate the qualified public depository where checks are to be drawn, and the officers authorized or required to sign checks. Wherever in this title reference is made to warrants, the term includes checks where authorized by this section. [2002 c 95 § 1.]

53.36.020 Tax levy—Limitation. A district may raise revenue by levy of an annual tax not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district for general port purposes, including the establishment of a capital improvement fund for future capital improvements, except that any levy for the payment of the principal and interest of the general bonded indebtedness of the port district shall be in excess of any levy made by the port district under the forty-five cents per thousand dollars of assessed value limitation. The levy shall be made and taxes collected in the manner provided for the levy and collection of taxes in school

districts of the first class. [1973 1st ex.s. c 195 § 56; 1955 c 65 § 11. Prior: 1951 c 133 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

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

Budgets: Chapter 53.35 RCW.

Levy of taxes: Chapter 84.52 RCW.

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59); RCW 84.52.050 through 84.52.056.

School district levy: Chapter 28A.545 RCW.

53.36.030 Indebtedness—Limitation. (1)(a) Except as provided in (b) of this subsection, a port district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor not exceeding an amount, together with any existing indebtedness of the district not authorized by the voters, of one-fourth of one percent of the value of the taxable property in the district.

(b) Port districts having less than eight hundred million dollars in value of taxable property during 1991 may at any time contract indebtedness or borrow money for port district purposes and may issue general obligation bonds therefor not exceeding an amount, combined with existing indebtedness of the district not authorized by the voters, of three-eighths of one percent of the value of the taxable property in the district. Prior to contracting for any indebtedness authorized by this subsection (1)(b), the port district must have a comprehensive plan for harbor improvements or industrial development and a long-term financial plan approved by the department of community, trade, and economic development. The department of community, trade, and economic development is immune from any liability for its part in reviewing or approving port district's improvement or development plans, or financial plans. Any indebtedness authorized by this subsection (1)(b) may be used only to acquire or construct a facility, and, prior to contracting for such indebtedness, the port district must have a lease contract for a minimum of five years for the facility to be acquired or constructed by the debt.

(2) With the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, a port district may contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor provided the total indebtedness of the district at any such time shall not exceed three-fourths of one percent of the value of the taxable property in the district.

(3) In addition to the indebtedness authorized under subsections (1) and (2) of this section, port districts having less than two hundred million dollars in value of taxable property and operating a municipal airport may at any time contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor not exceeding an additional one-eighth of one percent of the value of the taxable property in the district without authorization by the voters; and, with the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, may contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor for an additional three-eighths of one percent provided the total indebtedness

of the district for all port purposes at any such time shall not exceed one and one-fourth percent of the value of the taxable property in the district.

(4) Any port district may issue general district bonds evidencing any indebtedness, payable at any time not exceeding fifty years from the date of the bonds. Any contract for indebtedness or borrowed money authorized by RCW 53.36.030(1)(b) shall not exceed twenty-five years. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(5) Elections required under this section shall be held as provided in RCW 39.36.050.

(6) For the purpose of this section, "indebtedness of the district" shall not include any debt of a county-wide district with a population less than twenty-five hundred people when the debt is secured by a mortgage on property leased to the federal government; and the term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015.

(7) This section does not apply to a loan made under a loan agreement under chapter 39.69 RCW, and a computation of indebtedness under this chapter must exclude the amount of a loan under such a loan agreement. [1996 c 66 § 1; 1995 c 102 § 1; 1991 c 314 § 29; 1990 c 254 § 1; 1984 c 186 § 41; 1970 ex.s. c 42 § 32; 1965 ex.s. c 54 § 1; 1959 c 52 § 1; 1955 c 65 § 12. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Findings—1991 c 314: See note following RCW 43.160.020.

Purpose—1984 c 186: See note following RCW 39.46.110.

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

General provisions applicable to district bonds: Chapter 39.44 RCW.

Limitation upon indebtedness: State Constitution Art. 8 § 6 (Amendment 27); chapter 39.36 RCW.

Port district indebtedness authorized, emergency public works: RCW 39.28.030.

Validation requirement: RCW 39.40.010.

53.36.040 Funds in anticipation of revenues—Warrants. (1) Any port commission is hereby authorized, prior to the receipt of taxes raised by levy, to borrow money or issue the warrants of the district in anticipation of the revenues to be derived by such district and such warrants shall be redeemed from the first money available from such taxes when collected. Such warrants may be in any form, including bearer warrants or registered warrants as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 136; 1921 c 179 § 2; 1911 c 92 § 12; RRS § 9699.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

53.36.050 County treasurer—General and special funds—Depositories—Investment of excess funds. The county treasurer acting as port treasurer shall create a fund to be known as the "Port of Fund," into which shall be paid all money received by him from the collection of taxes in behalf of such port district, and shall also maintain such other special funds as may be created by the port commission

into which shall be placed such moneys as the port commission may by its resolution direct. All such port funds shall be deposited with the county depositories under the same restrictions, contracts and security as is provided by statute for county depositories and all interest collected on such port funds shall belong to such port district and shall be deposited to its credit in the proper port funds: PROVIDED, That any portion of such port moneys determined by the port commission to be in excess of the current needs of the port district may be invested by the county treasurer in accordance with RCW 36.29.020, 36.29.022, and chapter 39.59 RCW, and all interest collected thereon shall likewise belong to such port district and shall be deposited to its credit in the proper port funds. [1997 c 393 § 10; 1959 c 52 § 2; 1921 c 179 § 3; 1911 c 92 § 13; RRS § 9700.]

County depositories: Chapter 36.48 RCW.

53.36.060 Incidental expense fund. The port commission of any port district may, by resolution, create an incidental expense fund in such amount as the port commission may direct. Such incidental expense fund may be kept and maintained in a bank or banks designated in the resolution creating the fund, and such depository shall be required to give bonds or securities to the port district for the protection of such incidental expense fund, in the full amount of the fund authorized by the said resolution. Vouchers shall be drawn to reimburse said incidental expense fund and such vouchers shall be approved by the port commission. Transient labor, freight, express, cartage, postage, petty supplies, and minor expenses of the port district may be paid from said incidental expense fund and all such disbursements therefrom shall be by check of the port auditor or such other officer as the port commission shall by resolution direct. All expenditures from said incidental expense fund shall be covered by vouchers drawn by the port auditor and approved by the manager or such other officer of the port district as the port commission may by resolution direct. The officer disbursing said fund shall be required to give bond to the port district in the full authorized amount of the said incidental expense fund for the faithful performance of his duties in connection with the disbursement of moneys from such fund. [1933 c 189 § 16; RRS § 9699-1.]

53.36.070 Levy for dredging, canal construction, or land leveling or filling purposes. Any port district organized under the laws of this state shall, in addition to the powers otherwise provided by law, have the power to raise revenue by the levy and collection of an annual tax on all taxable property within such port district of not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district, for dredging, canal construction, or land leveling or filling purposes, the proceeds of any such levy to be used exclusively for such dredging, canal construction, or land leveling and filling purposes: PROVIDED, That no such levy for dredging, canal construction, or land leveling or filling purposes under the provisions of RCW 53.36.070 and 53.36.080 shall be made unless and until the question of authorizing the making of such additional levy shall have been submitted to a vote of the electors of the district in the manner provided by

law for the submission of the question of making additional levies in school districts of the first class at an election held under the provisions of *RCW 29.13.020 and shall have been authorized by a majority of the electors voting thereon. [1983 c 3 § 162; 1973 1st ex.s. c 195 § 57; 1965 ex.s. c 22 § 1; 1925 c 29 § 1; RRS § 9692-1.]

***Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

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

53.36.080 Collection of levies for dredging, canal construction, or land leveling or filling purposes. Whenever such additional levy for dredging, canal construction, or land leveling or filling purposes shall have been authorized by the electors of the district at an election, held subsequent to the time of making the levy for the district for general purposes, in any year, such levy shall be certified by the port commission in the manner provided by law for certifying levies for general purposes of the district, and shall be forthwith spread and extended upon the tax rolls for the current year, and the taxes so levied and extended shall be collected in the manner provided by law for the collection of general taxes. [1965 ex.s. c 22 § 2; 1925 c 29 § 2; RRS § 9692-2.]

Collection of taxes, generally: Chapter 84.56 RCW.

53.36.100 Levy for industrial development district purposes—Notice—Petition—Election. (1) A port district having adopted a comprehensive scheme of harbor improvements and industrial developments may thereafter raise revenue, for six years only, and a second six years if the procedures are followed under subsection (2) of this section, in addition to all other revenues now authorized by law, by an annual levy not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district. In addition, if voters approve a ballot proposition authorizing additional levies by a simple majority vote, a port district located in a county bordering on the Pacific Ocean having adopted a comprehensive scheme of harbor improvements and industrial developments may impose these levies for a third six-year period. Said levies shall be used exclusively for the exercise of the powers granted to port districts under chapter 53.25 RCW except as provided in RCW 53.36.110. The levy of such taxes is herein authorized notwithstanding the provisions of RCW 84.52.050 and 84.52.043. The revenues derived from levies made under RCW 53.36.100 and 53.36.110 not expended in the year in which the levies are made may be paid into a fund for future use in carrying out the powers granted under chapter 53.25 RCW, which fund may be accumulated and carried over from year to year, with the right to continue to levy the taxes provided for in RCW 53.36.100 and 53.36.110 for the purposes herein authorized.

(2) If a port district intends to levy a tax under this section for one or more years after the first six years these levies were imposed, the port commission shall publish notice of this intention, in one or more newspapers of general circulation within the district, by June 1 of the year in which the first levy of the seventh through twelfth year period is to be made. If within ninety days of the date of publication a petition is filed with the county auditor containing the signatures of

eight percent of the number of voters registered and voting in the port district for the office of the governor at the last preceding gubernatorial election, the county auditor shall canvass the signatures in the same manner as prescribed in *RCW 29.79.200 and certify their sufficiency to the port commission within two weeks. The proposition to make these levies in the seventh through twelfth year period shall be submitted to the voters of the port district at a special election, called for this purpose, no later than the date on which a primary election would be held under *RCW 29.13.070. The levies may be made in the seventh through twelfth year period only if approved by a majority of the voters of the port district voting on the proposition. [1994 c 278 § 1; 1982 1st ex.s. c 3 § 1; 1979 c 76 § 1; 1973 1st ex.s. c 195 § 58; 1957 c 265 § 1.]

***Reviser's note:** RCW 29.79.200 and 29.13.070 were recodified as RCW 29A.72.230 and 29A.04.310, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.310 was subsequently repealed by 2004 c 271 § 193.

Effective date—1982 1st ex.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982." [1982 1st ex.s. c 3 § 3.]

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

Levy by port district under RCW 53.36.100—Application of chapter 84.55 RCW: RCW 84.55.045.

53.36.110 Levy for industrial development district purposes—Excess funds to be used solely for retirement of general obligations. In the event the levy herein authorized shall produce revenue in excess of the requirements to complete the projects of a port district then provided for in its comprehensive scheme of harbor improvements and industrial developments or amendments thereto, said excess shall be used solely for the retirement of general obligation bonded indebtedness. [1957 c 265 § 2.]

53.36.120 Expenditures for industrial development, trade promotion, or promotional hosting—Budgeting required. Under the authority of Article VIII, section 8, of the state Constitution, port district expenditures for industrial development, trade promotion or promotional hosting shall be pursuant to specific budget items as approved by the port commission at the annual public hearings on the port district budget. [1967 c 136 § 1.]

53.36.130 Expenditures for industrial development, trade promotion, or promotional hosting—Source and amount of funds. Funds for promotional hosting expenditures shall be expended only from gross operating revenues and shall not exceed one percent thereof upon the first two million five hundred thousand dollars of such gross operating revenues, one-half of one percent upon the next two million five hundred thousand dollars of such gross operating revenues, and one-fourth of one percent on the excess over five million dollars of such operating revenues: PROVIDED, HOWEVER, That in no case shall these limitations restrict a port district to less than twenty-five hundred dollars per year from any funds available to the port. [1967 c 136 § 2.]

53.36.140 Expenditures for industrial development, trade promotion, or promotional hosting—Rules and regulations—Authorizations—Vouchers. Port commissions shall adopt, in writing, rules and regulations governing promotional hosting expenditures by port employees or agents. Such rules shall identify officials and agents authorized to make such expenditures and the approved objectives of such spending. Port commissioners shall not personally make such expenditures, or seek reimbursement therefor, except where specific authorization of such expenditures has been approved by the port commission. All payments and reimbursements shall be identified and supported on vouchers approved by the port auditor. [1967 c 136 § 3.]

53.36.150 Expenditures for industrial development, trade promotion, or promotional hosting—Duties of state auditor. The state auditor shall, as provided in chapter 43.09 RCW:

(1) Audit expenditures made pursuant to RCW 53.36.120 through 53.36.150; and

(2) Promulgate appropriate rules and definitions as a part of the uniform system of accounts for port districts to carry out the intent of RCW 53.36.120 through 53.36.150: PROVIDED, That such accounts shall continue to include "gross operating revenues" which shall be exclusive of revenues derived from any property tax levy except as provided in RCW 53.36.130. [1967 c 136 § 4.]

Chapter 53.40 RCW

REVENUE BONDS AND WARRANTS

Sections

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53.40.010 Revenue bonds authorized. The port commission of any port district is authorized for the purpose of carrying out the lawful powers granted port districts by the laws of the state to contract indebtedness and to issue revenue bonds evidencing such indebtedness in conformity with this chapter. [1959 c 183 § 1; 1957 c 59 § 1; 1949 c 122 § 1; Rem. Supp. 1949 § 9711-1.]

Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.

Declaratory judgments of local bond issues: Chapter 7.25 RCW.

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

53.40.020 Purposes for which bonds may be issued and sold. All such revenue bonds authorized under the terms of this chapter may be issued and sold by the port district from time to time and in such amounts as is deemed necessary by the port commission to provide sufficient funds for

the carrying out of all port district powers, and without limiting the generality thereof, shall include the following: Acquisition, construction, reconstruction, maintenance, repair, additions and operation of port properties and facilities, including in the cost thereof engineering, inspection, accounting, fiscal and legal expenses; the cost of issuance of bonds, including printing, engraving and advertising and other similar expenses; payment of interest on the outstanding bonds issued for any project during the period of actual construction and for six months after the completion thereof, and the proceeds of such bond issue are hereby made available for all such purposes. "Port property and facilities," as used in this section, includes facilities for the freezing or processing of agricultural products. [1987 c 289 § 2; 1959 c 183 § 2; 1957 c 59 § 3. Prior: 1949 c 122 § 2, part; Rem. Supp. 1949 § 9711-2, part.]

53.40.030 Bonds—Term, form, etc. (1) The port commission shall determine the form, conditions, and denominations of all such bonds, the maturity date or dates which the bonds so sold shall bear, and the interest rate or rates thereon. It shall not be necessary that all bonds of the same authorized issue bear the same interest rate or rates. Principal and interest of the bonds shall be payable at such place or places as may be fixed and determined by the port commission. The bonds may contain provisions for registration thereof as to principal only or as to both principal and interest as provided in RCW 39.46.030. The bonds shall have interest payable at such time or times as may be determined by the port commission and in such amounts as it may prescribe. The port commission may provide for retirement of bonds issued under this chapter at any time or times prior to their maturity, and in such manner and upon the payment of such premiums as may be fixed and determined by resolution of the port commission. The port commission may delegate authority to the chief executive officer of the port to approve the interest rate or rates, maturity date or dates, redemption rights, interest payment dates, and principal maturities under such terms and conditions approved by resolution of the port commission.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2000 c 181 § 1; 1983 c 167 § 137; 1970 ex.s. c 56 § 73; 1969 ex.s. c 232 § 37; 1959 c 183 § 3; 1957 c 59 § 4. Prior: 1949 c 122 § 2, part; Rem. Supp. 1949 § 9711-2, part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Bonds—Form, terms of sale, payment, etc.: Chapter 39.44 RCW.

53.40.040 Bonds payable solely out of revenues—Special funds. Bonds issued under the provisions of this chapter shall be payable solely out of operating revenues of the port district. Such bonds shall be authorized by resolution adopted by the port commission, which resolution shall create a special fund or funds into which the port commission may obligate and bind the port district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the gross revenue of the port district for the purpose of paying the principal of and interest on such bonds

as the same shall become due, and if deemed necessary to maintain adequate reserves therefor. Such fund or funds shall be drawn upon solely for the purpose of paying the principal and interest upon the bonds issued pursuant to this chapter.

The bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, even though they shall be payable solely from such special fund or funds, and the tax revenue of the port district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. The bonds and any coupons attached thereto shall state upon their face that they are payable solely from such special fund or funds. If the port commission fails to set aside and pay into such fund or funds the payments provided for in such resolution, the owner of any such bonds may bring suit to compel compliance with the provisions of the resolution. [1983 c 167 § 138; 1959 c 183 § 4; 1957 c 59 § 5; 1949 c 122 § 4; Rem. Supp. 1949 § 9711-4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Negotiable instruments—Uniform Commercial Code: Title 62A RCW.

53.40.050 Sale of bonds to federal government. Port districts may, but are not required by the terms of this chapter to do so, sell any or all such bonds issued pursuant to this chapter to the federal government, or any agency of the federal government, at private sale and without the necessity of public advertisement or calling for bids. [1959 c 183 § 5; 1957 c 59 § 6; 1949 c 122 § 3; Rem. Supp. 1949 § 9711-3.]

Bonds sold to government at private sale: Chapter 39.48 RCW.

53.40.110 Interest, signatures, sale of bonds—Covenants—Safeguards—Enforcement. (1) The bonds issued pursuant to the provisions of this chapter shall bear interest at such rate or rates as authorized by the port commission; shall be signed on behalf of the port district by the president of the port commission and shall be attested by the secretary of the port commission, one of which signatures may be a facsimile signature, and shall have the seal of the port district impressed thereon; any interest coupons attached thereto shall be signed by the facsimile signatures of said officials. Such bonds shall be sold in the manner and at such price as the port commission shall deem best, either at public or private sale.

The port commission may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on such bonds and may but shall not be required to include covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing the payment of such principal and interest; to establish, maintain, and collect tariffs, rates, charges, fees, rentals, and sales prices on facilities and services the income of which is pledged for the payment of such bonds, sufficient to pay or secure the payment of such principal and interest and to maintain an adequate coverage over annual debt service; and to make any and all other covenants not inconsistent with the provisions of this chapter which will increase the marketability of such bonds. The port commission may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. The provisions of

this chapter and any resolution or resolutions providing for the authorization, issuance, and sale of such bonds shall constitute a contract with the owners of such bonds, and the provisions thereof shall be enforceable by any owner of such bonds by mandamus or any appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 139; 1970 ex.s. c 56 § 74; 1969 ex.s. c 232 § 38; 1959 c 183 § 6; 1949 c 122 § 9; Rem. Supp. 1949 § 9711-8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Mandamus: Chapter 7.16 RCW.

53.40.120 Irregularity in bonds or use of funds no defense. The Reconstruction Finance Corporation, or any other agency of the United States government making any such loan, or any other holder or owner of any bonds issued pursuant to this chapter, shall not be required to see to the application of the moneys derived from such bonds to the purposes for which the bonds are issued as specified in any resolution authorizing the issuance thereof. No defense of invalidity, or irregularity in any such bonds funded or refunded by the issuance of bonds hereunder, shall be a valid defense in any action at law or equity for a judgment upon or for the enforcement or collection of any bonds issued pursuant to this chapter, and no court shall have jurisdiction to entertain any such defense in any such action or proceeding. [1957 c 59 § 10. Prior: 1949 c 122 § 7, part; Rem. Supp. 1949 § 9711-6, part.]

53.40.125 District may mortgage industrial development facility. The port commission of any port district, as security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, may mortgage, pledge, or otherwise encumber the particular industrial development facility or facilities or any part or parts thereof that are being financed by the revenue bonds, whether then owned or thereafter acquired, and may assign any mortgage and repledge any security conveyed to the port district for that particular facility or facilities. [1987 c 289 § 1.]

53.40.130 Funding, refunding bonds. (1) The port commission of any port district may by resolution, from time to time, provide for the issuance of funding or refunding revenue bonds to fund or refund any outstanding revenue warrants, bonds, and any premiums and interest due thereon at or before the maturity of such warrants or bonds, and may combine various outstanding revenue warrants and parts or all of various series and issues of outstanding revenue bonds and any matured coupons in the amount thereof to be funded or refunded.

The port commission shall create a special fund for the sole purpose of paying the principal of and interest on such

funding or refunding revenue bonds, into which fund the commission shall obligate and bind the port district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the gross revenue of the port district sufficient to pay such principal and interest as the same shall become due, and if deemed necessary to maintain adequate reserves therefor.

Such funding or refunding bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, and the tax revenue of the port district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The port district may exchange such funding or refunding bonds for the warrants, bonds, and any coupons being funded or refunded, or it may sell such funding or refunding bonds in the manner, at such rate or rates of interest and at such price as the port commission shall deem to be for the best interest of the district and its inhabitants, either at public or private sale.

The provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 140; 1970 ex.s. c 56 § 75; 1969 ex.s. c 232 § 39; 1959 c 183 § 7; 1949 c 122 § 8; Rem. Supp. 1949 § 9711-7.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

53.40.135 Revenue warrants. Port districts may also issue revenue warrants for the same purposes for which they may issue revenue bonds, and the provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such revenue warrants. [1959 c 183 § 8.]

53.40.140 Construction of chapter. This chapter shall be complete authority for the issuance of the bonds and warrants hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations relative to the issuance of such bonds or warrants contained in any other act shall not apply to the bonds or warrants issued under this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1949 c 122 § 10; Rem. Supp. 1949 § 9711-9.]

53.40.150 Validation—1959 c 183. Any sale of revenue bonds or warrants of port districts heretofore made, whether at public or private sale and whether at par or less than par as authorized herein, and any terms, conditions, and covenants of any revenue bonds or warrants of port districts heretofore issued, are hereby declared to be valid, legal, and binding in all respects: PROVIDED, HOWEVER, That this

section shall not be construed to exonerate any officer or agent of any such district from any liability for any acts which were committed fraudulently or in bad faith. [1959 c 183 § 9.]

Chapter 53.44 RCW

FUNDING AND REFUNDING INDEBTEDNESS— 1947 ACT

Sections

- 53.44.010 Funding and refunding authorized.
53.44.030 Maturities—Payment.

Funding and refunding revenue bonds: RCW 53.40.130.

Public bonds, form, terms of sale, payment, etc.: Chapter 39.44 RCW.

53.44.010 Funding and refunding authorized. The board of commissioners of any port district of the state may fund or refund any of the general bonded indebtedness and/or warrants of the district now or hereafter existing and accrued interest thereon, and may combine various series and/or issues of warrants and/or bonds into a single issue of funding or refunding bonds, by the issuance of general obligation funding or refunding bonds, when the board, by resolution, finds, determines, and declares that such proposed funding or refunding will inure to the benefit and credit of the district and will not result in an increase of the district's indebtedness or in an increase in the rate of interest borne by the indebtedness so funded or refunded. Such funding or refunding may be accomplished by the sale of said funding or refunding bonds or by their exchange for the bonds and/or warrants to be refunded. General obligation bonds of a port district which do not provide for prior redemption, may also be refunded with the consent of the holders thereof. Such bonds shall be issued in accordance with chapter 39.46 RCW. [1984 c 186 § 42; 1947 c 239 § 1; Rem. Supp. 1947 § 5623-1.]

Purpose—1984 c 186: See note following RCW 39.46.110.

53.44.030 Maturities—Payment. Such funding or refunding bonds shall run for a period of not exceeding twenty years from date thereof. The board may apply to the payment of the funding or refunding bonds and to the prior redemption thereof any other moneys or funds belonging to the district which are legally available for such purpose. [1984 c 186 § 43; 1947 c 239 § 3; Rem. Supp. 1947 § 5623-3.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Chapter 53.46 RCW

CONSOLIDATION

Sections

- 53.46.005 Definitions.
53.46.010 Consolidation authorized—Petition or resolution, contents.
53.46.020 Special election—Conduct.
53.46.030 Certification of election—Establishment as municipal corporation—Commissioners, terms.
53.46.040 Prior obligations—Powers of consolidated district—Separation of funds.
53.46.050 County commissioners may act if no active port commission.
53.46.060 Dissolution of district which has no active commission—Authority of county commissioners.
53.46.070 Title to property vests in consolidated district.

- 53.46.080 District including area from two or more counties—Procedure to determine proportion of taxes.
- 53.46.090 District including area from two or more counties—Levy and collection of taxes—Principal county treasurer, duties.
- 53.46.100 General powers of consolidated district—Debt limitation.

53.46.005 Definitions. As used in this chapter the term "principal county auditor" and "principal county treasurer" shall be the county auditor or county treasurer in the county having the largest assessed valuation of the total of the proposed consolidated port district. [1965 c 102 § 1.]

53.46.010 Consolidation authorized—Petition or resolution, contents. Two or more port districts may be joined into one consolidated port district in the following manner: The port commissioners of each of the port districts proposed to be consolidated may, or on petition of ten percent of the qualified electors residing within each of the districts proposed to be consolidated based on the total vote cast in the last general election, shall, by joint resolution submit to the qualified electors of the port districts to be consolidated the proposition of consolidating such districts into one port district. Such resolution or petition in request thereof shall identify each port district to be consolidated, listing its assets and liabilities; state the name by which the port district resulting from the consolidation shall be known; legally describe each port commissioner district to be created within the port district resulting from the consolidation; state the terms and conditions, if any, under which the consolidation is proposed; and call a special election in the territory of the port districts to be consolidated, to determine whether such consolidation shall take place, and to fill the offices of the port commission of the port district resulting from the consolidation. The resolution or petition shall provide that the commission in the proposed district shall consist of three, five, or seven commissioners and that the number shall be approved by the voters at the time the proposition for consolidation is voted upon. The proposition in this respect shall provide that the commissioners shall be elected one each from commissioner districts which shall be described as set forth in this section, or if such districts are not so described then the commissioners shall be elected at large. [1965 c 102 § 2; 1961 c 26 § 1.]

53.46.020 Special election—Conduct. The special election to consider such consolidation and to fill such offices shall be conducted in accordance with the general election laws of the state. [1990 c 259 § 20; 1965 c 102 § 3; 1961 c 26 § 2.]

53.46.030 Certification of election—Establishment as municipal corporation—Commissioners, terms. The county canvassing board of election returns shall certify the results of the election to the board of county commissioners; and if at such election a majority of voters voting on the question of consolidation in each port district to be consolidated shall vote in favor of consolidation, the board of county commissioners shall so declare, and the port district resulting from the consolidation shall then be and become a municipal corporation of the state of Washington. The county auditor shall in such event issue a certificate of election to the successful candidate from each port commissioner district. If the proposed district includes area in two or more counties, cer-

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tificates of election shall be issued by the principal county auditor, and the canvassing board of elections shall be made up of the chairmen of the board of county commissioners, prosecutors, and the auditors of each county with area within the consolidated port district. Of the successful port commissioner candidates, if three are elected, the one receiving the highest number of votes shall serve until his successor is elected and qualified at the third subsequent regular election for port commissioner, and the ones receiving the second and third highest numbers of votes shall serve until their successors are elected and qualified at the second and first subsequent regular elections for port commissioner, respectively. If five or seven commissioners are elected, the two with the greatest number of votes shall serve until their successors are elected and qualified at the third subsequent regular election of port commissioners, the two commissioners receiving the next highest number of votes shall serve until their successors are elected and qualified at the second subsequent regular election of port commissioners; and the remaining commissioner or commissioners shall serve until their successors are elected and qualified at the next regular election of port commissioners. [1965 c 102 § 4; 1961 c 26 § 3.]

53.46.040 Prior obligations—Powers of consolidated district—Separation of funds. None of the obligations of each port district which has been consolidated shall be affected by the consolidation, and taxes and assessments for payment of such obligations shall continue to be levied and collected in respect to property in such former port district notwithstanding the consolidation. The port commission of the port district resulting from the consolidation shall have all the powers possessed at the time of the consolidation by the port commission of each port district which has been consolidated, to levy or collect taxes or assessments in respect to property in such former port district, for payment of such obligations. While any such obligations remain outstanding, funds subject to such obligations shall be kept separate. [1961 c 26 § 4.]

53.46.050 County commissioners may act if no active port commission. In the event a port district does not have an active port commission to which the petition for consolidation may be directed, the board of county commissioners of the county wherein such inactive port district is located may act in the place and stead of the port commission for the purposes of consolidation. [1961 c 26 § 5.]

53.46.060 Dissolution of district which has no active commission—Authority of county commissioners. For the purpose of dissolution of any port district not having an active port commission the board of county commissioners of the county wherein such inactive port district is located may exercise the powers and duties vested by chapter 53.48 RCW in the governing body of such port district. [1961 c 26 § 6.]

53.46.070 Title to property vests in consolidated district. Upon consolidation of two or more port districts the title to all property owned by or held in trust for the former districts shall vest in the consolidated port district. [1965 c 102 § 5.]

53.46.080 District including area from two or more counties—Procedure to determine proportion of taxes. If the district includes area from two or more counties, it shall be the duty of the county assessor in each county to certify annually to the auditor of his county, who shall forward the same to the principal county auditor, the total assessed valuation of that part of the port district which lies within his county. The port commission of such consolidated port district shall certify to the principal county auditor the budget and the levies to be assessed for port purposes: PROVIDED, That the amount of tax to be levied upon taxable property of that part of a port district lying in one county shall be in such ratio to the whole amount levied upon the property lying in the entire consolidated port district as the assessed valuation lying in such county bears to the assessed valuation of the property in the entire consolidated port district.

Thereafter the principal county auditor shall forward a certificate to each county auditor, for the county commissioners thereof, which shall specify the proportion of taxes to be levied for port district purposes. [1965 c 102 § 6.]

53.46.090 District including area from two or more counties—Levy and collection of taxes—Principal county treasurer, duties. Upon receipt of the certificate from the principal county auditor as provided in RCW 53.46.080 it shall be the duty of the board of county commissioners of each county to levy on all taxable property of the consolidated port district which lies within the county a tax sufficient to raise the amount necessary to meet the county's proportionate share of the total tax levy. Such taxes shall be levied and collected in the same manner as other taxes are levied and collected. The proceeds shall be forwarded quarterly by the treasurer of each county to the principal county treasurer. The principal county treasurer shall place to the credit of said consolidated port district all funds received from the other county treasurers as well as those amounts he shall have collected for the account of the port district. The principal county treasurer shall be the treasurer of the consolidated port district and shall perform all functions required of a treasurer of a port district. [1965 c 102 § 7.]

53.46.100 General powers of consolidated district—Debt limitation. Any port district created by consolidation prior to June 10, 1965, or formed hereafter under chapter 102, Laws of 1965, shall have all the powers of a newly formed port district, without any other restriction except the requirements of RCW 53.46.040: PROVIDED, That general obligation indebtedness outstanding for all port purposes within the area of the consolidated port shall not exceed the limits of RCW 53.36.030, and for purpose of computing such bonded debt, the bonds outstanding of all port agencies shall be considered. [1965 c 102 § 8.]

Chapter 53.47 RCW

DISSOLUTION OF INACTIVE PORT DISTRICTS

Sections

53.47.010	Purpose.
53.47.020	Port district deemed inactive, when.
53.47.030	Petition for dissolution—Filing—Contents.

53.47.040	Hearing on petition—Notice, publication—Creditor claims, determination—Terms and conditions of court order if district to be dissolved.
53.47.050	Effect of final order of dissolution.
53.47.900	Chapter cumulative and nonexclusive.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

53.47.010 Purpose. This chapter shall provide an additional method by which inactive port districts may be dissolved. [1971 ex.s. c 162 § 1.]

53.47.020 Port district deemed inactive, when. A port district shall be deemed inactive if, at the time of the filing of the petition for dissolution with the clerk of the superior court of the county in which such port district is situated, such port has failed to comply with subdivision (1), (2), or (3) of this section.

(1) The port district has failed to file its budget with the board of county commissioners or, in the case of home rule charters, the appropriate governing body for the two fiscal years immediately preceding the date of filing such petition, and the port district, having been in existence for two years or more, has failed to adopt its comprehensive plan of harbor improvement and/or industrial development as provided by statute, and does not presently own or has not leased within two years prior to the filing of such petition, real property for use for port purposes.

(2) The port district does not presently own or has not leased or owned real property for use for port purposes within the four calendar years prior to the filing of such petition.

(3) The port district has not filed its budget with the board of county commissioners or, in the case of home rule charters, the appropriate governing body for the two fiscal years immediately preceding the filing of said petition has not adopted its comprehensive plan of harbor improvement and/or industrial development as provided by statute, and has not met with a legal quorum at least twice in the last two calendar years prior to the filing of such petition. [1971 ex.s. c 162 § 2.]

Harbor improvement plan: RCW 53.20.010.

53.47.030 Petition for dissolution—Filing—Contents. The county prosecutor of the county in which such port district is located acting upon his own motion shall file such petition for dissolution with the clerk of the superior court of the county in which such inactive port district is located. Such petition shall:

(1) Describe with certainty the port district which is declared to be inactive and which is sought to be dissolved;

(2) Allege with particularity that the port district sought to be dissolved is inactive within the purview of any of the several particulars set forth in RCW 53.47.020; and

(3) Request that the court find the port district inactive and declare it dissolved upon such terms and conditions as the court may impose and declare. [1971 ex.s. c 162 § 3.]

53.47.040 Hearing on petition—Notice, publication—Creditor claims, determination—Terms and conditions of court order if district to be dissolved. The superior court, upon the filing of such petition, shall set such petition for hearing not less than one hundred twenty days and not

more than one hundred eighty days after the date of filing said petition. Further, the court shall order the clerk of said court to give notice of the time and place fixed for the hearing by publication of notice in a newspaper of general circulation within such district, such publication to be once each week for three consecutive weeks, the date of first publication to be not less than thirty nor more than seventy days prior to the date fixed for the hearing upon such petition. Said notice shall further provide that all creditors of said district, including holders of revenue or general obligation bonds issued by said district, if any, shall present their claims to the clerk of said court within ninety days from the date of first publication of said notice, and that upon failure to do so all such claims will be forever barred. The clerk shall also mail a copy by ordinary mail of such notice to all creditors of said district, including holders of revenue or general obligation bonds issued by said district, if any, such mailing to be mailed not later than thirty days after the hearing date has been set. No other or further notices shall be required at any stage of the proceedings for dissolution of an inactive port district pursuant to this chapter.

The clerk, ten days prior to the date set for the hearing, shall deliver to the court the following:

- (1) A list of the liabilities of the port district in detail with the names and addresses of creditors as then known; and
- (2) A list of the assets of the port district in detail as then known.

The court upon hearing the petition shall fix and determine all such claims subject to proof being properly filed as provided in this section; shall fix and determine the financial condition of the district as to its assets and liabilities, and if it finds the port district to be inactive in respect of any standard of inactivity set forth by this chapter, shall order the port district to be dissolved upon the following terms and conditions:

(1) If there be no outstanding debts, or if the debts be less than the existing assets, the court shall appoint the auditor of the county in which the port district is located to be trustee of the port's assets and shall empower such person to wind up and liquidate the affairs of such district in such manner as the court shall provide and to file his accounting with the court within ninety days from the date of his appointment. Upon the filing of such account, the court shall fix a date for hearing upon the same and upon approval thereof, if such accounting be the final accounting, shall enter its order approving the same and declaring the port district dissolved.

At the request of the trustee the county sheriff may sell, at public auction, all real and personal property of the port district. The county sheriff shall cause a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale. Such notice shall contain a description of the property to be sold and shall be signed by the sheriff or his deputy. Such notice shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The sheriff or his deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. The moneys arising from such sale shall be turned over to the county auditor acting as trustee: **PROVIDED, HOWEVER,** That the sheriff shall first deduct the costs and

expenses of the sale from the moneys and shall apply such moneys to pay said costs and expenses.

The court order shall provide that the assets remaining in the hands of the trustee shall be transferred to any school district, districts, or portions of districts, lying within the dissolved port district boundaries. The transfer of assets shall be prorated to the districts based on the assessed valuation of said districts.

(2) If the debts exceed the assets of the port district, then the court shall appoint the auditor of the county in which a port district is located to be trustee of the port's assets for the purpose of conserving the same and of paying liability of the port district as funds become available therefor. The trustee shall be empowered to generally manage, wind up, and liquidate the affairs of such district in such manner as the court shall provide and to file his accounting with the court within ninety days from the date of his appointment and as often thereafter as the court shall provide. The board of county commissioners, acting as pro tempore port district commissioners under the authority of RCW 53.36.020 shall levy an annual tax not exceeding forty-five cents per thousand dollars of assessed value or such lesser amount as may previously have been voted by the taxpayers within said district, together with an amount deemed necessary for payment of the costs and expenses attendant upon the dissolution of said district, upon all the taxable property within said district, the amount of such levy to be determined from time to time by the court. When, as shown by the final accounting of the trustee, all of the indebtedness of the district shall have been satisfied, the cost and expense of the proceeding paid or provided for, and the affairs of the district wound up, the court shall declare the district dissolved: **PROVIDED,** That if the indebtedness be composed in whole or in part of bonded debt for which a regular program of retirement has been provided, then the board of county commissioners shall be directed by the court to continue to make such annual levies as are required for the purpose of debt service upon said bonded debt. [1973 1st ex.s. c 195 § 59; 1971 ex.s. c 162 § 4.]

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

53.47.050 Effect of final order of dissolution. Upon the entry of the final order of dissolution declaring the port district dissolved all offices of the port district shall be deemed abolished, and no other or further levy shall be certified by the county commissioners except pursuant to the directive of the court as hereinabove provided. [1971 ex.s. c 162 § 5.]

53.47.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1971 ex.s. c 162 § 6.]

Chapter 53.48 RCW

DISSOLUTION OF PORT AND OTHER DISTRICTS

Sections

- | | |
|-----------|--|
| 53.48.001 | Dissolution of certain districts subject to review by boundary review board. |
| 53.48.010 | Definitions. |

53.48.020	Petition.
53.48.030	Order for hearing—Notice.
53.48.040	Order of dissolution—Sale of assets.
53.48.050	Payment of debts and costs—Balance to school district.
53.48.060	Insolvency—Second hearing.
53.48.070	Notice of second hearing.
53.48.080	Sale of property—Levy to pay deficit.
53.48.090	Order of dissolution or refusal.
53.48.120	Provision for costs and expenses.
53.48.140	Dissolution of district which has no active commission—Powers of county commissioners.

Dissolution of

air pollution control authorities: RCW 70.94.260.

cemetery districts: RCW 68.52.320.

fire protection districts, election method: RCW 52.10.010.

flood control districts: 1937 act—RCW 86.09.622, 86.09.625.

inactive special purpose districts: Chapter 36.96 RCW.

irrigation districts: Chapters 87.52, 87.53, 87.56 RCW.

metropolitan park districts: RCW 35.61.310.

soil conservation districts: RCW 89.08.350 through 89.08.370.

water-sewer districts, election method: RCW 57.04.090, 57.04.100, and chapter 53.48 RCW.

53.48.001 Dissolution of certain districts subject to review by boundary review board. The dissolution of a metropolitan park district, fire protection district, water-sewer district, or flood control zone district under chapter 53.48 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1999 c 153 § 62; 1989 c 84 § 46.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

53.48.010 Definitions. The following words and terms shall, whenever used in this chapter, have the meaning set forth in this section:

(1) The term "district" as used herein, shall include all municipal and quasi-municipal corporations having a governing body, other than cities, towns, counties, and townships, such as port districts, school districts, water-sewer districts, fire protection districts, and all other special districts of similar organization, but shall not include local improvement districts, diking, drainage and irrigation districts, special districts as defined in RCW 85.38.010, nor public utility districts.

(2) The words "board of commissioners," as used herein, shall mean the governing authority of any district as defined in subdivision (1) of this section. [1999 c 153 § 63; 1986 c 278 § 17; 1979 ex.s. c 30 § 10; 1941 c 87 § 1; Rem. Supp. 1941 § 8931-11.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Severability—1986 c 278: See note following RCW 36.01.010.

Purpose—1941 c 87: "This act is intended to authorize the dissolution of all types of municipal corporations having governing bodies, other than those excepted from the application of this act, in cases where the occasion or reason for continued existence of such corporation has ceased, or where the best interests of all persons concerned would be served by such dissolution, and shall be liberally construed to effect such intent." [1941 c 87 § 12.]

Severability—1941 c 87: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1941 c 87 § 11.]

53.48.020 Petition. For the purpose of dissolution of a district, a petition for an order of dissolution signed by the

majority of the board of commissioners, or other governing authority of such district shall be presented to the superior court of the county in which the board of commissioners is situated. [1941 c 87 § 2; Rem. Supp. 1941 § 8931-12.]

53.48.030 Order for hearing—Notice. Upon the filing of such petition for an order of dissolution, the superior court shall enter an order setting the same for hearing at a date not less than thirty days from the date of filing, and the clerk of the court of said county shall give notice of such hearing by publication in a newspaper of general circulation in the county in which the district is located once a week for three successive weeks, and by posting in three public places in the county in which the district is located at least twenty-one days before said hearing. At least one notice shall be posted in the district. The notices shall set forth the filing of the petition, its purpose and the date and place of the hearing thereon. [1941 c 87 § 3; Rem. Supp. 1941 § 8931-13.]

53.48.040 Order of dissolution—Sale of assets. After said hearing the court shall enter its order dissolving or refusing to dissolve said district. A finding that the best interests of all persons concerned will be served by the proposed dissolution shall be essential to an order of dissolution. If the court find that such district is solvent, the court shall order the sale of such assets, other than cash, by the sheriff of the county in which the board is situated, in the manner provided by law for the sale of property on execution. [1941 c 87 § 4; Rem. Supp. 1941 § 8931-14.]

Execution: Chapter 6.17 RCW.

53.48.050 Payment of debts and costs—Balance to school district. The proceeds of the sale, together with moneys on hand in the treasury of the district, shall after payment of all costs and expenses, be paid to the treasurer of the same county and placed to the credit of the school district, or districts, in which such district is situated. [1941 c 87 § 5; Rem. Supp. 1941 § 8931-15.]

Port districts in counties with populations of from eight thousand to less than twelve thousand—Disposition of funds: Chapter 53.49 RCW.

53.48.060 Insolvency—Second hearing. Upon a finding of insolvency the court shall then determine the indebtedness of the district, the creditors thereof and their claims. The court shall then set a date and a place for a second hearing, which hearing shall be not less than sixty days nor more than one hundred twenty days from the hearing as provided in RCW 53.48.030.

The purpose of such hearing shall be to determine ways and means of retiring the established indebtedness of the district and paying all costs and expenses of proceedings hereunder. Such ways and means may include the levy of assessments against the property in the district as provided in RCW 53.48.080. [1941 c 87 § 6; Rem. Supp. 1941 § 8931-16.]

53.48.070 Notice of second hearing. The clerk shall give notice of the second hearing by publication in a newspaper of general circulation in the county in which the district is located once a week for three successive weeks, and by posting in three public places in the county in which the district is

located at least twenty-one days before the hearing, and shall give such other notice to creditors and other interested parties as the court may deem necessary or advisable. At least one notice shall be posted in the district. The notices shall set forth the filing of the petition, its purpose, the finding of the court on the petition, the date and place of the second hearing and the purpose of the hearing as stated in RCW 53.48.060. [1941 c 87 § 7; Rem. Supp. 1941 § 8931-17.]

53.48.080 Sale of property—Levy to pay deficit. At the second hearing the court shall have authority to order the sale of any district property. If the proceeds of such sale together with any cash remaining on hand to the credit of the district are insufficient to retire such indebtedness together with all costs and expenses, the court shall have authority to order the board of commissioners to levy assessments in the manner provided by law against the property in the district in amounts sufficient to retire said indebtedness and pay the costs and expenses. At such hearing any property owner within the district may appear and be heard for or against such levy. [1941 c 87 § 8; Rem. Supp. 1941 § 8931-18.]

53.48.090 Order of dissolution or refusal. After the indebtedness of the district has been settled or paid, the court shall determine whether the best interests of all persons concerned will be served by the proposed dissolution and shall make a finding thereon. The court shall then enter its order dissolving or refusing to dissolve said district. [1941 c 87 § 9; Rem. Supp. 1941 § 8931-19.]

53.48.120 Provision for costs and expenses. In all proceedings brought under this chapter the court shall make provision for the costs and expenses of proceedings hereunder and for the payment of the same. [1941 c 87 § 10; Rem. Supp. 1941 § 8931-20.]

53.48.140 Dissolution of district which has no active commission—Powers of county commissioners. See RCW 53.46.060.

Chapter 53.49 RCW

DISPOSITION OF FUNDS ON DISSOLUTION OF CERTAIN DISTRICTS

Sections

- 53.49.010 Port districts in counties with populations of from eight thousand to less than twelve thousand—Disposition of funds.
53.49.020 Port districts in counties with populations of from eight thousand to less than twelve thousand—Order to transfer funds.

53.49.010 Port districts in counties with populations of from eight thousand to less than twelve thousand—Disposition of funds. Whenever any port district located in any county with a population of from eight thousand to less than twelve thousand shall be dissolved and disestablished or is about to be dissolved and disestablished and any sums of money remain in any of its funds, the port commissioners are authorized and directed to apply by petition, which may be filed without fee, to the superior court of such county for an order authorizing the transfer of such funds to the school district fund or if there be more than one such district, the school

district funds of all districts, which are located within the boundaries of such port district. [1991 c 363 § 134; 1943 c 282 § 1; Rem. Supp. 1943 § 9718-10. Formerly RCW 53.48.100.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

53.49.020 Port districts in counties with populations of from eight thousand to less than twelve thousand—Order to transfer funds. The superior court of any such county shall enter his order authorizing such transfer of funds if he is satisfied, after hearing the petition therefor, that the port district is dissolved and disestablished or is about to be dissolved and disestablished and that no obligations of the port district remain unpaid. The court shall equitably divide such sums of money between school districts if there be more than one district involved. [1943 c 282 § 2; Rem. Supp. 1943 § 9718-11. Formerly RCW 53.48.110.]

Chapter 53.54 RCW

AIRCRAFT NOISE ABATEMENT

Sections

- 53.54.010 Programs for abatement of aircraft noise authorized.
53.54.020 Investigation and monitoring of noise impact—Programs to conform to needs—"Impacted areas."
53.54.030 Authorized programs—When property deemed within impacted area.
53.54.040 Fund authorized—Sources.
53.54.900 Liberal construction—Powers additional.
53.54.910 Severability—1974 ex.s. c 121.

53.54.010 Programs for abatement of aircraft noise authorized. A port district operating an airport serving more than twenty scheduled jet aircraft flights per day may undertake any of the programs or combinations of such programs, as authorized by this chapter, for the purpose of alleviating and abating the impact of jet aircraft noise on areas surrounding such airport. [1974 ex.s. c 121 § 1.]

53.54.020 Investigation and monitoring of noise impact—Programs to conform to needs—"Impacted areas." Prior to initiating programs as authorized in this chapter, the port commission shall undertake the investigation and monitoring of aircraft noise impact to determine the nature and extent of the impact. The port commission shall adopt a program of noise impact abatement based upon the investigations and as amended periodically to conform to needs demonstrated by the monitoring programs: PROVIDED, That in no case may the port district undertake any of the programs of this chapter in an area which is more than six miles beyond the paved end of any runway or more than one mile from the centerline of any runway or from an imaginary runway centerline extending six miles from the paved end of such runway. Such areas as determined above, shall be known as "impacted areas". [1984 c 193 § 1; 1979 c 85 § 1; 1974 ex.s. c 121 § 2.]

53.54.030 Authorized programs—When property deemed within impacted area. For the purposes of this chapter, in developing a remedial program, the port commission may utilize one or more of the following programs:

(1) Acquisition of property or property rights within the impacted area, which shall be deemed necessary to accomplish a port purpose. The port district may purchase such property or property rights by time payment notwithstanding the time limitations provided for in RCW 53.08.010. The port district may mortgage or otherwise pledge any such properties acquired to secure such transactions. The port district may assume any outstanding mortgages.

(2) Transaction assistance programs, including assistance with real estate fees and mortgage assistance, and other neighborhood remedial programs as compensation for impacts due to aircraft noise and noise associated conditions. Any such programs shall be in connection with properties located within an impacted area and shall be provided upon terms and conditions as the port district shall determine appropriate.

(3) Programs of soundproofing structures located within an impacted area. Such programs may be executed without regard to the ownership, provided the owner waives damages and conveys an easement for the operation of aircraft, and for noise and noise associated conditions therewith, to the port district.

(4) Mortgage insurance of private owners of lands or improvements within such noise impacted area where such private owners are unable to obtain mortgage insurance solely because of noise impact. In this regard, the port district may establish reasonable regulations and may impose reasonable conditions and charges upon the granting of such mortgage insurance: PROVIDED, That such fees and charges shall at no time exceed fees established for federal mortgage insurance programs for like service.

(5) An individual property may be provided benefits by the port district under each of the programs described in subsections (1) through (4) of this section. However, an individual property may not be provided benefits under any one of these programs more than once, unless the property is subjected to increased aircraft noise or differing aircraft noise impacts that would have afforded different levels of mitigation, even if the property owner had waived all damages and conveyed a full and unrestricted easement.

(6) Management of all lands, easements, or development rights acquired, including but not limited to the following:

- (a) Rental of any or all lands or structures acquired;
- (b) Redevelopment of any such lands for any economic use consistent with airport operations, local zoning and the state environmental policy;

(c) Sale of such properties for cash or for time payment and subjection of such property to mortgage or other security transaction: PROVIDED, That any such sale shall reserve to the port district by covenant an unconditional right of easement for the operation of all aircraft and for all noise or noise conditions associated therewith.

(7) A property shall be considered within the impacted area if any part thereof is within the impacted area. [1993 c 150 § 1; 1985 c 115 § 1; 1974 ex.s. c 121 § 3.]

53.54.040 Fund authorized—Sources. A port district may establish a fund to be utilized in effectuating the intent of this chapter. The port district may finance such fund by: The proceeds of any grants or loans made by federal agencies; rentals, charges and other revenues as may be generated by

programs authorized by this chapter, airport revenues; and revenue bonds based upon such revenues. The port district may also finance such fund, as necessary, in whole or in part, with the proceeds of general obligation bond issues of not more than one-eighth of one percent of the value of taxable property in the port district: PROVIDED, That any such bond issue shall be in addition to bonds authorized by RCW 53.36.030: PROVIDED FURTHER, That any such general obligation bond issue may be subject to referendum by petition as provided by county charter, the same as if it were a county ordinance. [1974 ex.s. c 121 § 4.]

53.54.900 Liberal construction—Powers additional.

The rule of strict construction shall have no application to this chapter, which shall be liberally construed to carry out the purposes and objects for which this chapter is intended. The powers granted in this chapter shall be in addition to all others granted to port districts. [1974 ex.s. c 121 § 5.]

53.54.910 Severability—1974 ex.s. c 121. If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1974 ex.s. c 121 § 7.]

Title 54

PUBLIC UTILITY DISTRICTS

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Chapter 54.04 RCW

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

"Wholesale power" defined: RCW 54.04.100.

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

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

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

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

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

54.04.030 Restrictions on invading other municipalities. Chapter 1, Laws of 1931, shall not be deemed or construed to repeal or affect any existing act, or any part thereof,

relating to the construction, operation and maintenance of public utilities by irrigation or water-sewer districts or other municipal corporations, but shall be supplemental thereto and concurrent therewith. No public utility district created hereunder shall include therein any municipal corporation, or any part thereof, where such municipal corporation already owns or operates all the utilities herein authorized: PROVIDED, that in case it does not own or operate all such utilities it may be included within such public utility district for the purpose of establishing or operating therein such utilities as it does not own or operate: PROVIDED, FURTHER, That no property situated within any irrigation or water-sewer districts or other municipal corporations shall ever be taxed or assessed to pay for any utility, or part thereof, of like character to any utility, owned or operated by such irrigation or water districts or other municipal corporations. [1999 c 153 § 64; 1931 c 1 § 12; RRS § 11616.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Irrigation districts: Title 87 RCW.

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

Water-sewer districts: Title 57 RCW.

54.04.035 Annexation of territory. In addition to other powers authorized in Title 54 RCW, public utility districts may annex territory as provided in this section.

The boundaries of a public utility district may be enlarged and new contiguous territory added pursuant to the procedures for annexation by cities and towns provided in RCW 35.13.015 through 35.13.110. The provisions of these sections concerning community municipal corporations, review boards, and comprehensive plans, however, do not apply to public utility district annexations. For purposes of conforming with such procedures, the public utility district is deemed to be the city or town and the board of commissioners is deemed to be the city or town legislative body.

Annexation procedures provided in this section may only be used to annex territory that is both: (1) Contiguous to the annexing public utility district; and (2) located within the service area of the annexing public utility district. As used in this section, a public utility district's "service area" means those areas whether located within or outside of the annexing public utility district's boundaries that were generally served with electrical energy by the annexing public utility district on January 1, 1987. Such service area may, or may not, have been recognized in an agreement made under chapter 54.48 RCW, but no area may be included within such service area that was generally served with electrical energy on January 1, 1987, by another public utility as defined in RCW 54.48.010. An area proposed to be annexed may be located in the same or a different county as the annexing public utility district.

If an area proposed to be annexed is located within the boundaries of another public utility district, annexation may be initiated only upon petition of registered voters residing in the area in accordance with RCW 35.13.020 and adoption by the boards of commissioners of both districts of identical resolutions stating (a) the boundaries of the area to be annexed, (b) a determination that annexation is in the public interest of the residents of the area to be annexed as well as the public interest of their respective districts, (c) approval of annex-

ation by the board, (d) the boundaries of the districts after annexation, (e) the disposition of any assets of the districts in the area to be annexed, (f) the obligations to be assumed by the annexing district, (g) apportionment of election costs, and (h) that voters in the area to be annexed will be advised of lawsuits that may impose liability on the annexed territory and the possible impact of annexation on taxes and utility rates.

If annexation is approved, the area annexed shall cease to be a part of the one public utility district at the same time that it becomes a part of the other district. The annexing public utility district shall assume responsibility for providing the area annexed with the services provided by the other public utility district in the area annexed. [1987 c 292 § 2; 1983 c 101 § 1.]

Consolidation and annexation: Chapter 54.32 RCW.

54.04.037 Annexation of territory—Coordination among county officials. When territory has been added to a public utility district in accordance with RCW 54.04.035, the supervisor of elections and other officers of the county in which the public utility district first operated shall coordinate elections, the levy and collection of taxes, and other necessary duties with the appropriate county officials of the other county. [1987 c 292 § 3.]

54.04.039 County with federal nuclear reservation within its boundaries—Special procedure for addition or withdrawal of territory from public utility district. (1) Any voting precinct located within a county that has a federal nuclear reservation within its boundaries is:

(a) Withdrawn from a public utility district if the precinct receives at least one electric distribution, water, or sewer service from a city, and no electric distribution, water, or sewer service from a public utility district;

(b) Included in a public utility district if any portion of the precinct receives at least one electric distribution, water, or sewer service from the public utility district.

(2) For voting precincts that meet the requirements of subsection (1) of this section, within ten days after March 24, 2004, and for voting precincts that later meet the requirements of subsection (1) of this section, within thirty days of meeting the requirements:

(a) The city that provides any electric distribution, water, or sewer service to a precinct that is withdrawn from a public utility district under subsection (1) of this section shall submit to the public utility district and the county auditor a list of street addresses, or map of the areas to which any service is provided;

(b) The public utility district that provides any electric distribution, water, or sewer service to a precinct that is included in the public utility district under subsection (1) of this section shall submit to the city or town and the county auditor a list of street addresses, or map of the areas to which any service is provided.

(3) Within ten days of receipt of the information required under subsection (2) of this section, the auditor shall determine which voting precincts are required to be withdrawn from or included in the public utility district, and provide that information to the public utility district commissioners who

shall, within ten days, revise the boundaries of the district in conformance with RCW 54.12.010 without dividing any voting precinct.

(4) Unless otherwise provided in an agreement between the public utility district and the city or town, taxes or assessments levied or assessed against property located in an area withdrawn from a public utility district shall remain a lien and be collected as by law (a) if the taxes or assessments were levied or assessed before the withdrawal or (b) if the levies or assessments were made to pay or secure an obligation of the district duly incurred or issued before the withdrawal. The withdrawal of an area from the boundaries of a district does not exempt any property therein from taxation or assessment for the purpose of paying the costs of retiring or redeeming any obligation of the district duly incurred or issued before the withdrawal.

(5) Except as set forth in subsection (4) of this section, a public utility district may not levy or impose any taxes upon property located within those voting precincts withdrawn from the public utility district.

(6) Nothing in chapter 113, Laws of 2004 limits the authority of public utility districts and cities or towns to enter into service agreements that are otherwise permitted by law. [2004 c 113 § 2.]

Effective date—2004 c 113: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 24, 2004]." [2004 c 113 § 3.]

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

54.04.045 Locally regulated utilities—Attachments to poles. (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means a public utility district not subject to rate or service regulation by the utilities and transportation commission.

(c) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2004 Ed.)

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities. [1996 c 32 § 5.]

54.04.050 Group employee insurance—Annuities—Retirement income policies. (1) Subject to chapter 48.62 RCW, any public utility district engaged in the operation of electric or water utilities may enter into contracts of group insurance for the benefit of its employees, and pay all or any part of the premiums for such insurance. Such premiums shall be paid out of the revenues derived from the operation of such properties: PROVIDED, That if the premium is to be paid by the district and employees jointly, and the benefits of the policy are offered to all eligible employees, not less than seventy-five percent of such employees may be so insured.

(2) A public utility district whose employees or officials are not members of the state retirement system engaged in the operation of electric or water utilities may contract for individual annuity contracts, retirement income policies or group annuity contracts, including prior service, to provide a retirement plan, or any one or more of them, and pay all or any part of the premiums therefor out of the revenue derived from the operation of its properties. [1991 sp.s. c 30 § 23; 1984 c 15 § 1; 1959 c 233 § 1; 1941 c 245 § 8; Rem. Supp. 1941 § 11616-6.]

Effective date, implementation, application—Severability—1991 sp.s. c 30: See RCW 48.62.900 and 48.62.901.

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

Group insurance: Chapters 48.21 and 48.24 RCW.

Hospitalization and medical insurance authorized: RCW 41.04.180.

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

54.04.060 District elections. The supervisor of elections or other proper officer of the county shall give notice of all elections held under this title, for the time and in the man-

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

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

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

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

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

mission may at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

All contract projects equal to or in excess of one hundred thousand dollars shall be let by competitive bidding unless the public utility district lets contracts using the small works roster process under RCW 39.04.155.

Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission and may consider such price as a bid without a deposit or bond.

The commission may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2002 c 72 § 2; 2000 c 138 § 211; 1998 c 278 § 7; 1993 c 198 § 14; 1990 c 251 § 1; 1971 ex.s. c 220 § 4; 1955 c 124 § 2. Prior: 1951 c 207 § 2; 1931 c 1 § 8, part; RRS § 11612, part.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Contracts with state department of transportation: RCW 47.01.210.

Emergency public works: Chapter 39.28 RCW.

Prevailing wages on public works: Chapter 39.12 RCW.

Public purchase preferences: Chapter 39.24 RCW.

54.04.080 Bids—Deposit—Low bidder claiming error—Contract—Bond—Definitions. Any notice inviting sealed bids shall state generally the work to be done, or the material to be purchased and shall call for proposals for furnishing it, to be sealed and filed with the commission on or before the time named therein. Each bid shall be accompanied by a certified or cashier's check, payable to the order of the commission, for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond unless he or she enters into a contract in accordance with his or her bid and furnishes the performance bond within ten days from the date on which he or she is notified that he or she is the successful bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

At the time and place named, the bids shall be publicly opened and read, and the commission shall canvass the bids, and may let the contract to the lowest responsible bidder upon the plans and specifications on file, or to the best bidder submitting his or her own plans or specifications; or if the contract to be let is to construct or improve electrical facilities, the contract may be let to the lowest bidder prequalified according to the provisions of RCW 54.04.085 upon the plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: PROVIDED, That no contract shall be let for more than fifteen percent in excess of the estimated cost of the materials or work. The commission may reject all bids and readvertise, and in such

case all checks shall be returned to the bidders. The commission may procure materials in the open market, have its own personnel perform the work or negotiate a contract for such work to be performed by others, in lieu of readvertising, if it receives no bid. If the contract is let, all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract is entered into and a bond to perform the work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of the contract price, in accordance with the bid. If the bidder fails to enter into the contract and furnish the bond within ten days from the date at which he or she is notified that he or her [she] is the successful bidder, his or her check and the amount thereof shall be forfeited to the district.

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

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

The commission shall be the final authority with regard to whether a bid is responsive to the call for bids and as to whether a bidder is a responsible bidder under the conditions of his or her bid. No award of contract shall be invalidated solely because of the failure of any prospective bidder to receive an invitation to bid. [1996 c 18 § 12; 1972 ex.s. c 41 § 1; 1971 ex.s. c 220 § 3; 1955 c 124 § 3. Prior: 1951 c 207 § 3; 1931 c 1 § 8, part; RRS § 11612, part.]

54.04.082 Alternative bid procedure. For the awarding of a contract to purchase any item, or items of the same kind of materials, equipment, or supplies in an amount exceeding ten thousand dollars, but less than fifty thousand dollars, exclusive of sales tax, the commission may, in lieu of the procedure described in RCW 54.04.070 and 54.04.080 requiring public notice to invite sealed proposals for such materials, equipment, or supplies, pursuant to commission resolution use the process provided in RCW 39.04.190. Waiver of the deposit or bid bond required under RCW 54.04.080 may be authorized by the commission in securing such bid quotations. [2002 c 72 § 1; 1995 c 354 § 1; 1993 c 198 § 15; 1977 ex.s. c 116 § 1.]

54.04.085 Electrical facility construction or improvement—Bid proposals—Contract proposal forms—Conditions for issuance—Appeals. A district shall require that bid proposals upon any construction or improvement of any electrical facility shall be made upon contract proposal form supplied by the district commission, and in no other manner. The district commission shall, before furnishing any person,

firm or corporation desiring to bid upon any electrical work with a contract proposal form, require from such person, firm or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of such person, firm, or corporation in performing electrical work. Such questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds, and shall be submitted once a year and at such other times as the district commission may require. Whenever the district commission is not satisfied with the sufficiency of the answers contained in such questionnaire and financial statement or whenever the district commission determines that such person, firm, or corporation does not meet all of the requirements hereinafter set forth it may refuse to furnish such person, firm or corporation with a contract proposal form and any bid proposal of such person, firm or corporation must be disregarded. In order to obtain a contract proposal form, a person, firm or corporation shall have all of the following requirements:

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

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

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

Prevailing wages on public works: Chapter 39.12 RCW.

54.04.092 Application of RCW 54.04.070 through 54.04.090 to certain service provider agreements under chapter 70.150 RCW. RCW 54.04.070 through 54.04.090 shall not apply to agreements entered into under authority of chapter 70.150 RCW provided there is compliance with the procurement procedure under RCW 70.150.040. [1986 c 244 § 14.]

Severability—1986 c 244: See RCW 70.150.905.

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

Upon reasonable notice, any such public service corporation shall furnish wholesale power to any public utility district owning or operating electrical distribution properties. Whenever a public service corporation shall furnish wholesale power to a district and the charge or rate therefor is reviewed by the commission, such reasonable rate as the commission finally may fix shall apply as to power thereafter furnished and as to that previously furnished under such charge or rate from the time that the complaint concerning the same shall have been filed by the commission or the district, as the case may be. [1983 c 4 § 5; 1945 c 130 § 2; Rem. Supp. 1945 § 10459-12. Formerly RCW 54.04.010, 54.04.100, and 54.04.110.]

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

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

54.04.120 Planning powers. In order that the commissioners of a public utility district may be better able to plan for the marketing of power and for the development of resources pertaining thereto, they shall have the same powers as are vested in a board of county commissioners as provided in *chapter 44, Laws of 1935 (sections 9322-2 to 9322-4, both inclusive, and 9322-10 to 9322-11 inclusive, Remington's Revised Statutes, also Pierce's Perpetual Code 776-3 to -7, 776-19 and -21), entitled: "An Act relating to city, town, county and regional planning and the creation, organization, duties and powers of planning commissions." For the pur-

poses of such act, the president of a public utility district shall have the powers of the chairman of the board of county commissioners, and a planning commission created hereunder shall have the same powers, enumerated in the above sections, with reference to a public utility district as a county planning commission has with reference to a county. However, this section shall not be construed to grant the power to adopt, regulate, or enforce comprehensive plans, zoning, land use, or building codes. [1985 c 95 § 1; 1945 c 130 § 4; Rem. Supp. 1945 § 10459-14.]

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

Purpose—Severability—1945 c 130: See notes following RCW 54.04.100.

54.04.130 Employee benefit plans when private utility acquired—Rights, powers and duties as to existing private employee benefit plans. Whenever any municipal corporation acquires by condemnation or otherwise any utility which at the time of acquisition is in private ownership and the employees of such private utility have been for at least two years and are at the time of acquisition covered by any plan for individual annuity contracts, retirement income policies, group annuity contracts, group insurance for the benefit of employees, or any other contract for the benefit of employees, such district shall, when the personnel is retained by the district, assume all of the obligations and liabilities of the private utility acquired with relation to such plan and the employees covered thereby at the time of acquisition; or the municipal corporation may by agreement with a majority of the employees affected substitute a plan or contract of the same or like nature. The municipal corporations acquiring such private utility shall proceed in such manner as is necessary so as not to reduce or impair any benefits or privileges which such employees would have received or be entitled to had such acquisition not been effected. The district may pay all or any part of the premiums or other payments required therefor out of the revenue derived from the operation of its properties. [1961 c 139 § 1.]

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

No such person shall have added and accredited to his period of employment his period of service with said private utility unless he or a third party shall pay to the appropriate officer or fund of the plan to which he requests admission his contribution for the period of such service with the private utility at the rate provided in or for such plan to which he

desires admission, or if he shall be entitled to any private benefits, as a result of such private service, unless he agrees at the time of his employment with the district to accept a reduction in the payment of any benefits payable under the plan to which he requests entry that are based in whole or in part on such added and accredited service by the amount of benefits received. For the purposes of contributions, the date of entry of service shall be deemed the date of entry into service with the private utility, which service is accredited by this section, and the amount of contributions for the period of accredited service shall be based on the wages or salary of such person during that added and accredited period of service with the private utility.

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

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

54.04.150 Employee benefit plans when private utility acquired—Agreements and contracts—Prior rights preserved. The municipal corporation may enter into any agreements and contracts necessary to carry out the powers and duties prescribed by RCW 54.04.130 and 54.04.140, but nothing in RCW 54.04.130 through 54.04.160 shall be so construed as requiring without consent the modification of the obligation of any contract or as requiring any third party to modify the rights, privileges or obligations acquired or incurred under a prior agreement. [1961 c 139 § 3.]

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

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

54.04.180 Collective bargaining authorized for districts. Any public utility district may enter into collective bargaining relations with its employees in the same manner

that a private employer might do and may agree to be bound by the result of such collective bargaining. [1963 c 28 § 2.]

Chapter 54.08 RCW

FORMATION—DISSOLUTION—ELECTIONS

Sections

- 54.08.001 Actions subject to review by boundary review board.
- 54.08.010 Districts including entire county or less—Procedure.
- 54.08.041 Formation election expenses.
- 54.08.050 Validity of district, questioning of.
- 54.08.060 Special election for formation of district and first commissioners—Terms.
- 54.08.070 Construction or acquisition of electric facilities for generation, transmission, or distribution of power—When voter approval required—Election.
- 54.08.080 Dissolution.

54.08.001 Actions subject to review by boundary review board. Actions taken under chapter 54.08 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 47.]

54.08.010 Districts including entire county or less—Procedure. At any general election held in an even-numbered year, the county legislative authority of any county in this state may, or, on petition of ten percent of the qualified electors of the county based on the total vote cast in the last general county election held in an even-numbered year, shall, by resolution, submit to the voters of the county the proposition of creating a public utility district which shall be coextensive with the limits of the county as now or hereafter established. A form of petition for the creation of a public utility district shall be submitted to the county auditor within ten months prior to the election at which the proposition is to be submitted to the voters. Petitions shall be filed with the county auditor not less than four months before the election and the county auditor shall within thirty days examine the signatures thereof and certify to the sufficiency or insufficiency thereof. If the petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed the petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor: PROVIDED, That each signature shall be dated and that no signature dated prior to the date on which the form of petition was submitted to the county auditor shall be valid. Whenever the petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the county legislative authority which shall submit the proposition to the voters of the county at the next general election in an even-numbered year occurring forty-five days after submission of the proposition to the legislative authority. The notice of the election shall state the boundaries of the proposed public utility district and the object of such election, and shall in other respects conform to the requirements of the general laws of the state of Washington, governing the time and manner of holding elections. In submitting the question to the voters for their approval or rejection, the proposition

shall be expressed on the ballot substantially in the following terms:

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

Any petition for the formation of a public utility district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed the county legislative authority shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when the petition will be heard. The publication, and all other publications required by chapter 1, Laws of 1931, shall be in a newspaper of general circulation in the county in which the district is situated. The hearing on the petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the county legislative authority shall find that any lands have been unjustly or improperly included within the proposed public utility district and will not be benefited by inclusion therein, it shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the public welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public utility district: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of those lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public utility district including an entire county, except that the petition and election shall be confined solely to the lesser public utility district.

No public utility district created after September 1, 1979, shall include any other public utility district within its boundaries: PROVIDED, That this paragraph shall not alter, amend, or modify provisions of chapter 54.32 RCW. [1985 c 469 § 55; 1979 ex.s. c 240 § 1; 1977 c 53 § 1; 1931 c 1 § 3; RRS § 11607. Formerly RCW 54.08.010 and 54.08.020.]

Elections: Title 29A RCW.

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

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

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

54.08.050 Validity of district, questioning of. The existence of any public utility district now or hereafter

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

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

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

At the same special election on the proposition to form a public utility district, there shall also be an election for three public utility district commissioners. However, the election of such commissioners shall be null and void if the proposition to form the public utility district does not receive approval by a majority of the voters voting on the proposition. No primary shall be held. A special filing period shall be opened as provided in *RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for the commissioner of each commissioner district shall be elected as the commissioner of that district. Commissioner districts shall be established as provided in RCW 54.12.010. The terms of the initial commissioners shall be staggered as follows: (1) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an even-numbered year or a five-year term if the election is held in an odd-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an even-numbered year or a three-year term of office if the election is held in an odd-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an even-numbered year

or a one-year term of office if the election is held in an odd-numbered year. The commissioners first to be elected at such special election shall assume office immediately when they are elected and qualified, but the length of their terms of office shall be calculated from the first day in January in the year following their elections.

The term "general election" as used herein means biennial general elections at which state and county officers in a noncharter county are elected. [1994 c 223 § 55; 1979 ex.s. c 126 § 36; 1951 c 207 § 5.]

*Reviser's note: RCW 29.15.170 and 29.15.180 were recodified as RCW 29A.24.170 and 29A.24.180, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Elections: Title 29A RCW.

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

At any general election held in an even-numbered year, the proposal to construct or acquire electric facilities may be submitted to the voters of the district by resolution of the public utility district commission or shall be submitted to the voters of the district by the county legislative authority on petition of ten percent of the qualified electors of such district, based on the total vote cast in the last general county election held in an even-numbered year. A form of petition for the construction or acquisition of electric facilities by the public utility district shall be submitted to the county auditor within ten months prior to the election at which such proposition is to be submitted to the voters. Petitions shall be filed with the county auditor not less than four months before such election and the county auditor shall within thirty days examine the signatures thereof and certify to the sufficiency or insufficiency thereof. If such petition is found to be insufficient, it shall be returned to the persons filing the same, who may amend and add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor: PROVIDED, That each signature shall be dated and that no signature dated prior to the date on which the form of petition was submitted to the county auditor shall be valid. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the county legislative authority which shall submit such proposition to the voters of said district at the next general election in an even-numbered year occurring

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forty-five days after submission of the proposition to said legislative authority. The notice of the election shall state the object of such election, and shall in other respects conform to the requirements of the general laws of Washington, governing the time and manner of holding elections.

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

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

Yes

No

Within ten days after such election, the election board of the county shall canvass the returns, and if at such election a majority of the voters voting on such proposition shall vote in favor of such construction or acquisition of electric facilities, the district shall be authorized to construct or acquire electric facilities. [1979 ex.s. c 240 § 2; 1969 c 106 § 3.]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.08.080 Dissolution. Any district now or hereafter created under the laws of this state may be dissolved, as hereinafter provided, by a majority vote of the qualified electors of such district at any general election upon a resolution of the district commission, or upon petition being filed and such proposition for dissolution submitted to said electors in the same manner provided by chapter 54.08 RCW for the creation of public utility districts. The returns of the election on such proposition for dissolution shall be canvassed and the results declared in the same manner as is provided by RCW 54.08.010: PROVIDED, HOWEVER, That any such proposition to dissolve a district shall not be submitted to the electors if within five years prior to the filing of such petition or resolution such district has undertaken any material studies or material action relating to the construction or acquisition of any utility properties or if such district at the time of the submission of such proposition is actually engaged in the operation of any utility properties.

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

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

Dissolution of special purpose districts: Chapters 36.96 and 53.48 RCW.

**Chapter 54.12 RCW
COMMISSIONERS**

Sections

- 54.12.010 Exercise of power by commissioners—Number—Districts—Terms—Vacancies—Adjustment of boundaries.
- 54.12.080 Compensation and expenses—Group insurance.
- 54.12.090 President—Secretary—Rules—Seal—Minutes.
- 54.12.100 Oath or affirmation.

54.12.110 Electrical utilities—Civil immunity of commissioners and employees for good faith mistakes and errors of judgment.

Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on, request for review of, certification, remand—Sanctions when review request frivolous: RCW 29A.76.010.

54.12.010 Exercise of power by commissioners—Number—Districts—Terms—Vacancies—Adjustment of boundaries. A public utility district that is created as provided in RCW 54.08.010 shall be a municipal corporation of the state of Washington, and the name of such public utility district shall be Public Utility District No. of County.

The powers of the public utility district shall be exercised through a commission consisting of three members in three commissioner districts, and five members in five commissioner districts.

(1) If the public utility district is county-wide and the county has three county legislative authority districts, then, at the first election of commissioners and until any change is made in the boundaries of public utility district commissioner districts, one public utility district commissioner shall be chosen from each of the three county legislative authority districts.

(2) If the public utility district comprises only a portion of the county, with boundaries established in accordance with chapter 54.08 RCW, or if the public utility district is county-wide and the county does not have three county legislative authority districts, three public utility district commissioner districts, numbered consecutively, each with approximately equal population and following precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, subject to appropriate change by the county legislative authority if and when it changes the boundaries of the proposed public utility district. One commissioner shall be elected as a commissioner of each of the public utility district commissioner districts.

(3) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district. Only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire public utility district may vote at a general election to elect a person as a commissioner of the commissioner district.

(4) The term of office of each public utility district commissioner other than the commissioners at large shall be six years, and the term of each commissioner at large shall be four years. Each term shall be computed in accordance with RCW 29A.20.040 following the commissioner's election. All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with RCW 29A.20.040.

(5) A vacancy in the office of public utility district commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the public utility district commission for a period of sixty days unless excused by the public utility district commission. Vacancies on a board of public utility district commissioners shall be filled as provided in chapter 42.12 RCW.

(6) The boundaries of the public utility district commissioner districts may be changed only by the public utility district commission, and shall be examined every ten years to determine substantial equality of population in accordance with chapter 29A.76 RCW. Except as provided in this section or RCW 54.04.039, the boundaries shall not be changed oftener than once in four years. Boundaries may only be changed when all members of the commission are present. Whenever territory is added to a public utility district under RCW 54.04.035, or added or withdrawn under RCW 54.04.039, the boundaries of the public utility commissioner districts shall be changed to include the additional or exclude the withdrawn territory. Unless the boundaries are changed pursuant to RCW 54.04.039, the proposed change of the boundaries of the public utility district commissioner district must be made by resolution and after public hearing. Notice of the time of the public hearing shall be published for two weeks before the hearing. Upon a referendum petition signed by ten percent of the qualified voters of the public utility district being filed with the county auditor, the county legislative authority shall submit the proposed change of boundaries to the voters of the public utility district for their approval or rejection. The petition must be filed within ninety days after the adoption of resolution of the proposed action. The validity of the petition is governed by the provisions of chapter 54.08 RCW. [2004 c 113 § 1; 1994 c 223 § 56; 1990 c 59 § 109; 1987 c 292 § 1; 1979 ex.s. c 126 § 37; 1977 ex.s. c 36 § 8; 1977 c 53 § 2; 1969 c 106 § 1; 1959 c 265 § 9; 1941 c 245 § 4; 1931 c 1 § 4; Rem. Supp. 1941 § 11608. Formerly RCW 54.08.030, 54.08.040, 54.12.010 through 54.12.070.]

Effective date—2004 c 113: See note following RCW 54.04.039.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.12.080 Compensation and expenses—Group insurance. (1) Commissioners of public utility districts are eligible to receive salaries as follows:

(a) Each public utility district commissioner of a district operating utility properties shall receive a salary of one thousand dollars per month during a calendar year if the district received total gross revenue of over fifteen million dollars during the fiscal year ending June 30th before the calendar year. However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to thirteen hundred dollars per month.

(b) Each public utility district commissioner of a district operating utility properties shall receive a salary of seven hundred dollars per month during a calendar year if the district received total gross revenue of from two million dollars to fifteen million dollars during the fiscal year ending June 30th before the calendar year. However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to nine hundred dollars per month.

(c) Commissioners of other districts shall serve without salary. However, the board of commissioners of such a public utility district may pass a resolution providing for salaries not

exceeding four hundred dollars per month for each commissioner.

(2) In addition to salary, all districts may provide by resolution for the payment of per diem compensation to each commissioner at a rate not exceeding seventy dollars for each day or major part thereof devoted to the business of the district, and days upon which he or she attends meetings of the commission of his or her district or meetings attended by one or more commissioners of two or more districts called to consider business common to them, but such compensation paid during any one year to a commissioner shall not exceed nine thousand eight hundred dollars. Per diem compensation shall not be paid for services of a ministerial or professional nature.

(3) Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

(4) Each district commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence.

(5) Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioner with the same coverage. [1998 c 121 § 4; 1997 c 28 § 1; 1985 c 330 § 4; 1977 ex.s. c 157 § 1; 1969 c 106 § 5; 1967 c 161 § 1; 1957 c 140 § 2; 1955 c 124 § 5; 1951 c 207 § 4. Prior: (i) 1931 c 1 § 8, part; RRS § 11612, part. (ii) 1941 c 245 § 6; Rem. Supp. 1941 § 11616-5.]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

Group employee insurance: RCW 54.04.050.

Hospitalization and medical insurance not deemed additional compensation: RCW 41.04.190.

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

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

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

54.12.100 Oath or affirmation. Each commissioner before he enters upon the duties of his office shall take and

subscribe an oath or affirmation that he will faithfully and impartially discharge the duties of his office to the best of his ability. This oath, or affirmation, shall be administered and certified by an officer of the county in which the district is situated, who is authorized to administer oaths, without charge therefor. The oath or affirmation shall be filed with the county auditor. [1986 c 167 § 23; 1959 c 265 § 10.]

Severability—1986 c 167: See note following RCW 29A.04.049.

54.12.110 Electrical utilities—Civil immunity of commissioners and employees for good faith mistakes and errors of judgment. Commissioners and employees of public utility districts shall be immune from civil liability for mistakes and errors of judgment in the good faith performance of acts within the scope of their official duties involving the exercise of judgment and discretion which relate solely to their responsibilities for electrical utilities. This grant of immunity shall not be construed as modifying the liability of the public utility district. [1983 1st ex.s. c 48 § 2.]

Severability—1983 1st ex.s. c 48: See note following RCW 35.21.415.

Chapter 54.16 RCW POWERS

Sections

54.16.005	Definitions.
54.16.010	Surveys, plans, investigations, or studies.
54.16.020	Acquisition of property and rights—Eminent domain.
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54.16.040	Electric energy.
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Deferral of special assessments: Chapter 84.38 RCW.

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54.16.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Telecommunications" has the same meaning as that contained in RCW 80.04.010.

(3) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

(4) "Wholesale telecommunications services" means the provision of telecommunications services or facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers. [2000 c 81 § 2.]

Findings—2000 c 81: See note following RCW 53.08.005.

54.16.010 Surveys, plans, investigations, or studies. A district may make surveys, plans, investigations or studies for generating electric energy by water power, steam, or other methods, and for systems and facilities for the generation, transmission or distribution thereof, and for domestic and industrial water supply and irrigation, and for matters and purposes reasonably incidental thereto, within or without the district, and compile comprehensive maps and plans showing the territory that can be most economically served by the various resources and utilities, the natural order in which they should be developed, and how they may be joined and coordinated to make a complete and systematic whole. [1969 c

106 § 6; 1955 c 390 § 2. Prior: 1945 c 143 § 1(a); 1931 c 1 § 6(a); Rem. Supp. 1945 § 11610(a).]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.16.020 Acquisition of property and rights—Eminent domain. A district may construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop, and regulate all lands, property, property rights, water, water rights, dams, ditches, flumes, aqueducts, pipes and pipe lines, water power, leases, easements, rights of way, franchises, plants, plant facilities, and systems for generating electric energy by water power, steam, or other methods; plants, plant facilities, and systems for developing, conserving, and distributing water for domestic use and irrigation; buildings, structures, poles and pole lines, and cables and conduits and any and all other facilities; and may exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of such property and rights, or property of any kind appurtenant thereto, and for the purpose of acquiring the right to make physical connection with plants and plant facilities of all persons and municipalities. The right of eminent domain shall be exercised pursuant to resolution of the commission and conducted in the same manner and by the same procedure as is provided for the exercise of that power by cities and towns of the state in the acquisition of like property and property rights. It shall be no defense to a condemnation proceeding that a portion of the electric current generated or sold by the district will be applied to private purposes, if the principal uses intended are public: PROVIDED, That no public utility owned by a city or town shall be condemned, and none shall be purchased without submission of the question to the voters of the utility district. In a condemnation proceeding, the court shall submit to the jury the values placed upon the property by the taxing authority for taxation purposes, and in respect to property, plants, and facilities of persons using public highways for furnishing public service without franchises, shall consider in determining the value thereof the fact that the property, plants, and facilities are subject to be removed from the highways by reason of being so operated without a franchise. [1955 c 390 § 3. Prior: 1945 c 143 § 1(b); 1931 c 1 § 6(b); Rem. Supp. 1945 § 11610(b).]

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

Eminent domain by cities: Chapter 8.12 RCW.

54.16.030 Water and irrigation works. A district may construct, purchase, condemn and purchase, acquire, add to, maintain, conduct, and operate water works and irrigation plants and systems, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof, and of the county in which the district is located, and any other persons including public and private corporations within or without the limits of the district or the county, with an ample supply of water for all purposes, public and private, including water power, domestic use, and irrigation, with full and exclusive authority to sell and regulate and control the use, distribution, and price thereof. [1999 c 154 § 1; 1998 c 49 § 1; 1955 c 390 § 4. Prior: 1945 c 143 § 1(c); 1931 c 1 § 6(c); Rem. Supp. 1945 § 11610(c).]

54.16.032 Authority to assist customers in the acquisition of water conservation equipment—Limitations.

Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the district if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the district to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [1989 c 421 § 4.]

Intent—Contingent effective date—1989 c 421: See notes following RCW 35.92.017.

54.16.035 Provision of water service beyond district subject to review by boundary review board. The provision of water service beyond the boundaries of a public utility district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 48.]

54.16.040 Electric energy. A district may purchase, within or without its limits, electric current for sale and distribution within or without its limits, and construct, condemn and purchase, purchase, acquire, add to, maintain, conduct, and operate works, plants, transmission and distribution lines and facilities for generating electric current, operated either by water power, steam, or other methods, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof and any other persons, including public and private corporations, within or without its limits, with

electric current for all uses, with full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges, and price thereof, free from the jurisdiction and control of the utilities and transportation commission, in all things, together with the right to purchase, handle, sell, or lease motors, lamps, transformers and all other kinds of equipment and accessories necessary and convenient for the use, distribution, and sale thereof: PROVIDED, That the commission shall not supply water to a privately owned utility for the production of electric energy, but may supply, directly or indirectly, to an instrumentality of the United States government or any publicly or privately owned public utilities which sell electric energy or water to the public, any amount of electric energy or water under its control, and contracts therefor shall extend over such period of years and contain such terms and conditions for the sale thereof as the commission of the district shall elect; such contract shall only be made pursuant to a resolution of the commission authorizing such contract, which resolution shall be introduced at a meeting of the commission at least ten days prior to the date of the adoption of the resolution: PROVIDED FURTHER, That it shall first make adequate provision for the needs of the district, both actual and prospective. [1955 c 390 § 5. Prior: 1945 c 143 § 1(d); 1931 c 1 § 6(d); Rem. Supp. 1945 § 11610(d).]

Joint operating agency: RCW 43.52.360.

Reduced utility rates for low-income senior citizens and other low-income citizens: RCW 74.38.070.

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

54.16.045 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. See chapter 80.58 RCW.

54.16.047 Hydroelectric resources—Separate legal authority—Creation by irrigation districts and cities, towns, or public utility districts. See RCW 87.03.825 through 87.03.840.

54.16.050 Water rights. A district may take, condemn and purchase, purchase and acquire any public and private property, franchises and property rights, including state, county, and school lands, and property and littoral and water rights, for any of the purposes aforesaid, and for railroads, tunnels, pipe lines, aqueducts, transmission lines, and all other facilities necessary or convenient, and, in connection with the construction, maintenance, or operation of any such utilities, may acquire by purchase or condemnation and purchase the right to divert, take, retain, and impound and use water from or in any lake or watercourse, public or private, navigable or nonnavigable, or held, owned, or used by the state, or any subdivision thereof, or by any person for any public or private use, or any underflowing water within the state; and the district may erect, within or without its limits, dams or other works across any river or watercourse, or across or at the outlet of any lake, up to and above high water mark; and, for the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing, retaining, and distributing water, or for any other purpose authorized hereunder, the district may

occupy and use the beds and shores up to the high water mark of any such lake, river, or watercourse, and acquire by purchase or by condemnation and purchase, or otherwise, any water, water rights, easements, or privileges named herein or necessary for any of such purposes, and a district may acquire by purchase, or condemnation and purchase, or otherwise, any lands, property, or privileges necessary to protect the water supply of the district from pollution: PROVIDED, That should private property be necessary for any of its purposes, or for storing water above high water mark, the district may condemn and purchase, or purchase and acquire such private property. [1955 c 390 § 6. Prior: 1945 c 143 § 1(e), part; 1931 c 1 § 6(e), part; Rem. Supp. 1945 § 11610(e), part.]

Water rights: Title 90 RCW.

54.16.060 Intertie lines. A district may build and maintain intertie lines connecting its power plant and distribution system with the power plant and distribution system owned by any other public utility district, or municipal corporation, or connect with the power plants and distribution systems owned by any municipal corporation in the district, and from any such intertie line, sell electric energy to any person, public utility district, city, town or other corporation, public or private, and, by means of transmission or pole lines, conduct electric energy from the place of production to the point of distribution, and construct and lay aqueducts, pipe or pole lines, and transmission lines along and upon public highways, roads, and streets, and condemn and purchase, purchase or acquire, lands, franchises, and rights of way necessary therefor. [1955 c 390 § 7. Prior: 1945 c 143 § 1(e), part; 1931 c 1 § 6(e), part; Rem. Supp. 1945 § 11610(e), part.]

54.16.070 District may borrow money, contract indebtedness, issue bonds or obligations—Guaranty fund. (1) A district may contract indebtedness or borrow money for any corporate purpose on its credit or on the revenues of its public utilities, and to evidence such indebtedness may issue general obligation bonds or revenue obligations; may issue and sell local utility district bonds of districts created by the commission, and may purchase with surplus funds such local utility district bonds, and may create a guaranty fund to insure prompt payment of all local utility district bonds. The general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. A district is authorized to establish lines of credit or make other prearranged agreements, or both, to borrow money with any financial institution.

(2) Notwithstanding subsection (1) of this section, such revenue obligations and local utility district bonds may be issued and sold in accordance with chapter 39.46 RCW. [1991 c 74 § 1; 1984 c 186 § 44; 1983 c 167 § 144; 1959 c 218 § 1; 1955 c 390 § 8. Prior: 1945 c 143 § 1(f); 1931 c 1 § 6(f); Rem. Supp. 1945 § 11610(f).]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.16.080 Levy and collection of taxes—Tax anticipation warrants. A district may raise revenue by the levy of an annual tax on all taxable property within the district, not

exceeding forty-five cents per thousand dollars of assessed value in any one year, exclusive of interest and redemption for general obligation bonds. The commission shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file it in its records, on or before the first Monday in September. Notice of the filing of the proposed budget and the date and place of hearing thereon shall be published for at least two consecutive weeks in a newspaper printed and of general circulation in the county. On the first Monday in October, the commission shall hold a public hearing on the proposed budget at which any taxpayer may appear and be heard against the whole or any part thereof. Upon the conclusion of the hearing, the commission shall, by resolution, adopt the budget as finally determined, and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper officer of the county in which the district is located in the same manner as provided for the certification and collection of port district taxes. The commission may, prior to the receipt of taxes raised by levy, borrow money or issue warrants of the district in anticipation of the revenue to be derived from the levy or taxes for district purposes, and the warrants shall be redeemed from the first money available from such taxes. The warrants shall not exceed the anticipated revenue of one year, and shall bear interest at a rate determined by the commission. [1981 c 156 § 18; 1973 1st ex.s. c 195 § 60; 1955 c 390 § 9. Prior: 1945 c 143 § 1(g); 1931 c 1 § 6(g); Rem. Supp. 1945 § 11610(g).]

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

Application of one percentum levy limitation to public utility district: State Constitution Art. 7 § 2 and RCW 84.52.050.

Collection of taxes by port districts: RCW 53.36.020.

54.16.083 Community revitalization financing—Public improvements. In addition to other authority that a public utility district possesses, a public utility district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a public utility district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 19.]

Severability—2001 c 212: See RCW 39.89.902.

54.16.085 Interfund loans. A public utility district may make and repay interfund loans between its funds. [1987 c 18 § 2.]

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

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

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

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

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

54.16.092 Employment interview expenses. When a district commission finds that a vacancy for a technical or managerial position requires special qualifications or entails responsibilities and duties of such a nature that substantial benefits will accrue to the district from personal interviews of candidates for such a vacancy to be held in the district, the district commission, by resolution adopted at a regular meeting, may authorize the payment of actual necessary travel and living expenses of such candidates incurred while in travel status. [1975 1st ex.s. c 140 § 1.]

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

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

54.16.096 Liability insurance for officers and employees authorized. See RCW 36.16.138.

54.16.097 Actions against officer, employee, or agent—Defense and costs provided by public utility district—Exception. Whenever any action, claim or proceeding is instituted against any person who is or was an officer, employee, or agent of a public utility district established under this title arising out of the performance or failure of performance of duties for, or employment with any such district, the commission of the district may grant a request by such person that the attorney of the district's choosing be authorized to defend said claim, suit or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the district's funds: PROVIDED, That costs of defense and/or judgment or settlement against such person shall not be paid in any case where the court has found that such person was not acting in

good faith or within the scope of his employment with or duties for the district. [1975 c 60 § 2.]

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

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

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

The manager shall carry out the orders of the commission, and see that the laws pertaining to matters within the functions of his or her department are enforced; keep the commission fully advised as to the financial condition and needs of the districts; prepare an annual estimate for the ensuing fiscal year of the probable expenses of the department, and recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made during the ensuing fiscal year, with an estimate of the costs of the development work, extensions, and additions; certify to the commission all bills, allowances, and payrolls, including claims due contractors of public works; recommend to the commission compensation of the employees of his or her office, and a scale of compensation to be paid for the different classes of service required by the district; hire and discharge employees under his or her direction; and perform such other duties as may be imposed upon the manager by resolution of the commission. It is unlawful for the manager to make any contribution of money in aid of or in opposition to the election of any candidate for public utility commissioner or to advocate or oppose any such election. [1990 c 16 § 1; 1955 c 390 § 11. Prior: 1945 c 143 § 1(j), part; 1931 c 1 § 6(j), part; Rem. Supp. 1945 § 11610(j), part.]

54.16.110 May sue and be sued—Claims. A district may sue in any court of competent jurisdiction, and may be sued in the county in which its principal office is located or in which it owns or operates facilities. No suit for damages shall be maintained against a district except on a claim filed with the district complying in all respects with the terms and requirements for claims for damages set forth in chapter 4.96 RCW. [1993 c 449 § 11; 1979 ex.s. c 240 § 3; 1955 c 390 § 12. Prior: 1945 c 143 § 1(k); 1931 c 1 § 6(k); Rem. Supp. 1945 § 11610(k).]

Purpose—Severability—1993 c 449: See notes following RCW 4.96.010.

Claims against cities of the second class: RCW 35.31.040.

54.16.120 Local utility districts authorized. A district may, by resolution, establish and define the boundaries of local assessment districts to be known as local utility district No. . . . , for distribution, under the general supervision and control of the commission, of water for all purposes, public and private, including domestic use, irrigation, and electric energy, and for providing street lighting, or any of them, and in like manner provide for the purchasing, or otherwise acquiring, or constructing and equipping and maintaining and operating distribution systems for such purposes, and for extensions and betterments thereof, and may levy and collect in accordance with the special benefits conferred thereon, special assessments and reassessments on property specially benefited thereby, for paying the cost and expense thereof, or any portions thereof, as herein provided, and issue local improvement bonds or warrants or both to be repaid wholly or in part by collection of local improvement assessments. A district also may form local utility districts located entirely or in part outside its limits or the limits of the county in which the district is located to provide water, or sewer facilities if otherwise authorized under this title. [1999 c 154 § 2; 1975 c 46 § 1; 1955 c 390 § 13. Prior: 1951 c 209 § 1; 1945 c 143 § 1(1), part; 1931 c 1 § 6(1), part; Rem. Supp. 1945 § 11610(1), part.]

Assessments and charges against state lands: Chapter 79.44 RCW.

Local improvements, supplemental authority: Chapter 35.51 RCW.

54.16.125 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.33.210 through 84.33.270, 84.34.300 through 84.34.380, and 84.34.922.

54.16.130 Local districts—Procedure—Financing. The commission shall by resolution establish the method of procedure in all matters relating to local utility districts. A public utility district may determine by resolution what work shall be done or improvements made at the expense, in whole or in part, of the property specially benefited thereby; and adopt and provide the manner, machinery and proceedings in any way relating to the making and collecting of assessments therefor in pursuance thereof. Except as herein otherwise provided or as may hereafter be set forth by resolution, all matters and proceedings relating to the local utility district, the levying and collection of assessments, the issuance and redemption of local improvement warrants and bonds, and the enforcement of local assessment liens hereunder, shall be governed, as nearly as may be, by the laws relating to local improvements for cities and towns: **PROVIDED**, That no protest against a local utility district improvement shall be received after twelve o'clock noon of the day set for hearing. Such bonds and warrants may be in any form, including bearer bonds or bearer warrants, or registered warrants or registered bonds as provided in RCW 39.46.030. Such bonds and warrants may also be issued and sold in accordance with chapter 39.46 RCW.

The commission may determine to finance the project by bonds or warrants secured by assessments against the property within the local utility district: Or it may finance the project by revenue bonds, in which case no bonds or warrants shall be issued by the local utility district, but assessments

shall be levied upon the taxable property therein on the basis of special benefits up to, but not exceeding the total cost of the improvement and in such cases the entire principal and interest of such assessments shall be paid into a revenue bond fund of the district, to be used for the sole purpose of the payment of revenue bonds. [1983 c 167 § 145; 1955 c 390 § 14. Prior: 1951 c 209 § 2; 1945 c 143 § 1(1), part; 1931 c 1 § 6(1), part; Rem. Supp. 1945 § 11610(1), part.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Local improvement

first class cities: Chapters 35.43 through 35.56 RCW.

guaranty fund: RCW 54.24.200 through 54.24.260.

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

54.16.142 Local utility districts—Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local utility district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement, or street lighting, adds to the property. [1989 c 243 § 9.]

54.16.145 Local utility districts—Sanitary sewer or potable water facilities—Notice to certain property owners. Whenever it is proposed that a local utility district finance sanitary sewers or potable water facilities, additional notice of the public hearing on the proposed local utility district shall be mailed to the owners of any property located outside of the proposed local utility district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the local utility district. The notice shall include information about this restriction. [1987 c 315 § 4.]

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

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

lant unless the court shall find from the evidence that such assessment is founded upon a fundamentally wrong basis and/or the decision of the commission thereon was arbitrary or capricious; in which event the judgment of the court shall correct, change, modify, or annul the assessment insofar as it affects the property of the appellant. In the same manner as provided with reference to cities of the first class appellate review of the judgment of the superior court may be sought, as in other cases, within fifteen days after the date of the entry of the judgment in the superior court. Engineering, office, and other expenses necessary or incident to the improvement shall be borne by the public utility district: **PROVIDED,** That when a municipal corporation included in the public utility district already owns or operates a utility of a character like that for which the assessments are levied hereunder, all such engineering and other expenses shall be borne by the local assessment district. [1988 c 202 § 51; 1971 c 81 § 123; 1959 c 142 § 4; 1955 c 390 § 17. Prior: 1945 c 143 § 1(1), part; 1931 c 1 § 6(1), part; Rem. Supp. 1945 c 11610(1), part.]

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

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

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

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

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

require as a condition to the order of segregation that the person seeking it pay the public utility district the reasonable engineering and clerical costs incident to making the segregation. Unless otherwise provided in said resolution, the county treasurer shall apportion amounts paid on the original assessment in the same proportion as the segregated assessments bear to the original assessment. Upon segregation being made by the county treasurer, as aforesaid, the lien of the special assessment shall apply to the segregated parcels only to the extent of the segregated part of such assessment. [1988 c 202 § 52; 1971 c 81 § 124; 1959 c 142 § 1.]

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

54.16.170 Apportionment of cost of improvement.

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

54.16.180 Sale, lease, disposition of properties, equipment, and materials—Procedure—Acquisition, operation of sewage system by districts in certain counties. A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as provided for the lease or disposition of like properties and facilities owned by cities and towns: **PROVIDED**, That the affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale, shall be necessary to authorize such sale: **PROVIDED FURTHER**, That a district may sell, convey, lease or otherwise dispose of all or any part of the property owned by it, located outside its boundaries, to another public utility district, city, town or other municipal corporation without the approval of the voters; or may sell, convey, lease, or otherwise dispose of to any person or public body, any part, either within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, without the approval of the voters: **PROVIDED FURTHER**, That a district may sell, convey, lease or otherwise dispose of items of equipment or materials to any other district, to any cooperative, mutual, consumer-owned or investor-owned utility, to any federal, state, or local government agency, to any contractor employed by the district or any other district, utility, or agency, or any customer of the district or of any other district or utility, from the district's stores without voter approval or resolution of the district's board, if such items of equipment or materials cannot practicably be obtained on a timely basis from any other source, and the amount received by the district in consideration for any such sale, conveyance, lease, or other disposal of such items of equipment or materials is not less than the district's cost to purchase such items or the reasonable market

value of equipment or materials: **PROVIDED FURTHER**, That a public utility district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand may sell and convey to a city of the first class, which owns its own water system, all or any part of a water system owned by said public utility district where a portion of it is located within the boundaries of such city, without approval of the voters upon such terms and conditions as the district shall determine: **PROVIDED FURTHER**, That a public utility district located in a county with a population of from twelve thousand to less than eighteen thousand and bordered by the Columbia river may, separately or in connection with the operation of a water system, or as part of a plan for acquiring or constructing and operating a water system, or in connection with the creation of another or subsidiary local utility district, may provide for the acquisition or construction, additions or improvements to, or extensions of, and operation of a sewage system within the same service area as in the judgment of the district commission is necessary or advisable in order to eliminate or avoid any existing or potential danger to the public health by reason of the lack of sewerage facilities or by reason of the inadequacy of existing facilities: **AND PROVIDED FURTHER**, That a public utility district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand bordering on Puget Sound may sell and convey to any city or town with a population of less than ten thousand all or any part of a water system owned by said public utility district without approval of the voters upon such terms and conditions as the district shall determine. Public utility districts are municipal corporations for the purposes of this section and the commission shall be held to be the legislative body and the president and secretary shall have the same powers and perform the same duties as the mayor and city clerk and the resolutions of the districts shall be held to be ordinances within the meaning of the statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns. [1999 c 69 § 1; 1994 c 81 § 78; 1991 c 363 § 135; 1977 ex.s. c 31 § 1; 1963 c 196 § 1; 1959 c 275 § 1; 1955 c 390 § 19. Prior: 1945 c 143 § 1(m); 1931 c 1 § 6(m); Rem. Supp. 1945 § 11610(m).]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

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

54.16.200 Joint exercise of powers and joint acquisition of properties. Any two or more public utility districts organized under the provisions of the laws of this state shall have the power, by mutual agreement, to exercise jointly all powers granted to each individual district, and in the exercise of such powers shall have the right and power to acquire jointly all or any part of any electric utility properties which, at *the time of the passage of this act, constitutes an interconnected and physically integrated electric utility system, whether entirely within or partly within and partly without such districts: **PROVIDED**, That any two or more districts so

acting jointly, by mutual agreement, shall not acquire any electric utility distribution properties in any other public utility district without the consent of such district, and shall not exercise jointly the power to condemn any privately owned utility property or any public utility owned by a municipality, to levy taxes or, to create subdistricts. [1949 c 227 § 2; Rem. Supp. 1949 § 10459-15.]

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

Joint operating agency: RCW 43.52.360.

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

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

54.16.230 Sewage system works—Acquire, construct, operate, etc.—Authorizing election—Procedure. A public utility district may acquire, construct, operate, maintain, and add to sewage systems, subject to and in compliance with the county comprehensive plan, under the general powers of Title 54 RCW or through the formation of local utility districts as provided in RCW 54.16.120 through 54.16.170: PROVIDED, That prior to engaging in any sewage system

works as authorized by this section, the voters of the public utility district shall first approve by majority vote a referendum proposition authorizing such district to exercise the powers set forth in this section, which proposition shall be presented at a general election. [1975 1st ex.s. c 57 § 1.]

54.16.240 Sewage system works—Resolution or petition—Voter approval or rejection. The commission of a public utility district, by resolution may, or on petition in the same manner as provided for the creation of a district under RCW 54.08.010 shall, submit to the voters for their approval or rejection the proposal that said public utility district be authorized to exercise the powers set forth in RCW 54.16.230. [1975 1st ex.s. c 57 § 2.]

54.16.250 Sewage system works—Ballot proposition—Canvass. The legislative authority of the county in which the public utility district is located, upon receipt of the resolution of the public utility district commission or petition as provided for in RCW 54.08.010, shall submit such proposal to the voters of the district at the next general election in substantially the following terms:

Shall Public Utility District No. of County be authorized to acquire, construct, operate, maintain, and add to sewage systems?

Yes

No

Within ten days after such election, the election board of the county shall canvass the returns, and if at such election a majority of voters voting on the proposition shall vote in favor of such authority, the district shall have the powers set forth in RCW 54.16.230. [1975 1st ex.s. c 57 § 3.]

54.16.260 Sewage system works—Accounts and funding. Accounts and funding for any sewage system or systems shall be kept as provided in RCW 43.09.210. [1975 1st ex.s. c 57 § 4.]

54.16.270 Sewage system works—Existing authority not affected. Nothing contained in RCW 54.16.230 through 54.16.260 shall change or alter the present authority of certain public utility districts as regards sewage systems and as provided in RCW 54.16.180. [1975 1st ex.s. c 57 § 5.]

54.16.280 Energy conservation plan—Financing authorized for energy conservation projects in structures or equipment—Limitations. Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the district if the cost per unit of energy saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the district could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in exist-

ing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another. For the purposes of this section, "conservation purposes in existing structures" may include projects to allow a district's customers to generate all or a portion of their own electricity through the on-site installation of a distributed electricity generation system that uses as its fuel solar, wind, geothermal, or hydropower, or other renewable resource that is available on-site and not from a commercial source. Such projects shall not be considered "a conversion from one energy source to another" which is limited to the change or substitution of one commercial energy supplier for another commercial energy supplier. Except where otherwise authorized, such assistance shall be limited to:

(1) Providing an inspection of the structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;

(2) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the district, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards.

(3) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

(5) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed one hundred twenty months in length. [2002 c 276 § 3; 1989 c 268 § 2; 1979 ex.s. c 239 § 3.]

Findings—Intent—2002 c 276: See note following RCW 35.92.360.

Legislative declaration—Effective date—Contingency—1979 ex.s. c 239: See RCW 35.92.355 and note following RCW 35.92.360.

54.16.285 Limitations on termination of utility service for residential heating. (1) A district providing utility service for residential space heating shall not terminate such utility service between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(2) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this section. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(3) All districts providing utility service for residential space heating shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(4) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter. [1995 c 399 § 144; 1991 c 165 § 3; 1990 1st ex.s. c 1 § 3; 1986 c 245 § 3; 1985 c 6 § 19; 1984 c 251 § 2.]

Findings—1991 c 165: See note following RCW 35.21.300.

54.16.300 Combined utility functions. A public utility district by resolution may combine two or more of its separate utility functions into a single utility and combine its related funds or accounts into a single fund or account. The separate utility functions include electrical energy systems, domestic water systems, irrigation systems, sanitary sewer systems, and storm sewer systems. All powers granted to public utility districts to acquire, construct, maintain, and operate such systems may be exercised in the joint acquisition, construction, maintenance, and operation of such combined systems. The establishment, maintenance, and operation of the combined system shall be governed by the public utility district statutes relating to one of the utility systems that is being combined, as specified in the resolution combining the utility systems. [1987 c 18 § 1.]

54.16.310 Operation, maintenance, and inspection of sewage disposal facilities, septic tanks, and wastewater disposal facilities and systems—Maintenance costs. A public utility district as authorized by a county board of health, may perform operation and maintenance, including inspections, of on-site sewage disposal facilities, alternate sewage disposal facilities, approved septic tanks or approved septic tank systems, other facilities and systems for the collection, interception, treatment, and disposal of wastewater, and for the control and protection, preservation, and rehabilitation of surface and underground waters. Those costs associated with the maintenance of private on-site sewage systems may be charged by the public utility district to the system owner. [1990 c 107 § 1.]

54.16.320 Assumption of substandard water system—Limited immunity from liability. A public utility district assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the public utility district has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall

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expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 10.]

Findings—Intent—1994 c 292: See note following RCW 57.04.050.

54.16.330 Telecommunications facilities—Purposes—Limitations—Provision of wholesale telecommunications services—Eminent domain. (1) A public utility district in existence on June 8, 2000, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(a) For the district's internal telecommunications needs; and

(b) For the provision of wholesale telecommunications services within the district and by contract with another public utility district.

Nothing in this subsection shall be construed to authorize public utility districts to provide telecommunications services to end users.

(2) A public utility district providing wholesale telecommunications services shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) A public utility district providing wholesale telecommunications services shall not be required to but may establish a separate utility system or function for such purpose. In either case, a public utility district providing wholesale telecommunications services shall separately account for any revenues and expenditures for those services according to standards established by the state auditor pursuant to its authority in chapter 43.09 RCW and consistent with the provisions of this title. Any revenues received from the provision of wholesale telecommunications services must be dedicated to costs incurred to build and maintain any telecommunications facilities constructed, installed, or acquired to provide such services, including payments on debt issued to finance such services, until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance such telecommunications facilities are discharged or retired.

(4) When a public utility district provides wholesale telecommunications services, all telecommunications services rendered to the district for the district's internal telecommunications needs shall be allocated or charged at its true and full value. A public utility district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services.

(5) A public utility district shall not exercise powers of eminent domain to acquire telecommunications facilities or

contractual rights held by any other person or entity to telecommunications facilities.

(6) Except as otherwise specifically provided, a public utility district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws of 2000 limits any existing authority of a public utility district under this title. [2004 c 158 § 1; 2000 c 81 § 3.]

Findings—2000 c 81: See note following RCW 53.08.005.

54.16.340 Wholesale telecommunications services—Petition for review of rates, terms, conditions. (1) A person or entity that has requested wholesale telecommunications services from a public utility district providing wholesale telecommunications services under this chapter may petition the commission under the procedures set forth in RCW 80.04.110 (1) through (3) if it believes the district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential. The person or entity shall provide the public utility district notice of its intent to petition the commission and an opportunity to review within thirty days the rates, terms, and conditions as applied to it prior to submitting its petition. In determining whether a district is providing discriminatory or preferential rates, terms, and conditions, the commission may consider such matters as service quality, cost of service, technical feasibility of connection points on the district's facilities, time of response to service requests, system capacity, and other matters reasonably related to the provision of wholesale telecommunications services. If the commission, after notice and hearing, determines that a public utility district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential, it shall issue a final order finding noncompliance with this section and setting forth the specific areas of apparent noncompliance. An order imposed under this section shall be enforceable in any court of competent jurisdiction.

(2) The commission may order a public utility district to pay a share of the costs incurred by the commission in connection with adjudicating or enforcing the provisions of this section.

(3) Without limiting other remedies at law or equity, the commission and prevailing party may also seek injunctive relief to compel compliance with an order.

(4) Nothing in this section shall be construed to affect the commission's authority and jurisdiction with respect to actions, proceedings, or orders permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56). [2000 c 81 § 5.]

Findings—2000 c 81: See note following RCW 53.08.005.

54.16.350 Tariff for irrigation pumping service—Authority to buy back electricity. The commission may approve a tariff for irrigation pumping service that allows the district to buy back electricity from customers to reduce electricity usage by those customers during the district's particular irrigation season. [2001 c 122 § 2.]

Effective date—2001 c 122: See note following RCW 80.28.310.

54.16.360 Cooperative watershed management. In addition to the authority provided in RCW 54.16.030 relating

to water supply, a public utility district may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 14.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

54.16.370 Purchase of electric power and energy from joint operating agency. A district may contract to purchase from a joint operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the district must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint operating agency or a city, town, or district under the contract or other instrument. [2003 c 138 § 2.]

Chapter 54.20 RCW CONDEMNATION PROCEEDINGS

Sections

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

54.20.010 Statement of operations—Decree of appropriation—Retirement of properties—Accounting—Limitation on new proceedings. In any condemnation proceeding heretofore or hereafter instituted or conducted by a public utility district for the acquisition of properties, the district may serve upon the condemnee's attorneys of record and file with the court a notice of its intention to present a decree of appropriation together with a demand for a verified statement showing in reasonable detail the following information with respect to the operation of the properties since the date of verdict, if the case was tried by jury, or since the date of the judgment fixing compensation, if the case was tried by the court, namely: the cost of any improvements and betterments to the properties which were reasonably necessary and prudently made; the gross income received from the properties, betterments and improvements; the actual reasonable expense, exclusive of depreciation, incurred in the operation thereof. If the condemnee fails to serve and file the statement within fifteen days after service of the demand therefor, it may be compelled to do so by contempt proceedings, and the time during which such proceedings are pending shall not be considered in computing the time within which the district may exercise its right of appropriation. After the statement is filed, the district may pay the amount of the verdict or judgment plus (1) accrued interest thereon less the net income before allowance

for depreciation, and (2) the cost of such improvements and betterments, all as shown by the sworn statement, and concurrently obtain its decree of appropriation. The condemnee may retire from use after the verdict or judgment such items of the properties as may be reasonably necessary in the ordinary and usual course of operation thereof, in which case it shall show in its statement the reasonable value of such items retired, and the district may deduct such value from the sum otherwise payable by it. If the condemnee fails to file the statement within fifteen days after service of the demand therefor, the district at its option may pay the full amount of the judgment or verdict plus accrued interest thereon and concurrently obtain a decree of appropriation.

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

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

Purpose—Severability—1945 c 130: See notes following RCW 54.04.100.

**Chapter 54.24 RCW
FINANCES**

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GENERAL PROVISIONS

54.24.010 Treasurer—Bond—Duties—Funds—Depositaries. The treasurer of the county in which a utility district is located shall be ex officio treasurer of the district: PROVIDED, That the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the utility district. The commission may require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

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

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries; if the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in *RCW 36.48.020 for deposit of county funds.

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

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

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district: PROVIDED, That the district pays the premium thereon. [1999 c 18 § 6; 1959 c 218 § 2; 1957 c 140 § 1; 1955 c 124 § 7. Prior: (i) 1931 c 1 § 9; RRS § 11613. (ii) 1931 c 1 § 8, part; RRS § 11612, part.]

*Reviser's note: RCW 36.48.020 was repealed by 1984 c 177 § 21.

54.24.012 Destruction of canceled or paid revenue obligations and interest coupons. After any revenue obligations or interest coupons have been canceled or paid they may be destroyed as directed by the district, any provisions of chapter 40.14 RCW notwithstanding: PROVIDED, That a certificate of destruction giving full descriptive reference to the documents destroyed shall be made by the person or persons authorized to perform such destruction and one copy of

the certificate shall be filed with the treasurer of the district. [1959 c 218 § 15.]

BONDS OR WARRANTS—1931 ACT

54.24.018 Acquisition of property—Adoption of plan—Bonds or warrants—Special funds. (1) Whenever the commission shall deem it advisable that the public utility district purchase, purchase and condemn, acquire, or construct any such public utility, or make any additions or betterments thereto, or extensions thereof, the commission shall provide therefor by resolution, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof, as near as may be, and specify whether general or utility indebtedness is to be incurred, the amount of such indebtedness, the amount of interest and the time in which all general bonds (if any) shall be paid, not to exceed thirty years. In the event the proposed general indebtedness to be incurred will bring the nonvoter approved indebtedness of the public utility district to an amount exceeding three-fourths of one percent of the value of the taxable property of the public utility district, as the term "value of the taxable property" is defined in RCW 39.36.015, the proposition of incurring such indebtedness and the proposed plan or system shall be submitted to the qualified electors of said public utility district for their approval or rejection at the next general election held in such public utility district. Elections shall be held as provided in RCW 39.36.050.

Whenever the commission (or a majority of the qualified voters of such public utility district, voting at said election, when it is necessary to submit the same to said voters) shall have adopted a system or plan for any such public utility, as aforesaid, and shall have authorized indebtedness therefor by a three-fifths vote of the qualified voters of such district, voting at said election, general or public utility bonds may be used as hereinafter provided. The principal and interest of such general bonds shall be paid from the revenue of such public utility district after deducting costs of maintenance, operation, and expenses of the public utility district, and any deficit in the payment of principal and interest of said general bonds shall be paid by levying each year a tax upon the taxable property within said district sufficient to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. Said bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(2) All bonds and warrants issued under the authority of this chapter shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys.

(3) When the commission shall not desire to incur a general indebtedness in the purchase, condemnation and purchase, acquisition, or construction of any such public utility, or addition or betterment thereto, or extension thereof, it shall have the power to create a special fund or funds for the sole purpose of defraying the cost of such public utility, or addition or betterment thereto, or extension thereof, into which special fund or funds it may obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of such public utility, or any fixed amount out of, and not

exceeding a fixed proportion of, such revenues, or a fixed amount without regard to any fixed proportion, and to issue and sell revenue bonds or warrants bearing interest at such rate or rates, payable semiannually, executed in such manner, and payable at such times and places as the commission shall determine, but such bonds or warrants and the interest thereon, shall be payable only out of such special fund or funds. In creating any such special fund or funds, the commission shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to, and to any proportion or part of the revenues previously pledged as a fund for the payment of bonds or warrants, and shall not set aside into such special fund or funds a greater amount or proportion of the revenues and proceeds than, in its judgment, will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenues so previously pledged. Any such bonds or warrants, and interest thereon, issued against any such fund, as herein provided, shall be a valid claim of the owner thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such district within the meaning of the constitutional provisions and limitations. Each such bond or warrant shall state on its face that it is payable from a special fund, naming such fund and the resolution creating it. Said bonds and warrants shall be sold in such manner as the commission shall deem for the best interests of the district. The commission may provide in any contract for the construction and acquisition of a proposed improvement or utility that payment therefor shall be made only in such bonds or warrants at the par value thereof. In all other respects, the issuance of such utility bonds or warrants and payment therefor shall be governed by the public utility laws for cities and towns. The revenue or utility bonds or warrants may be in any form, including bearer bonds or bearer warrants, or registered bonds or registered warrants as provided in RCW 39.46.030.

(4) Notwithstanding subsection (3) of this section, any of such revenue bonds and revenue warrants may be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 45; 1983 c 167 § 146; 1971 c 12 § 1. Prior: 1970 ex.s. c 56 § 77; 1970 ex.s. c 42 § 33; 1969 ex.s. c 232 § 14; 1931 c 1 § 7; RRS § 11611. Formerly RCW 54.24.130 through 54.24.160.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Municipal utilities: Chapter 35.92 RCW.

BONDS—REVENUE OBLIGATIONS—1941 ACT

54.24.020 General obligation bonds, revenue obligations for cost of utilities. Whenever the commission of a public utility district, organized pursuant to chapter 1 of the Laws of 1931 (sections 11605 et seq. of Remington's Revised Statutes) shall deem it advisable that the district purchase, purchase and condemn, acquire or construct any public utility, or make any additions or betterments thereto or extensions thereof, the commission shall provide therefor by reso-

lution, which shall specify and adopt the system or plan proposed and declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for working capital for the operation of such public utility by the district and for the payment of the expenses incurred in the acquisition or construction thereof, and shall specify whether general obligation bonds or revenue obligations are to be issued to defray such cost and the amount of such general obligation bonds or revenue obligations.

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

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

Revenue obligations defined: RCW 54.04.010.

54.24.030 Revenue obligations—Special fund—Form, term, payment, etc.—Resolution of authority, contents—Contracts for future sale. (1) Whenever the commission shall deem it advisable to issue revenue obligations for the purpose of defraying the cost or part of the cost of such public utility or any additions or betterments thereto or extensions thereof, it shall have power as a part of such plan and system to create a special fund or funds for the purpose of defraying the cost of such public utility, or additions or betterments thereto or extensions thereof, into which special fund or funds it may obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of such public utility, and all additions or betterments thereto or extensions thereof, or any fixed amount out of, and not exceeding a fixed proportion of such revenues, or a fixed amount without regard to any fixed proportion, or an amount of such revenues equal to a fixed percentage of the aggregate principal amount of revenue obligations at any time issued against the special fund or funds, and to issue and sell revenue obligations payable as to both principal and interest only out of such fund or funds.

Such revenue obligations shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, as provided in RCW 39.46.030, or both, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as the commission shall by resolution determine.

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

(a) Refunding the short term obligations at or prior to maturity and, if so provided, outstanding bonds by the issu-

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ance of revenue bonds of the district either by the sale of bonds and application of the proceeds to the payment of the short term obligations and outstanding bonds or by the exchange of bonds for the short term obligations;

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

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

(d) Pledging bonds of the district as collateral to secure payment of the short term obligations and providing for the terms and conditions of the pledge and the manner of enforcing the pledge, which terms and conditions may provide for the delivery of the bonds in satisfaction of the short term obligations: PROVIDED, That the aggregate principal amount of the bonds pledged shall not exceed by more than five percent the aggregate principal amount of the short term obligations to secure said short term obligations for which they are pledged;

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

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

A district shall have power to make contracts for the future sale from time to time of revenue obligations by which the purchasers shall be committed to purchase such revenue obligations from time to time on the terms and conditions stated in such contract; and a district shall have power to pay such consideration as it shall deem proper for such commitments.

(2) Notwithstanding subsection (1) of this section, such revenue obligations may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 147; 1959 c 218 § 4; 1941 c 182 § 2; Rem. Supp. 1941 § 11611-2.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

54.24.040 Considerations in creating special fund—Status of claims against fund—When lien attaches. In creating any special fund for the payment of revenue obligations, the commission shall have due regard to the cost of operation and maintenance of the plant or system constructed or added to, and to any proportion or amount of the revenues

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

It is the intention hereof that any pledge of the revenues or other moneys or obligations made by a district shall be valid and binding from the time that the pledge is made; that the revenues or other moneys or obligations so pledged and thereafter received by a district shall immediately be subject to the lien of such pledge without any physical delivery or further act, and that the lien of any such pledge shall be valid and binding as against any parties having claims of any kind in tort, contract, or otherwise against a district irrespective of whether such parties have notice thereof. Neither the resolution or other instrument by which a pledge is created need be recorded. [1983 c 167 § 148; 1959 c 218 § 5; 1941 c 182 § 5; Rem. Supp. 1941 § 11611-5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

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

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

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

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

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

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

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

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

(8) The appointment of trustees, depositaries, and paying agents to receive, hold, disburse, invest, and reinvest all or any part of the income, revenues, receipts, and profits derived by the district from the operation, ownership, and management of its public utility. [1983 c 167 § 149; 1959 c 218 § 6; 1945 c 143 § 2; 1941 c 182 § 3; Rem. Supp. 1945 § 11611-3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.24.060 Sale, delivery of revenue obligations. (1) Such utility revenue obligations shall be sold and delivered in such manner, at such rate or rates of interest and for such price or prices and at such time or times as the commission shall deem for the best interests of the district. The commission may, if it deem it to the best interest of the district, provide in any contract for the construction or acquisition of the public utility, or the additions or betterments thereto or extensions thereof, that payment therefor shall be made only in such revenue obligations at the par value thereof.

(2) Notwithstanding subsection (1) of this section, such obligations may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 150; 1970 ex.s. c 56 § 78; 1969 ex.s. c 232 § 83; 1959 c 218 § 7; 1941 c 182 § 4; Rem. Supp. 1941 § 11611-4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

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

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

54.24.070 Prima facie validity of revenue obligations. The state auditor need not register, certify, nor sign revenue obligations after July 26, 1981. These obligations shall be held in every action, suit, or proceeding in which their validity is or may be brought into question prima facie valid and binding obligations of the districts in accordance with their terms, notwithstanding any defects or irregularities in the proceedings for the organization of the district and the election of the commissioners thereof or for the authorization and issuance of such revenue obligations or in the sale, execution, or delivery thereof. [1981 c 37 § 1; 1959 c 218 § 8; 1941 c 182 § 6; Rem. Supp. 1941 § 11611-6.]

54.24.080 Rates and charges—Waiver of connection charges for low-income persons. (1) The commission of each district which shall have revenue obligations outstanding shall have the power and shall be required to establish, maintain, and collect rates or charges for electric energy and

water and other services, facilities, and commodities sold, furnished, or supplied by the district. The rates and charges shall be fair and, except as authorized by RCW 74.38.070 and by subsections (2) and (3) of this section, nondiscriminatory, and shall be adequate to provide revenues sufficient for the payment of the principal of and interest on such revenue obligations for which the payment has not otherwise been provided and all payments which the district is obligated to set aside in any special fund or funds created for such purpose, and for the proper operation and maintenance of the public utility and all necessary repairs, replacements, and renewals thereof.

(2) The commission of a district may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under section 501(c)(3) of the federal internal revenue code as amended prior to the July 23, 1995. Waivers of connection charges for the same class of electric or gas utility service must be uniformly applied to all qualified property. Nothing in this subsection (2) authorizes the impairment of a contract.

(3) In establishing rates or charges for water service, commissioners may in their discretion consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [1995 c 140 § 3; 1991 c 347 § 21; 1959 c 218 § 9; 1941 c 182 § 7; Rem. Supp. 1941 § 11611-7.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

54.24.090 Funding, refunding revenue obligations.

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

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

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

54.24.100 Execution of revenue obligations—Signatures. (1) All revenue obligations, including funding and refunding revenue obligations, shall be executed in such manner as the commission may determine: PROVIDED, That warrants may be signed as provided in RCW 54.24.010. Any interest coupons attached to any revenue obligations may be executed with facsimile or lithographed signatures, or otherwise, as the commission may determine.

(2) Notwithstanding subsection (1) of this section, such obligations may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 151; 1981 c 37 § 2; 1959 c 218 § 11; 1941 c 182 § 9; Rem. Supp. 1941 § 11611-9.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Facsimile signatures: RCW 39.44.100 through 39.44.102; chapter 39.62 RCW.

54.24.110 Laws and resolutions as contract. The provisions of chapter 182, Laws of 1941 and the provisions of chapter 1, Laws of 1931, not hereby superseded, and of any resolution or resolutions providing for the issuance of any revenue obligations as herein set forth shall constitute a contract with the holder or holders of such revenue obligations and the agreements and covenants of the district and its commission under said acts and any such resolution or resolutions shall be enforceable by any revenue obligation holder by mandamus or any other appropriate suit or action in any court of competent jurisdiction. [1959 c 218 § 12; 1941 c 182 § 10; Rem. Supp. 1941 § 11611-10.]

Mandamus: RCW 7.16.150 through 7.16.280.

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

Investment securities: Article 62A.8 RCW.

LOCAL IMPROVEMENT GUARANTY FUND

54.24.200 Local improvement guaranty fund. Every public utility district in the state is hereby authorized, by resolution, to create a fund for the purpose of guaranteeing, to the extent of such fund, and in the manner hereinafter provided, the payment of such of its local improvement bonds and/or warrants as the commission may determine issued to pay for any local improvement within any local utility district

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

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

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

shall be required to be set aside and paid into the guaranty fund by these subdivisions (1) and (2). [1983 c 167 § 152; 1957 c 150 § 1.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Local utility districts: RCW 54.16.120.

54.24.210 Local improvement guaranty fund—Duties of the district. To comply with the requirements of setting aside and paying into the local improvement guaranty fund a proportion of the monthly gross revenues of the public utilities of a district, for which guaranteed local improvement bonds and/or warrants have been issued and are outstanding, the district shall bind and obligate itself so long as economically feasible to maintain and operate the utilities and establish, maintain and collect such rates for water and/or electric energy, as the case may be, as will produce gross revenues sufficient to maintain and operate the utilities, and make necessary provision for the guaranty fund. The district shall alter its rates for water and/or electric energy, as the case may be, from time to time and shall vary them in different portions of its territory to comply with such requirements. [1957 c 150 § 2.]

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

When the cash balance in the local improvement guaranty fund is insufficient for the required purposes, warrants drawing interest at a rate determined by the commission may be issued by the district auditor, against the fund to meet any liability accrued against it and shall issue them upon demand of the owners of any matured coupons, bonds, interest payments, and/or warrants guaranteed hereby, or to pay for any certificate of delinquency for delinquent installments of assessments as provided hereinafter. Guaranty fund warrants shall be a first lien in their order of issuance upon the guaranty fund. [1983 c 167 § 153; 1981 c 156 § 19; 1957 c 150 § 3.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.24.230 Local improvement guaranty fund—Certificates of delinquency—Contents, purchase, payment, issuance, sale. Within twenty days after the date of delinquency of any annual installment of assessments levied for the purpose of paying the local improvement bonds and/or warrants of a district guaranteed hereunder, the county treasurer shall compile a statement of all installments delinquent together with the amount of accrued interest and penalty appurtenant to each installment, and shall forthwith purchase, for the district, certificates of delinquency for all such delinquent installments. Payment for the certificates shall be made from the local improvement guaranty fund and if there is not sufficient money in that fund to pay for the certificates, the

county treasurer shall accept the local improvement guaranty fund warrants in payment therefor. All certificates shall be issued in the name of the local improvement guaranty fund and all guaranty fund warrants issued in payment therefor shall be issued in the name of the appropriate local utility district fund. When a market is available and the commissioners direct, the county treasurer shall sell any certificates belonging to the local improvement guaranty fund, for not less than face value thereof plus accrued interest from date of issuance to date of sale.

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

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

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

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

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

The commissioners shall prescribe, by resolution, appropriate rules for the guaranty fund consistent herewith. So much of the money of a guaranty fund as is necessary and not required for other purposes hereunder may be used to pur-

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chase property at county tax foreclosure sales or from the county after foreclosure in cases where the property is subject to unpaid local improvement assessments securing bonds and/or warrants guaranteed hereunder and such purchase is deemed necessary for the purpose of protecting the guaranty fund. In such cases the funds shall be subrogated to all rights of the district. After so acquiring title to real property, the district may lease or resell and convey it in the same manner that county property may be leased or resold and for such prices and on such terms as may be determined by resolution of the commissioners. All proceeds resulting from such resales shall belong to and be paid into the guaranty fund. [1983 c 167 § 154; 1957 c 150 § 6.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

54.24.260 Local improvement guaranty fund—Rights and remedies of bond or warrant holder which shall be printed on bond or warrant—Disposition of balance of fund. Neither the holder nor the owner of local improvement bonds and/or warrants guaranteed hereunder shall have a claim therefor against the public utility district, except for payment from the special assessment made for the improvement for which the bonds and/or warrants were issued, and except as against the guaranty fund. The district shall not be liable to any holder or owner of such local improvement bonds and/or warrants for any loss to the guaranty fund occurring in the lawful operation thereof by the district. The remedy of the holder of a local improvement bond and/or warrant shall be confined to the enforcement of the assessment and to the guaranty fund. A copy of the foregoing part of this section shall be plainly written, printed, or engraved on each local improvement bond and/or warrant guaranteed hereby. The establishment of a guaranty fund shall not be deemed at variance from any comprehensive plan heretofore adopted by a district.

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

Chapter 54.28 RCW PRIVILEGE TAXES

Sections

54.28.010	Definitions.
54.28.011	"Gross revenue" defined.
54.28.020	Tax imposed—Rates—Additional tax imposed.
54.28.025	Tax imposed with respect to thermal electric generating facilities—Rate—Additional tax imposed.
54.28.030	Districts' report to department of revenue.
54.28.040	Tax computed—Payment—Penalties—Disposition.
54.28.050	Distribution of tax.
54.28.055	Distribution of tax proceeds from thermal electric generating facilities.
54.28.060	Interest.
54.28.070	Municipal taxes—May be passed on.
54.28.080	Additional tax for payment on bonded indebtedness of school districts.
54.28.090	Deposit of funds to credit of certain taxing districts.
54.28.100	Use of moneys received by taxing district.
54.28.110	Voluntary payments by district to taxing entity for removal of property from tax rolls.
54.28.120	Amount of tax if district acquires electric utility property from public service company.

Special benefit assessments—Property taxes—Exemptions: RCW 84.34.300 through 84.34.380.

54.28.010 Definitions. As used in this chapter:

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

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

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

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

(5) "Thermal electric generating facility" means a steam-powered electrical energy producing facility utilizing nuclear or fossil fuels;

(6) "Placed in operation" means delivery of energy into a transmission or distribution system for use or sale in such a manner as to establish a value accruing to the power plant operator, except operation incidental to testing or startup adjustments;

(7) "Impacted area" for a thermal electric generating facility on a federal reservation means that area in the state lying within thirty-five statute miles of the most commonly used entrance of the federal reservation and which is south of the southern boundary of township fifteen north. [1977 ex.s. c 366 § 1; 1967 ex.s. c 26 § 22; 1959 c 274 § 1; 1957 c 278 § 7. Prior: (i) 1941 c 245 § 1, part; Rem. Supp. 1941 § 11616-1, part. (ii) 1949 c 227 § 1(f); Rem. Supp. 1949 § 11616-2(f).]

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

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

54.28.020 Tax imposed—Rates—Additional tax imposed. (1) There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, except with respect to thermal electric generating facilities taxed under RCW 54.28.025, such tax shall be the sum of the following amounts: (a) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district; (b) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district; (c) five percent of the first four mills per kilowatt-hour of reve-

nue obtained by the district from the sale of self-generated energy for resale.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 8; 1982 1st ex.s. c 35 § 18; 1977 ex.s. c 366 § 2; 1959 c 274 § 2; 1957 c 278 § 2. Prior: 1949 c 227 § 1(a); 1947 c 259 § 1(a); 1941 c 245 § 2(a); Rem. Supp. 1949 § 11616-2(a).]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

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

54.28.025 Tax imposed with respect to thermal electric generating facilities—Rate—Additional tax imposed.

(1) There is hereby levied and there shall be collected from every district operating a thermal electric generating facility, as defined in RCW 54.28.010 as now or hereafter amended, having a design capacity of two hundred fifty thousand kilowatts or more, located on a federal reservation, which is placed in operation after September 21, 1977, a tax for the act or privilege of engaging within the state in the business of generating electricity for use or sale, equal to one and one-half percent of wholesale value of energy produced for use or sale, except energy used in the operation of component parts of the power plant and associated transmission facilities under control of the person operating the power plant.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 9; 1982 1st ex.s. c 35 § 19; 1977 ex.s. c 366 § 6.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

54.28.030 Districts' report to department of revenue.

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

testable by the district only for actual fraud. [1977 ex.s. c 366 § 3; 1975 1st ex.s. c 278 § 30; 1959 c 274 § 3; 1957 c 278 § 3. Prior: 1949 c 227 § 1(b); 1947 c 259 § 1(b); 1941 c 245 § 2(b); Rem. Supp. 1949 § 11616-2(b).]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

54.28.040 Tax computed—Payment—Penalties—Disposition. (1) Before May 1st, the department of revenue shall compute the tax imposed by this chapter for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before the following June 1st.

(2) If payment of any tax is not received by the department on or before the due date, there shall be assessed a penalty of five percent of the amount of the tax; if the tax is not received within one month of the due date, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within two months of the due date, there shall be assessed a total penalty of twenty percent of the amount of the tax.

(3) Upon receipt of the amount of each tax imposed the department of revenue shall deposit the same with the state treasurer, who shall deposit four percent of the revenues received under RCW 54.28.020(1) and 54.28.025(1) and all revenues received under RCW 54.28.020(2) and 54.28.025(2) in the general fund of the state and shall distribute the remainder in the manner hereinafter set forth. The state treasurer shall send a duplicate copy of each transmittal to the department of revenue. [1996 c 149 § 16; 1982 1st ex.s. c 35 § 20; 1975 1st ex.s. c 278 § 31; 1957 c 278 § 4. Prior: 1949 c 227 § 1(c); 1947 c 259 § 1(c); 1941 c 245 § 2(c); Rem. Supp. 1949 § 11616-2(c).]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

54.28.050 Distribution of tax. After computing the tax imposed by RCW 54.28.020(1), the department of revenue shall instruct the state treasurer, after placing thirty-seven and six-tenths percent in the state general fund to be dedicated for the benefit of the public schools, to distribute the balance collected under RCW 54.28.020(1)(a) to each county in proportion to the gross revenue from sales made within each county; and to distribute the balance collected under RCW 54.28.020(1)(b) and (c) as follows: If the entire generating facility, including reservoir, if any, is in a single county then all of the balance to the county where such generating facility is located. If any reservoir is in more than one county, then to each county in which the reservoir or any portion thereof is located a percentage equal to the percentage determined by dividing the total cost of the generating facilities, including adjacent switching facilities, into twice the cost of land and land rights acquired for any reservoir within each county, land and land rights to be defined the same as used by the federal power commission. If the powerhouse and dam, if any, in connection with such reservoir are in more than one county, the balance shall be divided sixty percent to the county in

which the owning district is located and forty percent to the other county or counties or if said powerhouse and dam, if any, are owned by a joint operating agency organized under chapter 43.52 RCW, or by more than one district or are outside the county of the owning district, then to be divided equally between the counties in which such facilities are located. If all of the powerhouse and dam, if any, are in one county, then the balance shall be distributed to the county in which the facilities are located.

The provisions of this section shall not apply to the distribution of taxes collected under RCW 54.28.025. [1982 1st ex.s. c 35 § 21; 1980 c 154 § 8; 1977 ex.s. c 366 § 4; 1975 1st ex.s. c 278 § 32; 1959 c 274 § 4; 1957 c 278 § 5. Prior: 1949 c 227 § 1(d); 1947 c 259 § 1(d); 1941 c 245 § 2(d); Rem. Supp. 1949 § 11616-2(d).]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

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

54.28.055 Distribution of tax proceeds from thermal electric generating facilities. (1) After computing the tax imposed by RCW 54.28.025(1), the department of revenue shall instruct the state treasurer to distribute the amount collected as follows:

(a) Fifty percent to the state general fund for the support of schools; and

(b) Twenty-two percent to the counties, twenty-three percent to the cities, three percent to the fire protection districts, and two percent to the library districts.

(2) Each county, city, fire protection district and library district shall receive a percentage of the amount for distribution to counties, cities, fire protection districts and library districts, respectively, in the proportion that the population of such district residing within the impacted area bears to the total population of all such districts residing within the impacted area. For the purposes of this chapter, the term "library district" includes only regional libraries as defined in RCW 27.12.010(4), rural county library districts as defined in RCW 27.12.010(5), intercounty rural library districts as defined in RCW 27.12.010(6), and island library districts as defined in RCW 27.12.010(7). The population of a library district, for purposes of such a distribution, shall not include any population within the library district and the impact area that also is located within a city or town.

(3) If any distribution pursuant to subsection (1)(b) of this section cannot be made, then that share shall be prorated among the state and remaining local districts.

(4) All distributions directed by this section to be made on the basis of population shall be calculated in accordance with data to be provided by the office of financial management. [1986 c 189 § 1; 1982 1st ex.s. c 35 § 22; 1979 c 151 § 165; 1977 ex.s. c 366 § 7.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

54.28.060 Interest. Interest at the rate as computed under RCW 82.32.050(2) shall be added to the tax hereby imposed from the due date until the date of payment. The tax shall constitute a debt to the state and may be collected as such. [1996 c 149 § 12; 1957 c 278 § 6. Prior: 1949 c 227 § 1(e); 1947 c 259 § 1(e); 1941 c 245 § 2(e); Rem. Supp. 1949 § 11616-2(e).]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

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

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

54.28.090 Deposit of funds to credit of certain taxing districts. The county legislative authority of each county shall direct the county treasurer to deposit funds to the credit of each taxing district in the county, other than school districts, according to the manner they deem most equitable; except not less than an amount equal to three-fourths of one percent of the gross revenues obtained by a district from the sale of electric energy within any incorporated city or town shall be remitted to such city or town. Information furnished by the district to the county legislative authority shall be the

basis for the determination of the amount to be paid to such cities or towns.

The provisions of this section shall not apply to the distribution of taxes collected under RCW 54.28.025. [1980 c 154 § 9; 1977 ex.s. c 366 § 5; 1957 c 278 § 10.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

54.28.100 Use of moneys received by taxing district.

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

Revenue and taxation: State Constitution Art. 7.

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

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

Chapter 54.32 RCW

CONSOLIDATION AND ANNEXATION

Sections

54.32.001 Actions subject to review by boundary review board.

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

Annexation of territory: RCW 54.04.035.

54.32.001 Actions subject to review by boundary review board. Actions taken under chapter 54.32 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 49.]

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

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

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

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

***(2) Rem. Comp. Stat. §8894 became chapter 35.12 RCW. RCW 35.12.010, the only section in that chapter, was repealed by 1969 ex.s. c 89 § 18.

54.32.040 Right of county-wide utility district to acquire distribution properties. Upon the formation of a county-wide public utility district in any county such district shall have the right, in addition to any other right provided by law, to acquire by purchase or condemnation any electrical

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distribution properties in the county from any other public utility district or combination of public utility districts for a period of five years from the time of organization of said public utility district. [1951 c 272 § 2.]

Acquisition of electrical distribution property from public utility district by cities and towns: RCW 35.92.054.

Chapter 54.36 RCW

LIABILITY TO OTHER TAXING DISTRICTS

Sections

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

54.36.010 Definitions. As used in this chapter:

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

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

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

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

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

"Nonconstruction pupils" means other pupils. [1975 1st ex.s. c 10 § 1; 1973 1st ex.s. c 154 § 99; 1957 c 137 § 1.]

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

Operating agencies: Chapter 43.52 RCW.

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

54.36.030 Compensation of school district for construction pupils—Computation. If the subsequent-year enrollment exceeds one hundred and three percent of the

base-year enrollment, the public utility district shall compensate the school district for a number of construction pupils computed as follows:

(1) If the subsequent-year enrollment of nonconstruction pupils is less than the base-year enrollment, compensation shall be paid for the total number of all pupils minus one hundred and three percent of the base-year enrollment.

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

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

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

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

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

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

*Reviser's note: RCW 28.41.080 was repealed by 1965 ex.s. c 154 § 12; as a part thereof said section concludes with the following proviso ". . .

PROVIDED, That the provisions of such statutes herein repealed insofar as they are expressly or impliedly adopted by reference or otherwise referred to in or for the benefit of any other statutes, are hereby preserved for such purposes."

Chapter 54.40 RCW

FIVE COMMISSIONER DISTRICTS

(Formerly: First class districts)

Sections

54.40.010	Five commissioner districts—Requirements.
54.40.020	Existing districts—Qualifications—Voters' approval.
54.40.030	Transmittal of copies of federal hydroelectric license to county auditor.
54.40.040	Criteria, election to reclassify as a five commissioner district—Ballot form—Vote required.
54.40.050	Petition for reclassification—Certificate of sufficiency—Election.
54.40.060	Division of district.
54.40.070	Special election for commissioners from districts—Terms.

54.40.010 Five commissioner districts—Requirements. A five commissioner public utility district is a district that (1) either: (a) Has or had a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred and fifty million dollars, including interest during construction; or (b) has a population of five hundred thousand or more; and (2) voters of the district approved a ballot proposition authorizing the district to become a five commissioner district as provided under RCW 54.40.040. All other public utility districts shall be known as three commissioner districts. [1994 c 223 § 57; 1977 ex.s. c 36 § 1; 1959 c 265 § 2.]

54.40.020 Existing districts—Qualifications—Voters' approval. Every public utility district which on September 21, 1977, shall be in existence and have such a license shall be qualified to become a five commissioner district upon approval of the voters of said district, and every public utility district which on September 21, 1977, shall have become a first class district as previously provided by chapter 265, Laws of 1959 shall be a five commissioner district. [1977 ex.s. c 36 § 2; 1959 c 265 § 3.]

54.40.030 Transmittal of copies of federal hydroelectric license to county auditor. Within five days after a public utility district shall receive a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred and fifty million dollars, including interest during construction, or, in the case of a district which on September 21, 1977, is in existence and has such a license within five days of September 21, 1977, the district shall forward a true copy of said license, certified by the secretary of the district, to the county auditor of the county wherein said district is located. [1977 ex.s. c 36 § 3; 1959 c 265 § 4.]

54.40.040 Criteria, election to reclassify as a five commissioner district—Ballot form—Vote required. A public utility district that has or had a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred fifty million dollars, including interest during construction, or has a population of

five hundred thousand or more, shall be classified as a five commissioner district if voters of the district approve a ballot proposition authorizing the change. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot in substantially the following terms:

Shall Public Utility District No. be reclassified a Five Commissioner District for the purpose of increasing the number of commissioners to five YES
NO

Should a majority of the voters voting on the question approve the proposition, the district shall be declared a five commissioner district upon the certification of the election returns. [1994 c 223 § 58; 1977 ex.s. c 36 § 4; 1959 c 265 § 5.]

54.40.050 Petition for reclassification—Certificate of sufficiency—Election. The question of reclassification of a public utility district that has or had a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than two hundred fifty million dollars, including interest during construction, or has a population of five hundred thousand or more, as a five commissioner public utility district shall be submitted to the voters if a petition proposing the change is filed with the county auditor of the county in which the district is located, identifying the district by number and praying that an election be held to determine whether it shall become a five commissioner district. The petition must be signed by a number of registered voters of the district equal to at least ten percent of the number of registered voters in the district who voted at the last general election and include each signer's residence address.

The petition shall be filed with the county auditor for verification of the validity of the signatures. Within thirty days after receipt of the petition, the county auditor shall determine the sufficiency of the petition. If the petition is found insufficient, the person who filed the same shall be notified by mail and he shall have an additional fifteen days from the date of mailing such notice within which to submit additional signatures, and the county auditor shall have an additional thirty days after the submission of such additional signatures to determine the validity of the entire petition. No signature may be withdrawn after the petition has been filed.

If the petition, including these additional signatures if any, is found sufficient, the county auditor shall certify its sufficiency to the public utility district and if the commissioners of the public utility district had certified to the county auditor the eligibility of the district for reclassification as provided in this chapter, the county auditor shall submit to the voters of the district the question of whether the district shall become a five commissioner district. The election shall be held at the next state general election occurring sixty or more days after the petition was certified as having sufficient valid signatures. [1994 c 223 § 59; 1977 ex.s. c 36 § 5; 1959 c 265 § 6.]

54.40.060 Division of district. If the reclassification to a five commissioner district is approved by the voters, the

public utility district commission within sixty days after the results of said election are certified shall divide the public utility district into two districts of as nearly equal population as possible, and shall designate the districts as District A and District B. [1994 c 223 § 60; 1977 ex.s. c 36 § 6; 1959 c 265 § 7.]

54.40.070 Special election for commissioners from districts—Terms. Within thirty days after the public utility district commission divides the district into District A and District B, the county legislative authority shall call a special election, to be held at the next special election date provided for under *RCW 29.13.010 that occurs sixty or more days after the call, at which time the initial commissioners for District A and District B shall be elected. No primary shall be held and a special filing period shall be opened as provided in *RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for each position shall be elected.

The person who is elected receiving the greatest number of votes shall be elected to a four-year term of office, and the other person who is elected shall be elected to a two-year term of office, if the election is held in an even-numbered year, or the person who is elected receiving the greatest number of votes shall be elected to a three-year term of office, and the other person who is elected shall be elected to a one-year term of office, if the election is held in an odd-numbered year. The length of these terms of office shall be calculated from the first day in January in the year following their elections.

The newly elected commissioners shall assume office immediately after being elected and qualified and shall serve until their successors are elected and qualified and assume office in accordance with *RCW 29.04.170. Each successor shall be elected to a four-year term of office. [1994 c 223 § 61; 1977 ex.s. c 36 § 7; 1959 c 265 § 8.]

***Reviser's note:** RCW 29.13.010, 29.15.170, 29.15.180, and 29.04.170 were recodified as RCW 29A.04.320, 29A.24.170, 29A.24.180, and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320, 29A.24.170, and 29A.24.180 were subsequently repealed by 2004 c 271 § 193.

Chapter 54.44 RCW

NUCLEAR, THERMAL, ELECTRIC GENERATING POWER FACILITIES—JOINT DEVELOPMENT

Sections

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

54.44.010 Declaration of public purpose. It is declared to be in the public interest and for a public purpose that cities of the first class, public utility districts, joint operating agencies organized under chapter 43.52 RCW, regu-

lated electrical companies and, rural electrical cooperatives including generation and transmission cooperatives be permitted to participate together in the development of nuclear and other thermal power facilities and transmission facilities as hereinafter provided as one means of achieving economies of scale and thereby promoting the economic development of the state and its natural resources to meet the future power needs of the state and all its inhabitants. [1975-'76 2nd ex.s. c 72 § 1; 1973 1st ex.s. c 7 § 1; 1967 c 159 § 1.]

Severability—1975-'76 2nd ex.s. c 72: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 72 § 3.]

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

Energy facilities, site locations: Chapter 80.50 RCW.

Nuclear energy and radiation: Chapter 70.98 RCW.

54.44.020 Authority to participate in and enter into agreements for operation of common facilities—Percentage of ownership—Expenses—Taxes—Payments. (1) Except as provided in subsection (2) of this section, cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, any such cities and public utility districts which operate electric generating facilities or distribution systems and any joint operating agency shall have power and authority to participate and enter into agreements with each other and with electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the public utility commissioner of Oregon, hereinafter called "regulated utilities", and with rural electric cooperatives, including generation and transmission cooperatives for the undivided ownership of any type of electric generating plants and facilities, including, but not limited to nuclear and other thermal power generating plants and facilities and transmission facilities including, but not limited to, related transmission facilities, hereinafter called "common facilities", and for the planning, financing, acquisition, construction, operation and maintenance thereof. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof and shall own and control a like percentage of the electrical output thereof.

(2) Cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, shall have the power and authority to participate and enter into agreements for the undivided ownership of a coal-fired thermal electric generat-

ing plant and facility placed in operation before July 1, 1975, including related common facilities, and for the planning, financing, acquisition, construction, operation, and maintenance of the plant and facility. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by the city, district, or agency, for the acquisition and construction of the facility and shall own and control a like percentage of the electrical output thereof. Cities of the first class, public utility districts, and joint operating agencies may enter into agreements under this subsection with each other, with regulated utilities, with rural electric cooperatives, with electric companies subject to the jurisdiction of the regulatory commission of any other state, and with any power marketer subject to the jurisdiction of the federal energy regulatory commission.

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

(4) Each city, public utility district, joint operating agency, regulated utility, and cooperatives participating in the ownership or operation of a common facility shall pay all taxes chargeable to its share of the common facility and the electric energy generated thereby under applicable statutes as now or hereafter in effect, and may make payments during preliminary work and construction for any increased financial burden suffered by any county or other existing taxing district in the county in which the common facility is located, pursuant to agreement with such county or taxing district. [1997 c 230 § 2; 1975-'76 2nd ex.s. c 72 § 2; 1974 ex.s. c 72 § 1; 1973 1st ex.s. c 7 § 2; 1967 c 159 § 2.]

Severability—1975-'76 2nd ex.s. c 72: See note following RCW 54.44.010.

54.44.030 Liability of city, joint operating agency, or public utility district—Extent—Limitations. In carrying out the powers granted in this chapter, each such city, public utility district, or joint operating agency shall be severally liable only for its own acts and not jointly or severally liable for the acts, omissions or obligations of others. No money or property supplied by any such city, public utility district, or joint operating agency for the planning, financing, acquisition, construction, operation or maintenance of any common facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of any city, public utility district, or joint operating agency in any common facility be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon any public utility district, city, or joint operating agency unless authorized or approved by resolution or ordinance of its governing body. [1973 1st ex.s. c 7 § 3; 1967 c 159 § 3.]

Chapter 54.48 RCW

AGREEMENTS BETWEEN ELECTRICAL PUBLIC UTILITIES AND COOPERATIVES

Sections

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

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

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

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

54.44.900 Liberal construction—Not to affect existing acts. The provisions of this chapter shall be liberally construed to effectuate the purposes thereof. This chapter shall not be construed to affect any existing act or part thereof relating to the construction, operation or maintenance of any public utility. [1967 c 159 § 7.]

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

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

54.48.010 Definitions. When used in this chapter:

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

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

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

54.48.030 Agreements between public utilities and cooperatives authorized—Boundaries—Extension procedures—Purchase or sale—Approval. In aid of the foregoing declaration of policy, any public utility and any cooperative is hereby authorized to enter into agreements with any one or more other public utility or one or more other cooperative for the designation of the boundaries of adjoining service areas which each such public utility or each such cooperative shall observe, for the establishment of procedures for orderly extension of service in adjoining areas not currently served by any such public utility or any such cooperative and for the acquisition or disposal by purchase or sale by any such public utility or any such cooperative of duplicating utility facilities, which agreements shall be for a reasonable period of time not in excess of twenty-five years: PROVIDED, That the participation in such agreement of any public utility which is an electrical company under RCW 80.04.010, excepting cities and towns, shall be approved by the Washington utilities and transportation commission. [1969 c 102 § 3.]

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

Chapter 54.52 RCW

VOLUNTARY CONTRIBUTIONS TO ASSIST
LOW-INCOME CUSTOMERS

Sections

- 54.52.010 Voluntary contributions to assist low-income residential customers—Administration.
54.52.020 Disbursal of contributions—Quarterly report.
54.52.030 Contributions not considered commingling of funds.

54.52.010 Voluntary contributions to assist low-income residential customers—Administration. A public utility district may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their electricity bills. All funds received by the district in response to such requests shall be transmitted to the grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs for the state in the district's service area or to a charitable organization within the district's service area. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their electricity bills. The grantee or charitable organization shall be responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified. [1995 c 399 § 145; 1985 c 6 § 20; 1984 c 59 § 1.]

54.52.020 Disbursal of contributions—Quarterly report. All assistance provided under this chapter shall be disbursed by the grantee or charitable organization. Where possible the public utility district will be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check will be issued jointly payable to the customer and the public utility district. The availability of funds for assistance to a district's low-income customers as a result of voluntary contributions shall not reduce the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community, trade, and economic development within the district's service area. The grantee or charitable organization shall provide the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance. [1995 c 399 § 146; 1985 c 6 § 21; 1984 c 59 § 2.]

54.52.030 Contributions not considered commingling of funds. Contributions received under a program implemented by a public utility district in compliance with this chapter shall not be considered a commingling of funds. [1984 c 59 § 3.]

Title 55

SANITARY DISTRICTS

Chapters

55.04 Formation and dissolution.

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

Credit card use by local governments: RCW 43.09.2855.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

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

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

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

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Chapter 55.04 RCW

FORMATION AND DISSOLUTION

Sections

55.04.050 Dissolution.

55.04.060 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.

Elections: Title 29A RCW.

55.04.050 Dissolution. See port districts, chapter 53.48 RCW.

55.04.060 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

Title 57

WATER-SEWER DISTRICTS

Chapters

- 57.02 General provisions.**
- 57.04 Formation and dissolution.**
- 57.06 Validation and construction.**
- 57.08 Powers.**
- 57.12 Officers and elections.**
- 57.16 Comprehensive plan—Local improvement districts.**
- 57.20 Finances.**
- 57.22 Contracts for system extensions.**
- 57.24 Annexation of territory.**
- 57.28 Withdrawal of territory.**
- 57.32 Consolidation of districts—Transfer of part of district.**
- 57.36 Merger of districts.**
- 57.42 Disposition of property to public utility district.**
- 57.46 Voluntary contributions to assist low-income customers.**
- 57.90 Disincorporation of districts in counties with 210,000 population or more.**

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

City sewerage, drainage, and water supply: RCW 35.21.210, chapters 35.67 and 35.92 RCW.

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

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

Credit card use by local governments: RCW 43.09.2855.

Furnishing impure water: RCW 70.54.020.

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

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

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

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

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

Chapter 57.02 RCW

GENERAL PROVISIONS

Sections

- 57.02.001 Reclassification of water and sewer districts—Previous actions valid.
- 57.02.010 Petition signatures of property owners—Rules governing.
- 57.02.015 Board of commissioners may notify property owners about petitions—Review of petitions—Information.
- 57.02.020 Claims against district.
- 57.02.030 Title to be liberally construed.
- 57.02.040 Water-sewer district activities to be approved—Criteria for approval by county legislative authority.
- 57.02.045 Approval by county legislative authority final, when—Boundary review board approval.
- 57.02.050 Multicounty districts—Delegation of duties—Exceptions.
- 57.02.070 Ratification of actions for the formation, annexation, consolidation, or merger of water districts prior to July 10, 1982.

57.02.080 Water-sewer districts desiring to merge into irrigation districts—Procedure.

57.02.090 Elections.

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

57.02.001 Reclassification of water and sewer districts—Previous actions valid. Every sewer district and every water district previously created shall be reclassified and shall become a water-sewer district, and shall be known as the ". . . . Water-Sewer District," or "Water-Sewer District No." or shall continue to be known as a "sewer district" or a "water district," with the existing name or number inserted, as appropriate. As used in this title, "district" means a water-sewer district, a sewer district, or a water district. All debts, contracts, and obligations previously made or incurred by or in favor of any water district or sewer district, and all bonds or other obligations issued or executed by those districts, and all assessments or levies, and all other things and proceedings done or taken by those districts or by their respective officers, are declared legal and valid and of full force and effect. [1996 c 230 § 101.]

Part headings not law—1996 c 230: "Part headings as used in this act do not constitute any part of the law." [1996 c 230 § 1700.]

Effective date—1996 c 230: "This act shall take effect July 1, 1997." [1996 c 230 § 1704.]

57.02.010 Petition signatures of property owners—Rules governing. Wherever in this title petitions are required to be signed by the owners of property, the following rules shall govern the sufficiency of the petitions:

(1) The signature of a record owner, as determined by the records of the county auditor of the county in which the real property is located, shall be sufficient without the signature of the owner's spouse.

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

(3) For property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor of the county in which the real property is located, shall be sufficient.

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

(5) If any property in the district stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the personal representative, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property. [1996 c 230 § 102; 1982 1st ex.s. c 17 § 8; 1953 c 251 § 24.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.02.015 Board of commissioners may notify property owners about petitions—Review of petitions—Information. The board of commissioners of a district may notify the owner or reputed owner of any tract, parcel of land, or other property located within the area included in a petition being circulated for a local improvement district or utility local improvement district under chapter 57.16 RCW, an annexation under chapter 57.24 RCW, a consolidation under chapter 57.32 RCW, a merger under chapter 57.36 RCW, a withdrawal of territory under chapter 57.28 RCW, or a transfer of territory under RCW 57.32.160.

Upon the request of any person, the board of commissioners of a district may:

- (1) Review a proposed petition for proper drafting; and
- (2) Provide information regarding the effects of the adoption of any proposed petition. [1996 c 230 § 103; 1979 c 35 § 3. Formerly RCW 56.02.110.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.02.020 Claims against district. See chapter 4.96 RCW.

57.02.030 Title to be liberally construed. The rule of strict construction shall not apply to this title, which shall be liberally construed to carry out its purposes and objects. [1996 c 230 § 104; 1959 c 108 § 19.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.02.040 Water-sewer district activities to be approved—Criteria for approval by county legislative authority. (1) Notwithstanding any provision of law to the contrary, the following proposed actions shall be approved as provided for in RCW 57.02.045:

- (a) Formation or reorganization under chapter 57.04 RCW;
- (b) Annexation of territory under chapter 57.24 RCW;
- (c) Withdrawal of territory under chapter 57.28 RCW;
- (d) Transfer of territory under RCW 57.32.160;
- (e) Consolidation under chapter 57.32 RCW; and
- (f) Merger under chapter 57.36 RCW.

(2) At least one of the districts involved shall give notice of the proposed action to the county legislative authority, state department of ecology, and state department of health. The county legislative authority shall within thirty days of receiving notice of the proposed action approve the action or hold a hearing on the action.

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

(a) Whether the proposed action in the area under consideration is in compliance with the development program that is outlined in the county comprehensive plan, or city or town comprehensive plan where appropriate, and its supporting documents;

(b) Whether the proposed action in the area under consideration is in compliance with the basinwide water and/or

sewage plan as approved by the state department of ecology and the state department of social and health services; and

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

(4) If the proposed action is inconsistent with subsection (3)(a), (b), or (c) of this section, the county legislative authority shall not approve it. If the proposed action is consistent with subsection (3)(a), (b), and (c) of this section, the county legislative authority shall approve it unless it finds that water or sewer service in the area under consideration will be most appropriately served by the county itself under the provisions of chapter 36.94 RCW, or by another district, city, town, or municipality. If there has not been adopted for the area under consideration a plan or program under subsection (3)(a), (b), or (c) of this section, the proposed action shall not be found inconsistent with such subsection.

(5) Where a district is proposed to be formed, and where no boundary review board is established in the county, the petition described in RCW 57.04.030 shall serve as the notice of proposed action under this section, and the hearing provided for in RCW 57.04.030 shall serve as the hearing provided for in this section and in RCW 57.02.045. [1996 c 230 § 105; 1988 c 162 § 7; 1971 ex.s. c 139 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

1988 validation: RCW 57.06.180.

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

In any county where a boundary review board, as provided in chapter 36.93 RCW, is established, a notice of intention of the proposed action shall be filed with the boundary review board as required by RCW 36.93.090 and with the county legislative authority. The county legislative authority shall transmit to the boundary review board a report of its approval or disapproval of the proposed action together with its findings and recommendations under RCW 57.02.040. Approval by the county legislative authority of the proposed action shall be final and the procedures required to adopt the proposal shall be followed as provided by law, unless the boundary review board reviews the action under RCW 36.93.100 through 36.93.180. If the county legislative authority does not approve the proposed action, the boundary review board shall review the action under RCW 36.93.150 through 36.93.180. The action of the boundary review board shall supersede approval or disapproval by the county legislative authority.

Where a district is proposed to be formed, and where no boundary review board is established in the county, the hearings provided for in RCW 57.04.030 shall serve as the hearing provided for in this section and in RCW 57.02.040. [1996 c 230 § 106; 1988 c 162 § 6; 1971 ex.s. c 139 § 3. Formerly RCW 56.02.070.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

1988 validation: RCW 57.06.180.

57.02.050 Multicounty districts—Delegation of duties—Exceptions. Whenever the boundaries or proposed boundaries of a district include or are proposed to include by means of formation, annexation, transfer, withdrawal, consolidation, or merger, territory in more than one county:

(1) All duties delegated by this title to officers of the county in which the district is located shall be delegated to the officers of the county in which the largest land area of the district is located, except that elections shall be conducted pursuant to general election law;

(2) Actions subject to review and approval under RCW 57.02.040 shall be reviewed and approved only by the officers or boundary review board in the county in which such actions are proposed to occur;

(3) Verification of voters' signatures shall be conducted by the county auditor of the county in which such signators reside; and

(4) Comprehensive plan review and approval or rejection by the respective county legislative authorities under RCW 57.16.010 shall be limited to that part of such plans within the respective counties. [1996 c 230 § 108; 1994 c 223 § 66; 1982 1st ex.s. c 17 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.02.070 Ratification of actions for the formation, annexation, consolidation, or merger of water districts prior to July 10, 1982. All actions taken in regard to the formation, annexation, consolidation, or merger of water districts taken prior to July 10, 1982, but consistent with this title, as amended, are hereby approved and ratified and shall be legal for all purposes. [1982 1st ex.s. c 17 § 7.]

57.02.080 Water-sewer districts desiring to merge into irrigation districts—Procedure. The procedures and provisions of RCW 85.08.830 through 85.08.890, which are applicable to drainage improvement districts, joint drainage improvement districts, or consolidated drainage improvement districts that desire to merge into irrigation districts, shall also apply to districts organized, or reorganized, under this title that desire to merge into irrigation districts.

The authority granted by this section shall be cumulative and in addition to any other power or authority granted by law to any district. [1996 c 230 § 107; 1977 ex.s. c 208 § 3. Formerly RCW 56.02.100.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Merger of irrigation district with drainage, joint drainage, consolidated drainage improvement, or water-sewer district: RCW 87.03.720, 87.03.725.

57.02.090 Elections. Elections in a district shall be conducted under general election laws. [1996 c 230 § 109.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

(2004 Ed.)

Chapter 57.04 RCW

FORMATION AND DISSOLUTION

Sections

- 57.04.001 Actions subject to review by boundary review board.
- 57.04.020 Districts authorized.
- 57.04.030 Petition procedure—Hearing—Boundaries.
- 57.04.050 Election—Notice—Excess tax levy.
- 57.04.055 County auditor to conduct elections—Expenses.
- 57.04.060 District created—Name—Formation expenses.
- 57.04.065 Change of name—Procedure—Effect.
- 57.04.070 When two or more petitions filed.
- 57.04.080 Act cumulative.
- 57.04.090 Dissolution—Legislative and court methods.
- 57.04.100 Dissolution—Election method.
- 57.04.110 Dissolution when district's boundaries identical with municipality.
- 57.04.120 Sewerage improvement districts located in counties with populations of from forty thousand to less than seventy thousand become sewer districts.
- 57.04.130 Sewerage improvement districts operating as sewer districts become water-sewer districts—Procedure.
- 57.04.140 Formation—Alternative method—New development.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

57.04.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 201; 1989 c 84 § 56.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.020 Districts authorized. Water-sewer districts are authorized to be established for the purposes of chapter 57.08 RCW. Such districts may include within their boundaries one or more counties, cities, and towns, or other political subdivisions. However, no portion or all of any city or town may be included without the consent by resolution of the city or town legislative authority. [1996 c 230 § 202; 1982 1st ex.s. c 17 § 9; 1929 c 114 § 1; RRS § 11579. Cf. 1913 c 161 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.030 Petition procedure—Hearing—Boundaries. (1) For the purpose of formation of water-sewer districts, a petition shall be presented to the county legislative authority of each county in which the proposed district is located. The petition shall set forth the reasons for the creation of the district, designate the boundaries of the district, and state that establishment of the district will be conducive to the public health, convenience, and welfare and will be of benefit to the property included in the district. The petition shall state the proposed name of the district, which may be ". Sewer-Water [Water-Sewer] District," ". Water District," ". Sewer District," or may be designated by a number such as ". County Water-Sewer District No. . . ." The petition shall specify the proposed property tax levy assessment, if any, which shall not exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district. The petition shall be signed by at least ten percent of the registered voters who voted in the last municipal general election, who shall be qualified voters on the date of filing the petition, residing within the district described in the petition.

The petition shall be filed with the county auditor of the county in which all or the largest geographic portion of the proposed district is located, who shall within ten days examine and verify the signatures on the petition. No person having signed such a petition shall be allowed to withdraw the person's name from the petition after the filing of the petition with the county auditor. If the area proposed to be included in the district is located in more than one county, the auditor of the county in which the largest geographic portion of the district is located shall be the lead auditor and shall immediately transfer a copy of the petitions to the auditor of each other county in which the proposed district is located. Within ten days after the lead auditor received the petition, the auditors of these other counties shall certify to the lead auditor: (a) The number of voters of that county residing in the proposed district who voted at the last municipal general election; and (b) the number of valid signatures on the petition of voters of that county residing in the proposed district. The lead auditor shall certify the sufficiency of the petition after receiving this information. If the petition shall be found to contain a sufficient number of signatures, the county auditor or lead county auditor shall then transmit it, together with a certificate of sufficiency attached thereto to the county legislative authority of each county in which the proposed district is located.

(2) If in the opinion of the county health officer the existing water, sewerage, or drainage facilities are inadequate in the district to be created, and creation of the district is necessary for public health and safety, then the legislative authority of the county may declare by resolution that a water-sewer district is a public health and safety necessity, and the district shall be organized under this title, without a petition being required.

(3) Following receipt of a petition certified to contain a sufficient number of signatures, or upon declaring a district to be a public health and safety necessity, at a regular or special meeting the county legislative authority shall cause to be published once a week for at least two weeks in one or more newspapers of general circulation in the proposed district, a notice that such a petition has been presented, stating the time of the meeting at which the petition shall be considered, and setting forth the boundaries of the proposed district. When a petition is presented for hearing, each county legislative authority shall hear the petition or may adjourn the hearing from time to time not exceeding one month in all. Any person, firm, or corporation may appear before the county legislative authority and make objections to the establishment of the district or the proposed boundary lines thereof. Upon a final hearing each county legislative authority shall make such changes in the proposed boundary lines within the county as it deems to be proper and shall establish and define the boundaries and shall find whether the proposed district will be conducive to the public health, welfare, and convenience and be of special benefit to the land included within the boundaries of the proposed district. No lands that will not, in the judgment of the county legislative authority, be benefited by inclusion therein, shall be included within the boundaries of the district. No change shall be made by the county legislative authority in the boundary lines to include any territory outside of the boundaries described in the petition, except that the boundaries of any proposed district may be extended by the county legislative authority to include

other lands in the county upon a petition signed by the owners of all of the land within the proposed extension. [1996 c 230 § 203; 1990 c 259 § 27; 1987 c 33 § 3; 1985 c 469 § 58; 1982 1st ex.s. c 17 § 10; 1931 c 72 § 3; 1929 c 114 § 2; RRS § 11580. Cf. 1915 c 24 § 1; 1913 c 161 § 2. Formerly RCW 57.04.030 and 57.04.040.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.050 Election—Notice—Excess tax levy. Upon entry of the findings of the final hearing on the petition if one or more county legislative authorities find that the proposed district will be conducive to the public health, welfare, and convenience and will benefit the land therein, they shall present a resolution to the county auditor calling for a special election to be held at a date specified under *RCW 29.13.020, that occurs forty-five or more days after the resolution is presented, at which a ballot proposition authorizing the district to be created shall be submitted to voters for their approval or rejection. The commissioners shall cause to be published a notice of the election for four successive weeks in a newspaper of general circulation in the proposed district, which notice shall state the hours during which the polls will be open, the boundaries of the district as finally adopted and the object of the election, and the notice shall also be posted ten days in ten public places in the proposed district. The district shall be created if the ballot proposition authorizing the district to be created is approved by a majority of the voters voting on the proposition.

A separate ballot proposition authorizing the district, if created, to impose a single-year excess levy for the preliminary expenses of the district shall be submitted to voters for their approval or rejection at the same special election, if the petition to create the district also proposed that a ballot proposition authorizing an excess levy be submitted to voters for their approval or rejection. The excess levy shall be proposed in the amount specified in the petition to create the district, not to exceed one dollar and twenty-five cents per thousand dollars of assessed value, and may only be submitted to voters for their approval or rejection if the special election is held in February, March, April, or May. The proposition to be effective must be approved in the manner set forth in Article VII, section 2(a) of the state Constitution. [1999 c 153 § 1; 1996 c 230 § 204; 1994 c 292 § 2; 1990 c 259 § 28; 1987 c 33 § 4; 1982 1st ex.s. c 17 § 11; 1973 1st ex.s. c 195 § 67; 1953 c 251 § 1; 1931 c 72 § 4; 1929 c 114 § 3; RRS § 11581. Cf. 1927 c 230 § 1; 1915 c 24 § 2; 1913 c 161 § 3.]

***Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Part headings not law—1999 c 153: "Part headings as used in this act do not constitute any part of the law." [1999 c 153 § 77.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Findings—Intent—1994 c 292: "The legislature finds that the monitoring and treatment requirements of the federal safe drinking water act place increasing burdens and cost on public water supply systems, especially smaller systems and rural systems. Across the state, those systems are turning to existing systems and their county governments for help, which may include assumption of the system.

It is the intent of the legislature to encourage larger existing systems to assist or acquire troubled systems or those systems burdened by federal requirements, to provide financial protection for that assistance, and to protect receivers of failed water systems." [1994 c 292 § 1.]

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

57.04.055 County auditor to conduct elections—Expenses. All elections held pursuant to this title, whether general or special, shall be conducted by the county auditor of the county in which the district is located. Except as provided in RCW 57.04.060, the expense of all such elections shall be paid for out of the funds of the district. [1996 c 230 § 208; 1941 c 210 § 40; Rem. Supp. 1941 § 9425-49. Formerly RCW 56.04.080.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.060 District created—Name—Formation expenses. If at the election a majority of the voters voting upon the proposition vote in favor of the formation of the district the county legislative authority shall so declare in its canvass of the returns of the election to be made within ten days after the date of the election, and the district shall then be and become a municipal corporation of the state of Washington, and the name of the district shall be the name of the district as provided in the petition and the ballot.

The county's expenses incurred in the formation of the district, including the election costs associated with the ballot proposition authorizing the district, election of the initial commissioners under RCW 57.12.030, and the ballot proposition authorizing the excess levy, shall be repaid to the county if the district is formed. [1996 c 230 § 205; 1929 c 114 § 5; RRS § 11583. Cf. 1913 c 161 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.065 Change of name—Procedure—Effect. Any district may apply to change its name by filing with the county legislative authority in which was filed the original petition for organization of the district, a certified copy of a resolution of its board of commissioners adopted by majority vote of all of the members of that board at a regular meeting thereof providing for such change of name. After approval of the new name by the county legislative authority, all proceedings for the district shall be had under the changed name, but all existing obligations and contracts of the district entered into under its former name shall remain outstanding without change and with the validity thereof unimpaired and unaffected by such change of name. A change of name heretofore made by any existing district in this state, substantially in the manner approved under this section, is ratified, confirmed, and validated. [1996 c 230 § 206; 1984 c 147 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.070 When two or more petitions filed. Whenever two or more petitions for the formation of a district shall be filed as provided in this chapter, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser district shall ever be created within the limits in whole or in part of any district, except as provided in RCW 36.94.420. [1996 c 230 § 207; 1985 c 141 § 6; 1981 c 45 § 9; 1929 c 114 § 4; RRS § 11582. Cf. 1913 c 161 § 4.]

(2004 Ed.)

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 36.93.090.

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

Reviser's note: *(1) The language "this act" appeared in 1929 c 114, the basic water district law, which is codified as follows: RCW 57.04.020, 57.04.030, 57.04.050 through 57.04.080, 57.04.100, 57.08.010, 57.08.050, 57.12.010, 57.12.020, 57.12.030, 57.16.010, 57.16.020, 57.16.030, 57.16.040, 57.16.050, 57.16.060, 57.16.070, 57.16.080 through 57.16.100, 57.20.010, 57.20.100 through 57.20.140, 57.24.010, 57.24.020, 57.24.040, and 57.24.050.

** (2) As to the reference "chapter 161 of the Laws of 1913," see note following RCW 57.06.010.

57.04.090 Dissolution—Legislative and court methods. Dissolution of district, see chapters 36.96 and 53.48 RCW.

57.04.100 Dissolution—Election method. Any district may be disincorporated in the same manner (insofar as the same is applicable) as is provided in RCW 35.07.010 through 35.07.220 for the disincorporation of cities and towns, except that the petition for disincorporation shall be signed by not less than twenty-five percent of the voters in the district. [1996 c 230 § 209; 1994 c 81 § 80; 1929 c 114 § 25; 1917 c 147 § 1; RRS § 11602.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.110 Dissolution when district's boundaries identical with municipality. A district whose boundaries are identical with, or if the district is located entirely within, the boundaries of a city or town may be dissolved by summary dissolution proceedings if the district is free from all debts and liabilities except contractual obligations between the district and the city or town. Summary dissolution shall take place if the board of commissioners of the district votes unanimously to dissolve the district and to turn all of its property over to the city or town within which the district lies, and the council of such city or town unanimously passes an ordinance accepting the conveyance of the property and assets of the district tendered to the city or town by the district. [1996 c 230 § 210; 1955 c 358 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Acceptance by town: RCW 35.92.012.

57.04.120 Sewerage improvement districts located in counties with populations of from forty thousand to less than seventy thousand become sewer districts. (1) On and after March 16, 1979, any sewerage improvement districts created under Title 85 RCW and located in a county with a population of from forty thousand to less than seventy thou-

sand shall become districts and shall be operated, maintained, and have the same powers as districts created under this title, upon being so ordered by the county legislative authority of the county in which such district is located after a hearing of which notice is given by publication in a newspaper of general circulation within the district and mailed to any known creditors, holders of contracts, and obligees at least thirty days prior to such hearing. After such hearing if the county legislative authority finds the converting of such district to be in the best interest of that district, it shall order that such sewer improvement district shall become a district and fix the date of such conversion. All debts, contracts, and obligations created while attempting to organize or operate a sewerage improvement district and all other financial obligations and powers of the district to satisfy such obligations established under Title 85 RCW are legal and valid until they are fully satisfied or discharged under Title 85 RCW.

(2) The board of supervisors of a sewerage improvement district in a county with a population of from forty thousand to less than seventy thousand shall act as the board of commissioners of the district under subsection (1) of this section until other members of the board of commissioners of the district are elected and qualified. There shall be an election on the same date as the 1979 state general election and the seats of all three members of the governing authority of every entity which was previously known as a sewerage improvement district in a county with a population of from forty thousand to less than seventy thousand shall be up for election. The election shall be held in the manner provided for in RCW 57.12.030 for the election of the first board of commissioners of a district. Thereafter, the terms of office of the members of the governing body shall be determined under RCW 57.12.030. [1996 c 230 § 211; 1991 c 363 § 136; 1979 c 35 § 1. Formerly RCW 56.04.120.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

57.04.130 Sewerage improvement districts operating as sewer districts become water-sewer districts—Procedure. Any sewerage improvement district which has been operating as a sewer district shall be a district under this title as of March 16, 1979, upon being so ordered by the county legislative authority of the county in which such district is located after a hearing of which notice is given by publication in a newspaper of general circulation within the district and mailed to any known creditors, holders of contracts, and obligees at least thirty days prior to such hearing. After such hearing if the county legislative authority finds that the sewerage improvement district was operating as a district and that the converting of such district will be in the best interest of that district, it shall order that such sewer improvement district shall become a district immediately upon the passage of the resolution containing such order. The debts, contracts, and obligations of any sewerage improvement district which has been erroneously operating as a district are recognized as legal and binding. The members of the government authority of any sewerage improvement district which has been operating as a district and who were erroneously elected as sewer district commissioners shall be recognized as the governing

authority of a district. The members of the governing authority shall continue in office for the term for which they were elected. [1996 c 230 § 212; 1979 c 35 § 2. Formerly RCW 56.04.130.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.04.140 Formation—Alternative method—New development. (1) As an alternative means to forming a water-sewer district, a county legislative authority may authorize the formation of a water-sewer district to serve a new development that at the time of formation does not have any residents, at written request of sixty percent of the owners of the area to be included in the proposed district. The county legislative authority shall review the proposed district according to the procedures and criteria in RCW 57.02.040.

(2) The county legislative authority shall appoint the initial water-sewer commissioners of the district. The commissioners shall serve until seventy-five percent of the development is sold and occupied, or until some other time as specified by the county legislative authority when the district is approved. Commissioners serving under this section are not entitled to any form of compensation from the district.

(3) New commissioners shall be elected according to the procedures in chapter 57.12 RCW at the next election held under *RCW 29.13.010 that follows more than ninety days after the date seventy-five percent of the development is sold and occupied, or after the time specified by the county legislative authority when the district is approved.

(4) A water-sewer district created under this section may be transferred to a city or county, or dissolved if the district is inactive, by order of the county legislative authority at the written request of sixty percent of the owners of the area included in the district. [1997 c 447 § 4.]

***Reviser's note:** RCW 29.13.010 was recodified as RCW 29A.04.320 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193.

Finding—Purpose—Construction—1997 c 447: See notes following RCW 70.05.074.

Chapter 57.06 RCW

VALIDATION AND CONSTRUCTION

Sections

57.06.010	1927 validation.
57.06.020	1931 validation.
57.06.030	1943 validation.
57.06.040	1943 validation.
57.06.050	1943 validation.
57.06.060	1945 validation.
57.06.070	1945 validation.
57.06.080	1945 validation.
57.06.090	1953 validation.
57.06.100	1953 validation.
57.06.110	1953 validation.
57.06.120	1959 validation.
57.06.130	1959 severability.
57.06.140	1975 validation.
57.06.150	1975 validation.
57.06.160	1975 validation.
57.06.170	1975 validation.
57.06.180	1988 validation.
57.06.190	Sewer districts—Validation—1959 c 103.
57.06.200	Sewer districts—Formation of districts validated.
57.06.210	Sewer districts—Validation of prior mergers.

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

Reviser's note: This section appeared in an act the first section of which amended RRS § 11581 which compiled 1913 c 161 § 3 as amended. 1913 c 161 was declared unconstitutional in *Drum v. University Place Water District*, 144 Wash. 585, 258 P. 505 (1927). The current basic water district act codified in this title is 1929 c 114.

57.06.020 1931 validation. Each and all of the respective areas of land heretofore organized or attempted to be organized or incorporated under *chapter 161 of the Laws of 1913, and amendments thereto, are each hereby declared to be and created into duly existing water districts having the respective boundaries set forth in their respective organization proceedings as shown in the files and records of the office of the board of county commissioners of the county in which said organization, or attempted organization is located. The water districts validated or created by this act shall have the same rights, liabilities, duties and obligations as water districts created under chapter 114 of the Laws of 1929, and amendments thereto: PROVIDED, That the provisions of this act shall apply only to those water districts which have maintained their organization as water districts since the date of their attempted incorporation or establishment: PROVIDED, HOWEVER, That nothing herein contained shall be deemed to validate the debts, contracts, bonds or other obligations executed prior to this act in connection with or in pursuance of such attempted organization, and all taxes or assessments shall hereafter be levied in accordance with the act of 1929, chapter 114, approved March 13, 1929. [1931 c 71 § 1; RRS § 11604.]

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

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

57.06.040 1943 validation. All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, local improvement district, or utility local

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

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

57.06.060 1945 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts or into local improvement districts or utility local improvement districts under the provisions of Pierce's Perpetual Code 994-1 to -53, chapter 114, Laws of 1929, and amendments thereto (sections 11579 to 11604, Remington's Revised Statutes), are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts, as the case may be, having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1945 c 40 § 1; Rem. Supp. 1945 § 11604-17.]

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

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

57.06.090 1953 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts, including all areas attempted to be annexed thereto, or into local improvement districts or utility local improvement districts, under the provisions of chapter 114, Laws of 1929, and amendments thereto, are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts,

as the case may be, having the respective boundaries set forth in their organization and annexation proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1953 c 251 § 25.]

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

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

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

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

57.06.140 1975 validation. Each and all of the respective areas of land heretofore attempted to be organized into water districts under the provisions of chapter 114, Laws of 1929, and amendments thereto, are hereby validated and declared to be duly existing water districts, having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1975 1st ex.s. c 188 § 15.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.150 1975 validation. All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, and all bonds or other obligations executed by such districts in connection with or in pursuance of

such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers, including by persons acting as commissioners nominated by petition of at least twenty-five percent of the qualified electors of the district, and elected and qualified as otherwise provided by law, acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1975 1st ex.s. c 188 § 16.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.160 1975 validation. The holding and exercise of the office of commissioner by persons now serving as members of the first board of commissioners under or in pursuance of such attempted organization, nominated by petition of at least twenty-five percent of the qualified electors of the district, and elected and qualified as otherwise provided by law, is hereby declared legal and valid and of full force and effect. [1975 1st ex.s. c 188 § 17.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.170 1975 validation. RCW 57.06.140 through 57.06.160 shall apply only to such districts attempted to be organized under chapter 114, Laws of 1929, and amendments thereto, which have maintained their organization as such since the date of such attempted organization, establishment, or creation, or which have been merged into another municipal corporation. [1975 1st ex.s. c 188 § 18.]

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.06.180 1988 validation. The existence of all water districts formed in counties without a boundary review board in compliance with the requirements of chapter 57.04 RCW, whether or not the requirements of RCW 57.02.040 and *56.02.070 were satisfied, is validated and such districts shall be deemed to be legally formed. [1988 c 162 § 9.]

***Reviser's note:** RCW 56.02.070 was recodified as RCW 57.02.045 by 1996 c 230 § 1701, effective July 1, 1997.

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

Severability—1959 c 103: See note following RCW 57.08.044.

57.06.200 Sewer districts—Formation of districts validated. The existence of all sewer districts formed in counties without a boundary review board in compliance with the requirements of *chapter 56.04 RCW, whether or not the requirements of RCW **56.02.060 and ***56.02.070

were satisfied, is validated and such districts shall be deemed to be legally formed. [1988 c 162 § 8. Formerly RCW 56.02.080.]

Reviser's note: *(1) Chapter 56.04 RCW was repealed and/or recodified in its entirety by 1996 c 230, effective July 1, 1997.

***(2) RCW 56.02.060 was repealed by 1996 c 230 § 1702, effective July 1, 1997.

****(3) RCW 56.02.070 was recodified as RCW 57.02.045 pursuant to 1996 c 230 § 1701, effective July 1, 1997.

57.06.210 Sewer districts—Validation of prior mergers. Each and all of the respective areas of land organized as a water district and heretofore attempted to be merged into a sewer district under chapter 148 of the Laws of 1969 [ex. sess.], and amendments thereto, and which have maintained their organization as part of a sewer district since the date of such attempted merger, are hereby validated and declared to be a proper merger of a water district into a sewer district. Such district shall have the respective boundaries set forth in their merger proceedings as shown by the official files of the legislative authority of the county in which such merged district is located. All debts, contracts, bonds, and other obligations heretofore executed in connection with or in pursuance of such attempted organization, and any and all assessments or levies and all other actions taken by such districts or by their respective officers acting under such attempted organization, are hereby declared legal and valid and of full force and effect. Such districts may hereafter exercise their powers only to the extent permitted by and in accordance with the provisions of *RCW 56.36.060, as now or hereafter amended. [1981 c 45 § 8. Formerly RCW 56.36.070.]

***Reviser's note:** RCW 56.36.060 was repealed by 1996 c 230 § 1702, effective July 1, 1997.

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Chapter 57.08 RCW

POWERS

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57.08.005 Powers. A district shall have the following powers:

(1) To acquire by purchase or condemnation, or both, all lands, property and property rights, and all water and water rights, both within and without the district, necessary for its purposes. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities and towns, insofar as consistent with this title, except that all assessment or reassessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the district, and the duties devolving upon the city treasurer are imposed upon the county treasurer;

(2) To lease real or personal property necessary for its purposes for a term of years for which that leased property may reasonably be needed;

(3) To construct, condemn and purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire, or own buildings and other necessary district facilities. Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer. District waterworks may include facilities which result in combined water supply and electric generation, if the electricity generated thereby is a byproduct of the water supply system. That electricity may be used by the district or sold to any entity authorized by law to use or distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of water supply. For such purposes, a district may take, condemn and purchase, acquire, and retain water from any public or navigable lake, river or watercourse, or any underflowing water, and by means of aqueducts or pipeline conduct the same throughout the district and any city or town therein and carry

it along and upon public highways, roads, and streets, within and without such district. For the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution. For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner;

(4) To purchase and take water from any municipal corporation, private person, or entity. A district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the district and inhabitants thereof and residents of Canada with an ample supply of water under the terms approved by the board of commissioners;

(5) To construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district, the inhabitants thereof, and persons outside the district with an adequate system of sewers for all uses and purposes, public and private, including but not limited to on-site sewage disposal facilities, approved septic tanks or approved septic tank systems, on-site sanitary sewerage systems, inspection services and maintenance services for private and public on-site systems, point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a district, other facilities, programs, and systems for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from wastewater with full authority to regulate the use and operation thereof and the service rates to be charged. Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer. Sewerage facilities may include facilities which result in combined sewage disposal or treatment and electric generation, except that the electricity generated thereby is a byproduct of the system of sewers. Such electricity may be used by the district or sold to any entity authorized by law to distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of sewage disposal or treatment. For such purposes a district may conduct sewage throughout the district and throughout other political subdivisions within the district, and construct and lay sewer pipe along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such sewer pipe. A district may erect sewage treatment plants within or without the district, and may acquire, by purchase or condemnation, properties or

privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from its sewers or its sewage treatment plant. For the purposes of sewage facilities which include facilities that result in combined sewage disposal or treatment and electric generation where the electric generation is a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owners;

(6)(a) To construct, condemn and purchase, add to, maintain, and operate systems of drainage for the benefit and use of the district, the inhabitants thereof, and persons outside the district with an adequate system of drainage, including but not limited to facilities and systems for the collection, interception, treatment, and disposal of storm or surface waters, and for the protection, preservation, and rehabilitation of surface and underground waters, and drainage facilities for public highways, streets, and roads, with full authority to regulate the use and operation thereof and, except as provided in (b) of this subsection, the service rates to be charged.

(b) The rate a district may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(c) Drainage facilities may include natural systems. Drainage facilities may include facilities which result in combined drainage facilities and electric generation, except that the electricity generated thereby is a byproduct of the drainage system. Such electricity may be used by the district or sold to any entity authorized by law to distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of drainage collection, disposal, and treatment. For such purposes, a district may conduct storm or surface water throughout the district and throughout other political subdivisions within the district, construct and lay drainage pipe and culverts along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such drainage systems. A district may provide or erect facilities and improvements for the treatment and disposal of storm or surface water within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from storm or surface waters. For the purposes of drainage facilities which include facilities that also generate electricity as a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to

acquire such rights or facilities without the consent of the owners;

(7) To construct, condemn, acquire, and own buildings and other necessary district facilities;

(8) To compel all property owners within the district located within an area served by the district's system of sewers to connect their private drain and sewer systems with the district's system under such penalty as the commissioners shall prescribe by resolution. The district may for such purpose enter upon private property and connect the private drains or sewers with the district system and the cost thereof shall be charged against the property owner and shall be a lien upon property served;

(9) Where a district contains within its borders, abuts, or is located adjacent to any lake, stream, ground water as defined by RCW 90.44.035, or other waterway within the state of Washington, to provide for the reduction, minimization, or elimination of pollutants from those waters in accordance with the district's comprehensive plan, and to issue general obligation bonds, revenue bonds, local improvement district bonds, or utility local improvement bonds for the purpose of paying all or any part of the cost of reducing, minimizing, or eliminating the pollutants from these waters;

(10) Subject to subsection (6) of this section, to fix rates and charges for water, sewer, and drain service supplied and to charge property owners seeking to connect to the district's systems, as a condition to granting the right to so connect, in addition to the cost of the connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that those property owners shall bear their equitable share of the cost of the system. For the purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants. The connection charge may include interest charges applied from the date of construction of the system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the system, or at the time of installation of the lines to which the property owner is seeking to connect. In lieu of requiring the installation of permanent local facilities not planned for construction by the district, a district may permit connection to the water and/or sewer systems through temporary facilities installed at the property owner's expense, provided the property owner pays a connection charge consistent with the provisions of this chapter and agrees, in the future, to connect to permanent facilities when they are installed; or a district may permit connection to the water and/or sewer systems through temporary facilities and collect from property owners so connecting a proportionate share of the estimated cost of future local facilities needed to serve the property, as determined by the district. The amount collected, including interest at a rate commensurate with the rate of interest applicable to the district at the time of con-

struction of the temporary facilities, shall be held for contribution to the construction of the permanent local facilities by other developers or the district. The amount collected shall be deemed full satisfaction of the proportionate share of the actual cost of construction of the permanent local facilities. If the permanent local facilities are not constructed within fifteen years of the date of payment, the amount collected, including any accrued interest, shall be returned to the property owner, according to the records of the county auditor on the date of return. If the amount collected is returned to the property owner, and permanent local facilities capable of serving the property are constructed thereafter, the property owner at the time of construction of such permanent local facilities shall pay a proportionate share of the cost of such permanent local facilities, in addition to reasonable connection charges and other charges authorized by this section. A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The county treasurer may charge and collect a fee of three dollars for each year for the treasurer's services. Those fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer. Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A water-sewer district shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using water-sewer district employees unless the on-site system is connected by a publicly owned collection system to the water-sewer district's sewerage system, and the on-site system represents the first step in the sewage disposal process.

Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for sewer, water, storm water control, drainage, and street lighting facilities to the same extent private persons and private property are subject to those rates and charges that are imposed by districts. In setting those rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

(11) To contract with individuals, associations and corporations, the state of Washington, and the United States;

(12) To employ such persons as are needed to carry out the district's purposes and fix salaries and any bond requirements for those employees;

(13) To contract for the provision of engineering, legal, and other professional services as in the board of commissioner's discretion is necessary in carrying out their duties;

(14) To sue and be sued;

(15) To loan and borrow funds and to issue bonds and instruments evidencing indebtedness under chapter 57.20 RCW and other applicable laws;

(16) To transfer funds, real or personal property, property interests, or services subject to RCW 57.08.015;

(17) To levy taxes in accordance with this chapter and chapters 57.04 and 57.20 RCW;

(18) To provide for making local improvements and to levy and collect special assessments on property benefitted thereby, and for paying for the same or any portion thereof in accordance with chapter 57.16 RCW;

(19) To establish street lighting systems under RCW 57.08.060;

(20) To exercise such other powers as are granted to water-sewer districts by this title or other applicable laws; and

(21) To exercise any of the powers granted to cities and counties with respect to the acquisition, construction, maintenance, operation of, and fixing rates and charges for waterworks and systems of sewerage and drainage. [2004 c 202 § 1; 2003 c 394 § 5; 1999 c 153 § 2; 1997 c 447 § 16; 1996 c 230 § 301.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.007 Concurrent service by two districts.

Except upon approval of both districts by resolution, a district may not provide a service within an area in which that service is available from another district or within an area in which that service is planned to be made available under an effective comprehensive plan of another district. [1996 c 230 § 302.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.009 Use of property not immediately necessary to district for park or recreational purposes. A district may operate and maintain a park or recreational facilities on real property that it owns or in which it has an interest that is not immediately necessary for its purposes.

If such park or recreational facilities are operated by a person other than the district, including a corporation, partnership, or other business enterprise, the person shall indemnify and hold harmless the district for any injury or damage caused by the action of the person. [1991 c 82 § 3. Formerly RCW 56.08.170.]

57.08.011 Authority to manage, operate, maintain, or repair public or private water system—Contract. A district may enter into a contract with any person, corporation, or other entity, public or private, that owns a water system located in the district to manage, operate, maintain, or repair the water system. Such a contract may be entered into only if the general comprehensive plan of the district reflects the

water system that is to be so managed, operated, maintained, or repaired.

A district shall be liable to provide the services provided in such a contract only if the required contractual payments are made to the district, and such payments shall be secured by a lien on the property served by the water system to the same extent that rates and charges imposed by the district constitute liens on the property served by the district. The responsibility for all costs incurred by the water system in complying with water quality laws, regulations, and standards shall be solely that of the water system and not the district, except to the extent payments have been made to the district for the costs of such compliance.

A district periodically may transfer to another account surplus moneys that may accumulate in an account established by the district to receive payments for the provision of services for such a water system. [1996 c 230 § 303; 1989 c 308 § 14.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.012 Fluoridation of water authorized. A water district by a majority vote of its board of commissioners may fluoridate the water supply system of the water district. The commissioners may cause the proposition of fluoridation of the water supply to be submitted to the electors of the water district at any general election or special election to be called for the purpose of voting on the proposition. The proposition must be approved by a majority of the electors voting on the proposition to become effective. [1988 c 11 § 2.]

57.08.014 Authority to adjust or delay rates or charges for low-income persons—Notice. In addition to the authority of a district to establish classifications for rates and charges and impose such rates and charges, a district may adjust or delay those rates and charges for low-income persons or classes of low-income persons, including but not limited to, low-income handicapped persons and low-income senior citizens. Other financial assistance available to low-income persons shall be considered in determining charges and rates under this section. Notification of special rates or charges established under this section shall be provided to all persons served by the district annually and upon initiating service. Information on cost shifts caused by establishment of the special rates or charges shall be included in the notification. Any reduction in charges and rates granted to low-income persons in one part of a service area shall be uniformly extended to low-income persons in all other parts of the service area. [1999 c 153 § 3; 1996 c 230 § 304; 1983 c 198 § 2.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1983 c 198: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 198 § 3.]

57.08.015 Sale of unnecessary property authorized—Notice. The board of commissioners of a district may sell, at

public or private sale, property belonging to the district if the board determines that the property is not and will not be needed for district purposes and if the board gives notice of intention to sell as in this section provided. However, no such notice of intention shall be required to sell personal property of less than two thousand five hundred dollars in value.

The notice of intention to sell shall be published once a week for two consecutive weeks in a newspaper of general circulation in the district. The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions of the bids and reserve the right to reject any and all bids for good cause. [1999 c 153 § 4; 1996 c 230 § 305; 1993 c 198 § 19; 1989 c 308 § 7; 1977 ex.s. c 299 § 2; 1953 c 50 § 1.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.016 Sale of unnecessary property authorized—Additional requirements for sale of realty. (1) There shall be no private sale of real property where the appraised value exceeds the sum of two thousand five hundred dollars. Subject to the provisions of subsection (2) of this section, no real property of the district shall be sold for less than ninety percent of the value thereof as established by a written appraisal made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state or professionally designated real estate appraisers as defined in RCW 74.46.020. The appraisal shall be signed by the appraisers and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the appraised value thereof.

(2) If no purchasers can be obtained for the property at ninety percent or more of its appraised value after one hundred twenty days of offering the property for sale, the board of commissioners of the district may adopt a resolution stating that the district has been unable to sell the property at the ninety percent amount. The district then may sell the property at the highest price it can obtain at public auction. A notice of intention to sell at public auction shall be published once a week for two consecutive weeks in a newspaper of general circulation in the district. The notice shall describe the property, state the time and place at which it will be offered for sale and the terms of sale, and shall call for bids, fix the conditions thereof, and reserve the right to reject any and all bids for good cause. [1999 c 153 § 5; 1996 c 230 § 306; 1993 c 198 § 20; 1989 c 308 § 8; 1988 c 162 § 2; 1984 c 103 § 3; 1953 c 50 § 2.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.017 Application of sections to certain service provider agreements under chapter 70.150 RCW. RCW 57.08.015, 57.08.016, 57.08.050, and 57.08.120 shall not

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apply to agreements entered into under authority of chapter 70.150 RCW if there is compliance with the procurement procedure under RCW 70.150.040. [1996 c 230 § 321; 1986 c 244 § 16.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1986 c 244: See RCW 70.150.905.

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

57.08.030 Election on conveyance—Contract for operation of facilities. (1) Whenever any district shall have installed a distributing system of water mains and laterals, and as a source of supply of water shall be purchasing or intending to purchase water from any city or town, and whenever it appears to be advantageous to the water consumers in the district that such city or town shall take over the water system of the district and supply water to those water users, the commissioners of the district, when authorized as provided in subsection (2) of this section, shall have the right to convey the distributing system to that city or town if that city or town is willing to accept, maintain, and repair the same.

(2) Should the commissioners of the district decide that it would be to the advantage of the water consumers of the district to make the conveyance provided for in subsection (1) of this section, they shall cause the proposition of making that conveyance to be submitted to the voters of the district at any general election or at a special election to be called for the purpose of voting on the same. If at the election a majority of the voters voting on the proposition shall be in favor of making the conveyance, the district commissioners shall have the right to convey to the city or town the mains and laterals belonging to the district upon the city or town entering into a contract satisfactory to the commissioners to maintain and repair the same.

(3) Whenever a city or town located wholly or in part within a district shall enter into a contract with the commissioners of a district providing that the city or town shall take over all of the operation of the water supply facilities of the district located within its boundaries, the area of the district located within the city or town shall upon the execution of the contract cease to be served by the district for water service purposes. However, the affected land within that city or town

shall remain liable for the payment of all assessments, any lien upon the property at the time of the execution of the agreement, and for any lien of all general obligation bonds due at the date of the contract, and the city or town shall remain liable for its fair prorated share of the debt of the area for any revenue bonds, outstanding as of the date of contract. [1999 c 153 § 6; 1996 c 230 § 307; 1933 c 142 § 2; RRS § 11586-2.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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

57.08.040 City or town may accept and agree to maintain system. Whenever any city or town is selling or proposes to sell water to a district, the city or town may by ordinance accept a conveyance of any distributing system and enter into a contract with the district for the maintenance and repair of the system and the supplying of water to the district consumers. [1996 c 230 § 308; 1933 c 142 § 3; RRS § 11586-3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.044 Contracts for acquisition, use, operation, etc., authorized—Service to areas in other districts. A district may enter into contracts with any county, city, town, or any other municipal or quasi-municipal corporation, or with any private person or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the district, and necessary or desirable to carry out the purposes of the district. A district may provide water, sewer, drainage, or street lighting services to property owners in areas within or without the limits of the district, except that if the area to be served is located within another existing district duly authorized to exercise district powers in that area, then water, sewer, drainage, or street lighting service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of that other district. [1999 c 153 § 7; 1996 c 230 § 309; 1981 c 45 § 4; 1959 c 103 § 3; 1953 c 250 § 8; 1941 c 210 § 48; Rem. Supp. 1941 § 9425-57. Formerly RCW 56.08.060.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 36.93.090.

Severability—1959 c 103: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1959 c 103 § 19.]

Water-sewer districts and municipalities, joint agreements: RCW 35.67.300.

57.08.047 Provision of water, sewer, or drainage service beyond district subject to review by boundary review board. The provision of water, sewer, or drainage service beyond the boundaries of a district may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1999 c 153 § 8; 1996 c 230 § 310; 1989 c 84 § 57.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.050 Contracts for materials and work—Notice—Bids—Small works roster—Requirements waived, when. (1) All work ordered, the estimated cost of which is in excess of ten thousand dollars, shall be let by contract and competitive bidding. Before awarding any such contract the board of commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. The board of commissioners may reject all bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for doing the work, and a bond to perform such work fur-

nished with sureties satisfactory to the board of commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond within ten days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the district shall be entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to requirements under subsection (1) of this section, a water-sewer district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of ten thousand dollars, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of less than fifty thousand dollars shall be made using the process provided in RCW 39.04.190. Any purchase of materials, supplies, or equipment with an estimated cost of fifty thousand dollars or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

(4) As an alternative to requirements under subsection (3) of this section, a water-sewer district may let contracts for purchase of materials, supplies, or equipment with the suppliers designated on current state agency, county, city, or town purchasing rosters for the materials, supplies, or equipment, when the roster has been established in accordance with the competitive bidding law for purchases applicable to the state agency, county, city, or town. The price and terms for purchases shall be as described on the applicable roster.

(5) The board may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2003 c 145 § 1; 2003 c 60 § 1; 2000 c 138 § 212; 1999 c 153 § 9; 1998 c 278 § 8; 1997 c 245 § 4. Prior: 1996 c 230 § 311; 1996 c 18 § 14; 1994 c 31 § 2; prior: 1993 c 198 § 21; 1993 c 45 § 8; 1989 c 105 § 2; 1987 c 309 § 2; 1985 c 154 § 2; 1983 c 38 § 2; 1979 ex.s. c 137 § 2; 1975 1st ex.s. c 64 § 2; 1965 c 72 § 1; 1947 c 216 § 2; 1929 c 114 § 21; Rem. Supp. 1947 § 11598. Cf. 1913 c 161 § 20.]

Reviser's note: This section was amended by 2003 c 60 § 1 and by 2003 c 145 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.060 Powers as to street lighting systems—Establishment. In addition to the powers given districts by (2004 Ed.)

law, a district shall also have power to acquire, construct, maintain, operate, and develop street lighting systems.

To establish a street lighting system, the board of commissioners shall adopt a resolution proposing a street lighting system and delineating the boundaries of the area to be served by the proposed street lighting system. The board shall conduct a public hearing on the resolution to create a street lighting system. Notice of the hearing shall be published at least once each week for two consecutive weeks in one or more newspapers of general circulation in the area to be served by the proposed street lighting system. Following the hearing, the board may by resolution establish the street lighting system.

A street lighting system shall not be established if, within thirty days following the decision of the board, a petition opposing the street lighting system is filed with the board and contains the signatures of at least forty percent of the voters registered in the area to be served by the proposed system.

The district has the same powers of imposing charges for providing street lighting, collecting delinquent street lighting charges, and financing street lighting systems by issuing general obligation bonds, issuing revenue bonds, and creating improvement districts as it has for imposing charges for providing water, collecting delinquent water service charges, and financing water systems by issuing general obligation bonds, issuing revenue bonds, and creating improvement districts. [1996 c 230 § 312; 1987 c 449 § 11; 1982 c 105 § 1; 1941 c 68 § 1; Rem. Supp. 1941 § 11604-12.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.065 Powers as to mutual systems—Overlapping districts—Operation of system of sewerage or drainage by former water district. (1) A district shall have power to establish, maintain, and operate a mutual water, sewerage, drainage, and street lighting system, a mutual system of any two or three of the systems, or separate systems.

(2) Where any two or more districts include the same territory as of July 1, 1997, none of the overlapping districts may provide any service that was made available by any of the other districts prior to July 1, 1997, within the overlapping territory without the consent by resolution of the board of commissioners of the other district or districts.

(3) A district that was a water district prior to July 1, 1997, that did not operate a system of sewerage or drainage prior to July 1, 1997, may not proceed to exercise the powers to establish, maintain, construct, and operate any system of sewerage or drainage without first obtaining written approval and certification of necessity from the department of ecology and department of health. Any comprehensive plan for a system of sewers or drainages or addition thereto or betterment thereof, proposed by a district that was a water district prior to July 1, 1997, shall be approved by the same county and state officials as were required to approve such plans adopted by a sewer district immediately prior to July 1, 1997, and as subsequently may be required. [1999 c 153 § 10; 1997 c 447 § 17; 1996 c 230 § 313; 1981 c 45 § 11; 1979 c 141 § 69; 1967 ex.s. c 135 § 3; 1963 c 111 § 1.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 36.93.090.

57.08.070 Participation in volunteer fire fighters' relief and pension fund. See chapter 41.24 RCW.

57.08.081 Rates and charges—Delinquencies. (1) Subject to RCW 57.08.005(6), the commissioners of any district shall provide for revenues by fixing rates and charges for furnishing sewer and drainage service and facilities to those to whom service is available or for providing water, such rates and charges to be fixed as deemed necessary by the commissioners, so that uniform charges will be made for the same class of customer or service and facility. Rates and charges may be combined for the furnishing of more than one type of sewer or drainage service and facilities.

(2) In classifying customers of such water, sewer, or drainage system, the board of commissioners may in its discretion consider any or all of the following factors: The difference in cost to various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the service and facility furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful practices; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Rates shall be established as deemed proper by the commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system. Prior to furnishing services, a district may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by this section.

(3) The commissioners shall enforce collection of connection charges, and rates and charges for water supplied against property owners connecting with the system or receiving such water, and for sewer and drainage services charged against property to which and its owners to whom the service is available, such charges being deemed charges against the property served, by addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either connection charges or rates and charges for services supplied are delinquent for any specified period of time, the district shall certify the delinquencies to the auditor of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate of not more than the prime lending rate of the district's bank plus four percentage points per year shall be a lien against the property upon which the service was received, subject only to the lien for general taxes.

(4) The district may, at any time after the connection charges or rates and charges for services supplied or available and penalties are delinquent for a period of sixty days, bring suit in foreclosure by civil action in the superior court of the county in which the real property is located. The court may allow, in addition to the costs and disbursements provided by statute, attorneys' fees, title search and report costs, and expenses as it adjudges reasonable. The action shall be in rem, and may be brought in the name of the district against an individual or against all of those who are delinquent in one action. The laws and rules of the court shall control as in other civil actions.

(5) In addition to the right to foreclose provided in this section, the district may also cut off all or part of the service after charges for water or sewer service supplied or available are delinquent for a period of thirty days.

(6) A district may determine how to apply partial payments on past due accounts.

(7) A district may provide a real property owner or the owner's designee with duplicate bills for service to tenants, or may notify an owner or the owner's designee that a tenant's service account is delinquent. However, if an owner or the owner's designee notifies the district in writing that a property served by the district is a rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the district shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the district notifies the tenant of the tenant's delinquency or by mail. When a district provides a real property owner or the owner's designee with duplicates of tenant utility service bills or notice that a tenant's utility account is delinquent, the district shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee. After January 1, 1999, if a district fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection (7), the district shall have no lien against the premises for the tenant's delinquent and unpaid charges. [2003 c 394 § 6; 1999 c 153 § 11. Prior: 1998 c 285 § 2; 1998 c 106 § 9; 1997 c 447 § 19; 1996 c 230 § 314.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Assessments and charges against state lands: Chapter 79.44 RCW.

57.08.085 Public property subject to rates and charges for drainage facilities. Except as otherwise provided in RCW 90.03.525, any public entity and public property, including state of Washington property, shall be subject to rates and charges for drainage facilities to the same extent as private persons and private property are subject to such rates and charges that are imposed by districts pursuant to RCW 57.08.005 or 57.08.081. In setting those rates and charges, consideration may be given to in-kind services, such as stream improvements or donation of property. [1999 c 153 § 12; 1996 c 230 § 315; 1986 c 278 § 59; 1983 c 315 § 5. Formerly RCW 56.08.012.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1983 c 315: See note following RCW 90.03.500.

Flood control zone districts—Storm water control improvements: Chapter 86.15 RCW.

Rates and charges for storm water control facilities—Limitations—Definitions: RCW 90.03.500 through 90.03.525. See also RCW 35.67.025, 35.92.021, 36.89.085, and 36.94.145.

57.08.100 Health care, group, life, and social security insurance contracts for employees', commissioners' benefit—Joint action with other districts. Subject to chapter 48.62 RCW, a district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance and/or social security insurance for the benefit of its employees and may pay all or any part of the cost thereof. Any two or more districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of a participating district may by appropriate resolution authorize its respective district to pay all or any portion of the cost thereof.

A district with five thousand or more customers providing health, group, or life insurance to its employees may provide its commissioners with the same coverage. However, the per person amounts for such insurance paid by the district shall not exceed the per person amounts paid by the district for its employees. [1996 c 230 § 316; 1991 sp.s. c 30 § 25; 1991 c 82 § 5; 1981 c 190 § 6; 1973 c 24 § 2; 1961 c 261 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Effective date, implementation, application—Severability—1991 sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Hospitalization and medical insurance authorized: RCW 41.04.180.

Hospitalization and medical insurance not deemed additional compensation: RCW 41.04.190.

57.08.105 Liability insurance for officials and employees. The board of commissioners of each district may purchase liability insurance with such limits as it may deem reasonable for the purpose of protecting its officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1996 c 230 § 317; 1973 c 125 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.107 Liability insurance for officers and employees authorized. See RCW 36.16.138.

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

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

No such lease shall be made unless secured by a bond conditioned on the performance of the terms of the lease, with surety satisfactory to the commissioners and with a penalty of not less than one-sixth of the term of the lease or for one year's rental, whichever is greater.

No such lease shall be made for a term longer than twenty-five years. In cases involving leases of more than five years, the commissioners may provide for or stipulate to acceptance of a bond conditioned on the performance of a part of the term for five years or more whenever it is further provided that the lessee must procure and deliver to the commissioners renewal bonds with like terms and conditions no more than two years prior nor less than one year prior to the expiration of such bond during the entire term of the lease. However, no such bond shall be construed to secure the furnishing of any other bond by the same surety or indemnity company. The board of commissioners may require a reasonable security deposit in lieu of a bond on leased property owned by a district.

The commissioners may accept as surety on any bond required by this section an approved surety company, or may accept in lieu thereof a secured interest in property of a value at least twice the amount of the bond required, conditioned further that in the event the commissioners determine that the value of the bond security has become or is about to become impaired, additional security shall be required from the lessee.

The authority granted under this section shall not be exercised by the board of commissioners unless the property is declared by resolution of the board of commissioners to be property for which there is a future need by the district and for the use of which provision is made in the comprehensive plan of the district as the same may be amended from time to time. [1996 c 230 § 319; 1991 c 82 § 6; 1967 ex.s. c 135 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.140 RCW 39.33.060 to govern on sales by district for park and recreational purposes. The provisions of RCW 57.08.015, 57.08.016, and 57.08.120 shall have no application as to the sale or conveyance of real or personal property or any interest or right therein by a district to the county or park and recreation district wherein such property is located for park and recreational purposes, but in those cases the provisions of RCW 39.33.060 shall govern. [1996 c 230 § 320; 1971 ex.s. c 243 § 8.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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

57.08.150 Extensions by private party—Preparation of plans—Review by district. A district may not require that a specified engineer prepare plans or designs for extensions to its systems if the extensions are to be financed and constructed by a private party, but may review, and approve or reject, the plans or designs which have been prepared for such a private party based upon standards and requirements established by the district. [1996 c 230 § 323; 1987 c 309 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.160 Authority to assist customers in the acquisition of water conservation equipment—Limitations. Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the district if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the district to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with the use charge or separately. Loans shall not exceed one hundred twenty months in length. [1996 c 230 § 324; 1989 c 421 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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Intent—Contingent effective date—1989 c 421: See notes following RCW 35.92.017.

57.08.170 Water conservation plan—Emergency water use restrictions—Fine. A district may adopt a water conservation plan and emergency water use restrictions. The district may enforce a water conservation plan and emergency water use restrictions by imposing a fine as provided by resolution for failure to comply with any such plan or restrictions. The commissioners may provide by resolution that if a fine for failure to comply with the water conservation plan or emergency water use restrictions is delinquent for a specified period of time, the district shall certify the delinquency to the treasurer of the county in which the real property is located and serve notice of the delinquency on the subscribing water customer who fails to comply, and the fine is then a separate item for inclusion on the bill of the party failing to comply with the water conservation plan or emergency water use restrictions. [1996 c 230 § 325; 1991 c 82 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.180 Sewer, drainage, and water connections without district permission—Penalties. It is unlawful and a misdemeanor to make, or cause to be made, or to maintain any connection with any sewer, drainage, or water system of any district, or with any sewer, drainage, or water system which is connected directly or indirectly with any sewer, drainage, or water system of any district without having permission from the district. [1999 c 153 § 14; 1996 c 230 § 322; 1995 c 376 § 15; 1991 c 190 § 5.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Findings—1995 c 376: See note following RCW 70.116.060.

57.08.190 Cooperative watershed management. In addition to the authority provided in RCW 57.08.005, a water district, sewer district, or water-sewer district may participate in and expend revenue on cooperative watershed management actions, including watershed management partnerships under RCW 39.34.210 and other intergovernmental agreements, for purposes of water supply, water quality, and water resource and habitat protection and management. [2003 c 327 § 13.]

Finding—Intent—2003 c 327: See note following RCW 39.34.190.

Chapter 57.12 RCW

OFFICERS AND ELECTIONS

Sections

57.12.010	Commissioners—President and secretary—Compensation.
57.12.015	Increase in number of commissioners.
57.12.017	Decrease in number of commissioners.
57.12.020	Vacancies.
57.12.030	Commissioners—Terms.
57.12.039	Commissioner districts.

Redistricting by local governments and municipal corporations—Census information for—Plan, prepared when, criteria for, hearing on, request for review of, certification, remand—Sanctions when review request frivolous: RCW 29A.76.010.

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57.12.010 Commissioners—President and secretary—Compensation. The governing body of a district shall be a board of commissioners consisting of three members, or five or seven members as provided in RCW 57.12.015. The board shall annually elect one of its members as president and another as secretary.

The board shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book kept for that purpose which shall be a public record.

A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate of seventy dollars for each day or portion thereof devoted to the business of the district. However the compensation for each commissioner shall not exceed six thousand seven hundred twenty dollars per year. In addition, the secretary may be paid a reasonable sum for clerical services.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during the commissioner's term of office, by a written waiver filed with the district at any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

No commissioner shall be employed full time by the district. A commissioner shall be reimbursed for reasonable expenses actually incurred in connection with district business, including subsistence and lodging while away from the commissioner's place of residence and mileage for use of a privately-owned vehicle at the mileage rate authorized in RCW 43.03.060. [2001 c 63 § 1; 1998 c 121 § 5; 1996 c 230 § 401; 1985 c 330 § 6; 1980 c 92 § 2; 1975 1st ex.s. c 116 § 1; 1969 ex.s. c 148 § 8; 1959 c 108 § 5; 1959 c 18 § 1; 1945 c 50 § 2; 1929 c 114 § 7; Rem. Supp. 1945 § 11585. Cf. 1913 c 161 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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

57.12.015 Increase in number of commissioners. (1) In the event a three-member board of commissioners of any district with any number of customers determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, or if the board of a district with any number of customers is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for an increase in the number of commissioners of the district, the board shall submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the district, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (name and/or number of district) be increased from three to five members?
Yes
No

If the proposition receives a majority approval at the election the board of commissioners of the district shall be increased to five members.

(2) In any district with more than ten thousand customers, if a three-member board of commissioners determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, the number of commissioners shall be so increased without an election, unless within ninety days of adoption of that resolution a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last municipal general election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section.

(3)(a) In any district with more than twenty-five thousand customers, if a five-member board of commissioners determines by resolution that it would be in the best interest of the district to increase the number of commissioners from five to seven, the number of commissioners may be so increased without an election, unless within ninety days of adoption of that resolution a petition requesting an election and signed by at least ten percent of the registered voters who voted in the last municipal general election is filed with the board. If such a petition is received, the board shall submit the resolution and the petition to the county auditor, who shall call a special election in the manner described in this section.

(b) In the event a five-member board of commissioners of any district with more than twenty-five thousand customers determines by resolution that it would be in the best interest of the district to increase the number of commissioners from five to seven, the board may submit a resolution to the county auditor requesting that an election be held. Upon receipt of the resolution, the county auditor shall call a special election to be held within the district, at which election a proposition in substantially the following language shall be submitted to the voters:

Shall the Board of Commissioners of (name and/or number of district) be increased from five to seven members?
Yes
No

If the proposition receives a majority approval at the election the board of commissioners of the district shall be increased to seven members.

(4) The two additional positions created on boards of commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next district general election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second district general election after the appointment, at which two commissioners shall be elected for six-year terms. [2001 c 63 § 2; 1996 c 230 § 402; 1994 c 223 § 67; 1991 c 190 § 6; 1990 c 259 § 29; 1987 c 449 § 12.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.12.017 Decrease in number of commissioners. (1)

Except as provided in RCW 52.14.020, in the event a five-member or seven-member board of commissioners of any district determines by resolution that it would be in the best interest of the district to decrease the number of commissioners from five to three, or from seven to five, or in the event the board is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for such a decrease in the number of commissioners of the district, the board shall submit a resolution to the county auditor. Upon receipt of the resolution, the county auditor shall call a special election to be held within the district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of (name and/or number of district) be decreased from (five/seven) members to (three/five) members?

Yes . . .

No . . .

If the district has commissioner districts, the commissioners of the district must pass a resolution, before the submission of the proposition to the voters, to either redistrict from five commissioner districts to three commissioner districts, or from seven commissioner districts to five commissioner districts, or eliminate the commissioner districts. The resolution takes effect upon approval of the proposition by the voters.

If the proposition receives a majority approval at the election, the board of commissioners of the district shall be decreased to three or five members.

(2) The number of members on the board of the district shall be reduced by one whenever a commissioner resigns from office or a vacancy otherwise occurs on the board, until the number of remaining members is reduced to the number of members that is chosen for the board eventually to have. The reduction of membership on the board shall not be considered to be a vacancy that is to be filled until the number of remaining members is less than the number of members on the board that is chosen for the board eventually to have.

(3) At the next three district general elections after the reduction is approved, the number of commissioners for the district that are elected shall be as follows, notwithstanding the number of commissioners whose terms expire:

(a) In the first election after the reduction, only one position shall be filled.

(b) In the second election, one position shall be filled.

Thereafter, the commissioners shall be elected in the same manner as prescribed for such districts of the state. [2001 c 63 § 3.]

57.12.020 Vacancies. A vacancy on the board shall occur and shall be filled as provided in chapter 42.12 RCW. In addition, if a commissioner is absent from three consecutive scheduled meetings unless by permission of the board, the office may be declared vacant. However, such an action shall not be taken unless the commissioner is notified by mail after two consecutive unexcused absences that the position will be declared vacant if the commissioner is absent without

being excused from the next regularly scheduled meeting. [1996 c 230 § 405; 1994 c 223 § 68; 1990 c 259 § 30; 1985 c 141 § 7; 1981 c 169 § 1; 1975 1st ex.s. c 188 § 14; 1959 c 18 § 3. Prior: 1953 c 251 § 4; 1947 c 216 § 1, part; 1945 c 50 § 1, part; 1931 c 72 § 1, part; 1929 c 114 § 6, part; Rem. Supp. 1947 § 11584, part. Cf. 1913 c 161 § 7, part.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1975 1st ex.s. c 188: See RCW 36.94.921.

57.12.030 Commissioners—Terms. Except as in this section otherwise provided, the term of office of each district commissioner shall be six years, such term to be computed from the first day of January following the election, and commissioners shall serve until their successors are elected and qualified and assume office in accordance with *RCW 29.04.170.

Three initial district commissioners shall be elected at the same election at which the proposition is submitted to the voters as to whether such district shall be formed. The election of initial district commissioners shall be null and void if the ballot proposition to form the district is not approved. Each candidate shall run for one of three separate commissioner positions. A special filing period shall be opened as provided in *RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for each position shall be elected to that position.

The initial district commissioners shall assume office immediately when they are elected and qualified. Staggering of the terms of office for the initial district commissioners shall be accomplished as follows: (1) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office in accordance with *RCW 29.04.170. [1996 c 230 § 403; 1994 c 223 § 69; 1982 1st ex.s. c 17 § 14; 1979 ex.s. c 126 § 39; 1959 c 18 § 4. Prior: 1947 c 216 § 1; 1945 c 50 § 1; 1931 c 72 § 1; 1929 c 114 § 6; Rem. Supp. 1947 § 11584. Cf. 1913 c 161 § 7.]

***Reviser's note:** RCW 29.04.170, 29.15.170, and 29.15.180 were recodified as RCW 29A.20.040, 29A.24.170, and 29A.24.180, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Terms and compensation of county and district officers: State Constitution Art. 11 § 5.

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

57.12.039 Commissioner districts. (1) Notwithstanding RCW 57.12.020 and 57.12.030, the board of commissioners may provide by majority vote that subsequent commissioners be elected from commissioner districts within the district. If the board exercises this option, it shall divide the district into three, five, or seven if the number of commissioners has been increased under RCW 57.12.015, commissioner districts of approximately equal population following current precinct and district boundaries.

(2) Commissioner districts shall be used as follows: (a) Only a registered voter who resides in a commissioner district may be a candidate for, or serve as, a commissioner of the commissioner district; and (b) only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire district may vote at a general election to elect a person as a commissioner of the commissioner district. Commissioner districts shall be redrawn as provided in *chapter 29.70 RCW.

(3) In districts in which commissioners are nominated from commissioner districts, at the inception of a five-member or a seven-member board of commissioners, the new commissioner districts shall be numbered one through five or one through seven and the incumbent commissioners shall represent up to five commissioner districts depending on the amount of commissioners. If, as a result of redrawing the district boundaries two or three of the incumbent commissioners reside in one of the new commissioner districts, the commissioners who reside in the same commissioner district shall determine by lot which of the first three or five numbered commissioner districts they shall represent for the remainder of their respective terms. A primary shall be held to nominate candidates from the remaining districts where necessary and commissioners shall be elected at large at the general election. The persons elected as commissioners from the remaining commissioner districts shall take office immediately after qualification as defined under **RCW 29.01.135. [2001 c 63 § 4; 1996 c 230 § 404; 1994 c 223 § 70; 1986 c 41 § 2.]

Reviser's note: *(1) Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

** (2) RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.16 RCW

COMPREHENSIVE PLAN—LOCAL IMPROVEMENT DISTRICTS

Sections

- 57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments.
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- 57.16.160 Review of sewer general comprehensive plan—Time limitations—Notice of rejection of plan or extension of timeline.

Deferral of special assessments: Chapter 84.38 RCW.

Local improvements, supplemental authority: Chapter 35.51 RCW.

57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments. Before ordering any improvements or submitting to vote any proposition for incurring any indebtedness, the district commissioners shall adopt a general comprehensive plan for the type or types of facilities the district proposes to provide. A district may prepare a separate general comprehensive plan for each of these services and other services that districts are permitted to provide, or the district may combine any or all of its comprehensive plans into a single general comprehensive plan.

(1) For a general comprehensive plan of a water supply system, the commissioners shall investigate the several portions and sections of the district for the purpose of determining the present and reasonably foreseeable future needs thereof; shall examine and investigate, determine, and select a water supply or water supplies for such district suitable and adequate for present and reasonably foreseeable future needs thereof; and shall consider and determine a general system or plan for acquiring such water supply or water supplies, and the lands, waters, and water rights and easements necessary therefor, and for retaining and storing any such waters, and erecting dams, reservoirs, aqueducts, and pipe lines to convey the same throughout such district. There may be included as part of the system the installation of fire hydrants at suitable places throughout the district. The commissioners shall determine a general comprehensive plan for distributing such water throughout such portion of the district as may then reasonably be served by means of subsidiary aqueducts and pipe lines, and a long-term plan for financing the planned projects and the method of distributing the cost and expense thereof, including the creation of local improvement districts or utility local improvement districts, and shall determine whether the whole or part of the cost and expenses shall be paid from revenue or general obligation bonds.

(2) For a general comprehensive plan for a sewer system, the commissioners shall investigate all portions and sections of the district and select a general comprehensive plan for a sewer system for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan shall provide for treatment plants and other methods and services, if any, for the prevention, control, and reduction of water pollution and for the treatment and disposal of sewage and industrial and other liquid wastes now produced or which may reasonably be expected to be produced within the district and shall, for such portions of the

district as may then reasonably be served, provide for the acquisition or construction and installation of laterals, trunk sewers, intercepting sewers, syphons, pumping stations or other sewage collection facilities, septic tanks, septic tank systems or drainfields, and systems for the transmission and treatment of wastewater. The general comprehensive plan shall provide a long-term plan for financing the planned projects and the method of distributing the cost and expense of the sewer system and services, including the creation of local improvement districts or utility local improvement districts; and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(3) For a general comprehensive plan for a drainage system, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for a drainage system for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system to collect, treat, and dispose of storm water or surface waters, including use of natural systems and the construction or provision of culverts, storm water pipes, ponds, and other systems. The general comprehensive plan shall provide for a long-term plan for financing the planned projects and provide for a method of distributing the cost and expense of the drainage system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(4) For a general comprehensive plan for street lighting, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for street lighting for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system or systems of street lighting, provide for a long-term plan for financing the planned projects, and provide for a method of distributing the cost and expense of the street lighting system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(5) The commissioners may employ such engineering and legal service as in their discretion is necessary in carrying out their duties.

(6) Any general comprehensive plan or plans shall be adopted by resolution and submitted to an engineer designated by the legislative authority of the county in which fifty-one percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health, except that a comprehensive plan relating to street lighting shall not be submitted to or approved by the director of health. The general comprehensive plan shall be approved, conditionally approved, or rejected by the director of health and by the designated engineer within sixty days of their respective receipt of the plan. However, this sixty-day time limitation may be extended by the director of health or engineer for up to an additional sixty days if sufficient time is not available to review adequately the general comprehensive plans.

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of the district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of the county legislative authorities pursuant to the criteria in RCW 57.02.040 for approving the formation, reorganization, annexation, consolidation, or merger of districts. The resolution, ordinance, or motion of the legislative body that rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The general comprehensive plan shall not provide for the extension or location of facilities that are inconsistent with the requirements of RCW 36.70A.110. Nothing in this chapter shall preclude a county from rejecting a proposed plan because it is in conflict with the criteria in RCW 57.02.040. Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a county legislative authority may extend this ninety-day time limitation by up to an additional ninety days where a finding is made that ninety days is insufficient to review adequately the general comprehensive plan. In addition, the commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section.

If the district includes portions or all of one or more cities or towns, the general comprehensive plan shall be submitted also to, and approved by resolution of, the legislative authorities of the cities and towns before becoming effective. The general comprehensive plan shall be deemed approved by the city or town legislative authority if the city or town legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the city or town or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a city or town legislative authority may extend this time limitation by up to an additional ninety days where a finding is made that insufficient time exists to adequately review the general comprehensive plan within these time limitations. In addition, the commissioners and the city or town legislative authority may mutually agree to an extension of the deadlines in this section.

Before becoming effective, the general comprehensive plan shall be approved by any state agency whose approval may be required by applicable law. Before becoming effective, any amendment to, alteration of, or addition to, a general comprehensive plan shall also be subject to such approval as if it were a new general comprehensive plan. However, only if the amendment, alteration, or addition affects a particular city or town, shall the amendment, alteration, or addition be subject to approval by such particular city or town governing body. [1997 c 447 § 18; 1996 c 230 § 501; 1990 1st ex.s. c 17 § 35; 1989 c 389 § 10; 1982 c 213 § 2; 1979 c 23 § 2; 1977 ex.s. c 299 § 3; 1959 c 108 § 6; 1959 c 18 § 6. Prior: 1939 c

128 § 2, part; 1937 c 177 § 1; 1929 c 114 § 10, part; RRS § 11588. Cf. 1913 c 161 § 10.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

57.16.015 Expenditures before plan adopted and approved. No expenditure for carrying on any part of a general comprehensive plan shall be made other than the necessary salaries of engineers, clerical, office expenses, and other professional expenses of the district, and the cost of engineering, surveying, preparation, and collection of data necessary for making and adopting a general plan of improvements in the district, until the general comprehensive plan of improvements has been adopted by the commissioners and approved as provided in RCW 57.16.010. [1996 c 230 § 502; 1953 c 250 § 5; 1941 c 210 § 12; Rem. Supp. 1941 § 9425-21. Formerly RCW 56.08.030.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.045 Additions and betterments—Annexed areas. Whenever an area has been annexed to a district after the adoption of a general comprehensive plan, the commissioners shall adopt by resolution a plan for additions and betterments to the original comprehensive plan to provide for the needs of the area annexed. [1996 c 230 § 503.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.050 Districts authorized—Special assessments—Bonds. (1) A district may establish local improvement districts within its territory; levy special assessments and allow annual installments on the special assessments, together with interest thereon, extending over a period not exceeding twenty years, on all property specially benefited by a local improvement, on the basis of special benefits to pay in whole or in part the damage or costs of any improvements ordered in the district; and issue local improvement bonds in the local improvement district to be repaid by the collection of special assessments. The bonds may be of any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The levying, collection, and enforcement of special assessments and the issuance of bonds shall be as provided for the levying, collection, and enforcement of special assessments and the issuance of local improvement district bonds by cities and towns insofar as is consistent with this title. The duties devolving upon the city or town treasurer are imposed upon the county treasurer of the county in which the real property is located for the purposes hereof. The mode of assessment shall be determined by the commissioners by resolution.

(2) A district may establish a utility local improvement district, in lieu of a local improvement district, if the petition or resolution for establishing the local improvement district, and the approved comprehensive plan or approved amendment thereto or plan providing for additions and betterments to the original plan, previously adopted, provides that, except as set forth in this section, the special assessments shall be for

the purpose of payment of improvements and payment into the revenue bond fund for the payment of revenue bonds. No warrants or bonds shall be issued in a utility local improvement district, but the collection of interest and principal on all special assessments in the utility local improvement district shall be paid into the revenue bond fund, except that special assessments paid before the issuance and sale of bonds may be deposited in a fund for the payment of costs of improvements in the utility local improvement district. Revenue bonds shall be issued using the procedures by which cities and towns issue revenue bonds, insofar as is consistent with this title.

Such revenue bonds may also be issued and sold in accordance with chapter 39.46 RCW. [1996 c 230 § 601; 1987 c 169 § 2; 1983 c 167 § 161; 1982 1st ex.s. c 17 § 15; 1953 c 251 § 13; 1939 c 128 § 1; 1929 c 114 § 9; RRS § 11587. Cf. 1913 c 161 § 9.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Assessments and charges against state lands: Chapter 79.44 RCW.

Local improvement bonds: Chapter 35.45 RCW.

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

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

In case any such improvement district is initiated by petition, the petition shall set forth the nature and territorial extent of the proposed improvement requested to be ordered and the fact that the signers thereof are the owners according to the records of the applicable county auditor of at least fifty-one percent of the area of land within the limits of the improvement district to be created. Upon the filing of such petition the board shall determine whether the petition is sufficient, and the board's determination thereof shall be conclusive upon all persons. No person may withdraw his or her name from the petition after it has been filed with the board of commissioners. If the board finds the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the

nature and territorial extent of the improvement, designating the number of the proposed improvement district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed improvement district, and fixing a date, time, and place for a public hearing on the formation of the proposed improvement district.

Notice of the adoption of the resolution of intention, whether the resolution was adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed improvement district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of commissioners. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed improvement district by mailing the notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer of the county in which the real property is located at the address shown thereon. Whenever such notices are mailed, the commissioners shall maintain a list of the reputed property owners, which list shall be kept on file at a location within the district and shall be made available for public perusal. The notices shall refer to the resolution of intention and designate the proposed improvement district by number. The notices also shall set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, and the date, time, and place of the hearing before the board of commissioners. In the case of improvements initiated by resolution, the notice also shall: (1) State that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board of commissioners no later than ten days after the public hearing; (2) state that if owners of at least forty percent of the area of land within the proposed improvement district file written protests with the secretary of the board, the power of the commissioners to proceed with the creation of the proposed improvement district shall be divested; (3) provide the name and address of the secretary of the board; and (4) state the hours and location within the district where the names of the property owners within the proposed improvement district are kept available for public perusal. In the case of the notice given each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, parcel of land, or other property. [1999 c 153 § 15; 1996 c 230 § 602; 1991 c 190 § 7; 1986 c 256 § 3; 1982 1st ex.s. c 17 § 16; 1977 ex.s. c 299 § 7; 1965 ex.s. c 39 § 1; 1959 c 18 § 11. Prior: 1953 c 251 § 14; 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12, part.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.062 Hearing—Improvement ordered—Divestment of power to order—Notice—Appeal—Assessment

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roll. Whether an improvement district is initiated by petition or resolution, the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the improvement district and may make such changes in the boundaries of the improvement district or such modifications in the plans for the proposed improvement as shall be deemed necessary. The board may not change the boundaries of the improvement district to include property not previously included in it without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time provided in this chapter for the original notice.

After the hearing and the expiration of the ten-day period for filing protests, the commissioners shall have jurisdiction to overrule protests and proceed with any such improvement district initiated by petition or resolution. The jurisdiction of the commissioners to proceed with any improvement district initiated by resolution shall be divested by protests filed with the secretary of the board within ten days after the public hearing, signed by the owners, according to the records of the applicable county auditor, of at least forty percent of the area of land within the proposed improvement district.

If the commissioners find that the improvement district should be formed, they shall by resolution form the improvement district and order the improvement. After execution of the resolution forming the improvement district, the secretary of the board of commissioners shall publish, in a legal publication that serves the area subject to the improvement district, a notice setting forth that a resolution has been passed forming the improvement district and that a lawsuit challenging the jurisdiction or authority of the district to proceed with the improvement and creating the improvement district must be filed, and notice to the district served, within thirty days of the publication of the notice. The notice shall set forth the nature of the appeal. Property owners bringing the appeal shall follow the procedures set forth under RCW 57.16.090. Whenever a resolution forming an improvement district has been adopted, the formation is conclusive in all things upon all parties, and cannot be contested or questioned in any manner in any proceeding whatsoever by any person not commencing a lawsuit in the manner and within the time provided in this section, except for lawsuits made under RCW 57.16.090.

Following an appeal, if it is unsuccessful or if no appeal is made under RCW 57.16.090, the commissioners may proceed with creating the improvement district, provide the improvement and provide the general funds of the district to be applied thereto, adopt detailed plans of the improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the district such eminent domain proceedings as may be necessary to entitle the district to proceed with the improvements. The board shall thereupon proceed with the work and file with the county treasurer of the county in which the real property is located its roll levying special assessments in the amount to be paid by special assessment against the property situated within the improvement district in proportion to the special benefits to be derived by the property therein from the improvements. [1996 c 230 § 605; 1991 c 190 § 3; 1986 c 256 § 2; 1974 ex.s.

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c 58 § 6; 1971 ex.s. c 272 § 9; 1953 c 250 § 18; 1941 c 210 § 28; Rem. Supp. 1941 § 9425-37. Formerly RCW 56.20.030.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.065 Notice must contain statement that assessments may vary from estimates. Notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of an improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1996 c 230 § 604; 1989 c 243 § 11.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.070 Hearing on assessment roll—Notice. Before approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the improvement district, stating that the roll is on file and open to inspection in the office of the secretary, and fixing the time, not less than fifteen or more than thirty days from the date of the first publication of the notice, within which protests must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing will be held by the commissioners on the protests. Notice shall also be given by mailing, at least fifteen days before the hearing, a similar notice to the owners or reputed owners of the land in the improvement district as they appear on the books of the treasurer of the county in which the real property is located. At the hearing, or any adjournment thereof, the commissioners may correct, change, or modify the roll, or any part thereof, or set aside the roll and order a new assessment, and may then by resolution approve it. If an assessment is raised a new notice similar to the first shall be given, after which final approval of the roll may be made. When property has been entered originally upon the roll and the assessment thereon is not raised, no objection thereto shall be considered by the commissioners or by any court on appeal unless the objection is made in writing at, or prior to, the date fixed for the original hearing upon the roll. [1996 c 230 § 606; 1982 1st ex.s. c 17 § 17; 1959 c 18 § 12. Prior: 1953 c 251 § 15; 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12, part.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.073 Sanitary sewer and potable water facilities—Notice to certain property owners. Whenever it is proposed that an improvement district finance sanitary sewer or potable water facilities, additional notice of the public hearing on the proposed improvement district shall be mailed to the owners of any property located outside of the proposed improvement district that would be required as a condition of federal housing administration loan qualification, at the time of notice, to be connected to the specific sewer or water facilities installed by the improvement district. The notice shall include information about this restriction. [1996 c 230 § 603; 1987 c 315 § 6.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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57.16.075 Exemption of farm and agricultural land from special benefit assessments. See RCW 84.34.300 through 84.34.380 and 84.34.922.

57.16.080 Enlarged district. If any portion of the system after its installation is not adequate for the purpose for which it was intended, or if for any reason changes, alterations, or betterments are necessary in any portion of the system after its installation, then an improvement district with boundaries which may include one or more existing improvement districts may be created in the district in the same manner as is provided herein for the creation of improvement districts. Upon the organization of such an improvement district, the plan of the improvement and the payment of the cost of the improvement shall be carried out in the same manner as is provided herein for the carrying out of and the paying for the improvement in the improvement districts previously provided for in this title. [1996 c 230 § 607; 1959 c 18 § 13. Prior: 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.090 Review. The decision of the district board of commissioners upon any objections made within the time and in the manner herein prescribed may be reviewed by the superior court upon an appeal thereto taken in the following manner. The appeal shall be made by filing written notice of appeal with the secretary of the board of commissioners and with the clerk of the superior court in the county in which the real property is situated within ten days after publication of a notice that the resolution confirming such assessment roll has been adopted, and such notice of appeal shall describe the property and set forth the objections of such appellant to such assessment. Within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of the court a transcript consisting of the assessment roll and the appellant's objections thereto, together with the resolution confirming the assessment roll and the record of the district commissioners with reference to the assessment. The transcript, upon payment of the necessary fees therefor, shall be furnished by the secretary of the board of commissioners and shall be certified by the secretary to contain full, true, and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court, the appellant shall file a sufficient bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of the court, conditioned to prosecute such appeal without delay, and if unsuccessful to pay all costs to which the district is put by reason of such appeal. The court may order the appellant, upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, the appellant shall give written notice to the secretary of the district that such transcript is filed. The notice shall state a time, not less than three days from the service thereof, when the appellant

will call up the cause for hearing. The superior court shall, at such time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury. The appeal shall have preference over all civil causes pending in the court, except eminent domain proceedings and actions of forcible entry and detainer. The judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is either founded upon a fundamentally wrong basis or a decision of the board of commissioners thereon was arbitrary or capricious, or both, in which event the judgment of the court shall correct, modify, or annul the assessment insofar as it affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, who shall modify and correct the assessment roll in accordance with such decision. Appellate review of the judgment of the superior court may be sought as in other civil cases. However, the appeal must be sought within fifteen days after the date of the entry of the judgment of such superior court. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of the assessment roll, who shall thereupon modify and correct the assessment roll in accordance with the decision. [1996 c 230 § 609; 1991 c 190 § 8; 1988 c 202 § 53; 1982 1st ex.s. c 17 § 18; 1971 c 81 § 126; 1965 ex.s. c 39 § 2; 1929 c 114 § 13; RRS § 11591. Cf. 1913 c 161 § 13.]

Rules of court: Cf. *RAP 5.2, 18.22.*

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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

57.16.100 Conclusiveness of roll—Correction of errors.

(1) Whenever any assessment roll for local improvements shall have been confirmed by the district board of commissioners, the regularity, validity, and correctness of the proceedings relating to the improvements, and to the assessment therefor, including the action of the district commissioners upon the assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in this chapter, and not appealing from the action of the commissioners in confirming such assessment roll in the manner and within the time in this chapter provided. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor. However, this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds (a) that the property about to be sold does not appear upon the assessment roll, or (b) that the assessment had been paid.

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

(a) The board of commissioners may file a petition with the superior court of the county wherein the real property is located, asking that the court enter an order correcting such errors and directing that the county treasurer pay a portion or

all of the incorrect assessment by the transfer of funds from the district's maintenance fund, if such relief be necessary.

(b) Upon the filing of the petition, the court shall set a date for hearing and upon the hearing may enter an order as provided in (a) of this subsection. However, neither the correcting order nor the corrected assessment roll shall result in an increased assessment to the property owner. [1996 c 230 § 608; 1929 c 114 § 14; RRS § 11592. Cf. 1913 c 161 § 14.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.110 Segregation of assessment—Procedure.

Whenever any land against which there has been levied any special assessment by any district shall have been sold in part or divided, the board of commissioners of the district shall have the power to order a segregation of the assessment.

Any person desiring to have a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of commissioners of the district that levied the assessment. If the commissioners determine that a segregation should be made, they shall by resolution order the treasurer of the county in which the real property is located to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract and the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the treasurer of the county in which the real property is located who shall proceed to make the segregation. The board of commissioners may require as a condition to the order of segregation that the person seeking it pay the district the reasonable engineering and clerical costs incident to making the segregation. [1999 c 153 § 16; 1998 c 106 § 5; 1996 c 230 § 610; 1982 1st ex.s. c 17 § 19; 1953 c 251 § 23.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Segregation duties of county treasurer: RCW 36.29.160.

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

57.16.140 Excess sewer capacity or water supply not grounds for zoning decision challenge.

The construction of or existence of sewer capacity or water supply in excess of the needs of the density allowed by zoning shall not be grounds for any legal challenge to any zoning decision by the county. [1996 c 230 § 504; 1982 c 213 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.150 Foreclosure of assessments—Attorneys' fees. Judgments foreclosing special assessments pursuant to RCW 35.50.260 may also allow to districts, in addition to

delinquent installments, interest, penalties, and costs, such as attorneys' fees as the court may adjudge reasonable. [1996 c 230 § 611; 1987 c 449 § 16.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.16.160 Review of sewer general comprehensive plan—Time limitations—Notice of rejection of plan or extension of timeline. For any new or revised sewer general comprehensive plan submitted by a water-sewer district for review under this chapter, the appropriate state agency shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The appropriate state agency may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general comprehensive plan. For rejections of plans or extensions of the timeline, the appropriate state agency shall provide in writing to the water-sewer district the reason for such action. In addition, the governing body of the water-sewer district and the appropriate state agency may mutually agree to an extension of the deadlines contained in this section. [2002 c 161 § 2.]

**Chapter 57.20 RCW
FINANCES**

Sections

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- 57.20.015 Refunding general obligation bonds.
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Election to authorize revenue bonds: RCW 57.20.018.

57.20.010 General obligation bonds—Term—Issuance—Excess bond retirement levies. When general district indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations has been authorized, the district may issue its general obligation bonds in payment thereof.

The bonds shall not have terms in excess of twenty years and shall as nearly as practicable be issued for a period which

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will not exceed the life of the improvement to be acquired by the issuance of the bonds. The bonds shall be issued and sold in accordance with chapter 39.46 RCW. The election at which the voters are presented with a ballot proposition authorizing both the bond issue and imposition of excess bond retirement levies shall be held as provided in RCW 39.36.050.

Whenever the proposition to issue such bonds and impose such excess bond retirement levies has been approved, there shall be levied by the officers or governing body charged with the duty of levying taxes, annual levies in excess of the constitutional and/or statutory tax limitations sufficient to meet the annual or semiannual payments of principal and interest on the bonds upon all taxable property within the district. [1984 c 186 § 53; 1983 c 167 § 162; 1973 1st ex.s. c 195 § 71; 1970 ex.s. c 56 § 83; 1969 ex.s. c 232 § 87; 1953 c 251 § 12; 1951 2nd ex.s. c 25 § 3; 1931 c 72 § 2; 1929 c 114 § 11; RRS § 11589. Cf. 1913 c 161 § 11.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

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

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

57.20.015 Refunding general obligation bonds. (1)

The board of commissioners of any district may by resolution, without submitting the matter to the voters of the district, provide for the issuance of refunding general obligation bonds to refund any outstanding general obligation bonds, or any part thereof, at maturity thereof, or before the maturity thereof if they are subject to call for prior redemption or all of the owners thereof consent thereto. Refunding bonds may be combined with an issue of bonds for other district purposes, as long as those other bonds are approved in accordance with applicable law.

(2) The total cost to the district over the life of the refunding bonds or refunding portion of an issue of bonds shall not exceed the total cost to the district which the district would have incurred but for such refunding over the remainder of the life of the bonds to be refunded thereby.

(3) The refunding bonds may be exchanged for the bonds to be refunded thereby, or may be sold in such manner as the board of commissioners deems to be for the best interest of the district, and the proceeds of such sale used exclusively for the purpose of paying, retiring, and canceling the bonds to be refunded and interest thereon. Such bonds may be of any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. [1996 c 230 § 702; 1984 c 186 § 54; 1983 c 167 § 163; 1973 1st ex.s. c 195 § 72; 1953 c 251 § 16.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

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

Election to authorize revenue bonds: RCW 57.20.018.

57.20.018 Revenue bonds authorized—Use. (1) The commissioners may, without submitting a proposition to the voters, authorize by resolution the district to issue revenue bonds for the construction costs, interest during the period of construction and six months thereafter, working capital or other costs of the improvements described in any part or all of a general comprehensive plan or plans, or for other purposes or functions of a district authorized by statute. The amount of the bonds to be issued shall be included in the resolution.

(2) Any resolution authorizing the issuance of revenue bonds may include provision for refunding any local improvement district bonds of a district, out of the proceeds of sale of revenue bonds, and a district may pay off any outstanding local improvement bonds with such funds either by purchase in the open market below their par value and accrued interest or by call at par value and accrued interest at the next succeeding interest payment date. The bonds may be in any form, including bearer bonds or registered bonds as provided by RCW 39.46.030.

(3) Notwithstanding subsection (1) of this section, district revenue bonds may be issued and sold in accordance with chapter 39.46 RCW. [1996 c 230 § 703; 1987 c 449 § 14; 1983 c 167 § 160; 1977 ex.s. c 299 § 4; 1959 c 108 § 8; 1959 c 18 § 8. Prior: 1953 c 251 § 6; 1951 c 112 § 1; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part. Formerly RCW 57.16.030.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

57.20.0181 Additional revenue bonds for increased cost of improvements. Whenever a district shall have adopted a general comprehensive plan and bonds to defray the cost thereof shall have been authorized by resolution of the board of commissioners, and before the completion of the improvements the board of commissioners shall find by resolution that the authorized bonds are not sufficient to defray the cost of such improvements due to the increase of costs of construction subsequent to the adoption of the plan, the board of commissioners may by resolution authorize the issuance and sale of additional revenue bonds for such purpose in excess of those previously issued. [1996 c 230 § 704; 1977 ex.s. c 299 § 5; 1959 c 108 § 10. Formerly RCW 57.16.035.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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

The district may incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional tax limitation for the construction of the additions and betterments in the same way that general indebtedness may be incurred for the construction of the original general comprehensive plan after submission to the voters of the entire

district in the manner the original proposition to incur indebtedness was submitted as provided in RCW 57.20.105. Upon ratification the additions and betterments may be carried out by the commissioners to the extent specified or referred to in the proposition to incur the general indebtedness.

The district may issue revenue bonds to pay for the construction of the additions and the betterments pursuant to resolution of the board of commissioners. [1996 c 230 § 705; 1984 c 186 § 52; 1977 ex.s. c 299 § 6; 1973 1st ex.s. c 195 § 70; 1959 c 108 § 9; 1959 c 18 § 9. Prior: 1953 c 251 § 7; 1951 2nd ex.s. c 25 § 2; 1951 c 112 § 2; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part. Formerly RCW 57.16.040.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—1984 c 186: See note following RCW 39.46.110.

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

57.20.020 Revenue bonds—Special fund. (1) The commissioners shall have power and are required to create a special fund or funds for the sole purpose of paying the interest and principal of revenue bonds into which special fund or funds the commissioners shall obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of the water supply, sewer, or drainage system or any fixed amount out of and not exceeding a fixed proportion of such revenues, or a fixed amount or amounts without regard to any fixed proportion, and such bonds and the interest thereof shall be payable only out of such special fund or funds, and shall be a lien and charge against all revenues and payments received from any utility local improvement district or districts pledged to secure such bonds, subject only to operating and maintenance expenses.

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

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

(2) Revenue bonds payable from a special fund may be issued and sold in accordance with chapter 39.46 RCW. [1996 c 230 § 706; 1991 c 347 § 20; 1983 c 167 § 164; 1975 1st ex.s. c 25 § 3; 1970 ex.s. c 56 § 84; 1969 ex.s. c 232 § 88; 1959 c 108 § 11; 1939 c 128 § 3; RRS § 11588-1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

Alternative authority to issue revenue bonds: RCW 39.46.150, 39.46.160.

Authority to adjust or delay rates or charges for low-income persons: RCW 57.08.014.

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

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

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sale of such bonds. The board of commissioners may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. [1996 c 230 § 707; 1959 c 108 § 12.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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

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

Whenever local improvement district bonds have been refunded as provided by RCW 57.20.018, or pursuant to this section, all local improvement district assessments remaining unpaid shall thereafter when collected be paid into the revenue bond redemption fund established for payment of the refunding revenue bonds, and the cash balance, if any, in the local improvement guaranty fund of the district and the proceeds received from any other assets owned by such fund shall be used in whole or in part as a reserve fund for the refunding revenue bonds or be transferred in whole or in part to any other funds of the district as the board of commissioners may determine. If any warrants are outstanding against the local improvement guaranty fund of the district at the time of the issuance of such refunding revenue bonds, the bonds shall be issued in an amount sufficient also to fund and pay such outstanding warrants.

The provisions of RCW 57.20.020 shall apply to the refunding revenue bonds issued under this title. [1996 c 230 § 708; 1977 ex.s. c 299 § 8; 1959 c 108 § 13; 1953 c 251 § 17.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.027 Revenue warrants and revenue bond anticipation warrants. Districts may also issue revenue warrants and revenue bond anticipation warrants for the same purposes for which such districts may issue revenue bonds. The provisions of this chapter relating to the authorization, terms, conditions, covenants, issuance and sale of revenue bonds (exclusive of provisions relating to refunding) shall be

applicable to such warrants. Districts issuing revenue bond anticipation warrants may make covenants relative to the issuance of revenue bonds to provide funds for the redemption of part or all of such warrants and may contract for the sale of such bonds and warrants. [1996 c 230 § 709; 1975 1st ex.s. c 25 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.030 Local improvement guaranty fund. Every district in the state is authorized to create a fund for the purpose of guaranteeing, to the extent of such fund, and in the manner hereinafter provided, the payment of all of its local improvement bonds issued to pay for any local improvement within its confines. Such fund shall be designated "Local Improvement Guaranty Fund of the ". . . . Water-Sewer District," ". . . . Water District," ". . . . Sewer District," or ". . . . District No.," and shall be established by resolution of the board of commissioners. For the purpose of maintaining such fund, every district, after the establishment thereof, shall at all times set aside and pay into such a fund such proportion of the monthly gross revenues of the water supply, sewer, or drainage system of such district as the commissioners thereof may direct by resolution. This proportion may be varied from time to time as the commissioners deem expedient or necessary. However, under the existence of the conditions set forth in subsections (1) and (2) of this section, then the proportion must be as specified in subsections (1) and (2) of this section:

(1) Whenever any bonds of any local improvement district have been guaranteed under this section and RCW 57.20.080 and 57.20.090 and the guaranty fund does not have a cash balance equal to twenty percent of all bonds originally guaranteed under this section and RCW 57.20.080 and 57.20.090 (excluding issues which have been retired in full), then twenty percent of the gross monthly revenues derived from water, sewer, and drainage systems in the territory included in the local improvement district (but not necessarily from users in other parts of the district as a whole) shall be set aside and paid into the guaranty fund, except that whenever under the requirements of this subsection, the cash balance accumulates so that it is equal to twenty percent of all bonds guaranteed, or to the full amount of all bonds guaranteed, outstanding and unpaid (which amount might be less than twenty percent of the original total guaranteed), then no further money need be set aside and paid into the guaranty fund so long as the condition shall continue.

(2) Whenever any warrants issued against the guaranty fund, as provided in this section, remain outstanding and uncalled for lack of funds for six months from the date of issuance thereof; or whenever any coupons or bonds guaranteed under this section and RCW 57.20.080 and 57.20.090 have been matured for six months and have not been redeemed either in cash or by issuance and delivery of warrants upon the guaranty fund, then twenty percent of the gross monthly revenues (or such portion thereof as the commissioners of the district determine will be sufficient to retire the warrants or redeem the coupons or bonds in the ensuing six months) derived from all water, sewer, and drainage system users in the district shall be set aside and paid into the guaranty fund. However, whenever under the requirements of this

subsection all warrants, coupons, or bonds specified in this subsection have been redeemed, no further income needs to be set aside and paid into the guaranty fund under the requirements of this subsection until and unless other warrants remain outstanding and unpaid for six months or other coupons or bonds default.

(3) For the purposes of complying with the requirements of setting aside and paying into the local improvement guaranty fund a proportion of the monthly gross revenues of the water supply, sewer, or drainage system of any district, as provided in subsections (1) and (2) of this section, that district shall bind and obligate itself to maintain and operate the applicable system and further bind and obligate itself to establish, maintain, and collect such rates for water, sewer, or drainage as will produce gross revenues sufficient to maintain and operate that system and to make necessary provision for the local improvement guaranty fund as specified by this section and RCW 57.20.080 and 57.20.090. The district shall alter its rates for water, sewer, and drainage service from time to time and shall vary the same in different portions of its territory to comply with those requirements.

(4) Whenever any coupon or bond guaranteed by this section shall mature and there shall not be sufficient funds in the appropriate local improvement district bond redemption fund to pay the same, then the applicable county treasurer shall pay same from the local improvement guaranty fund of the district; if there shall not be sufficient funds in the guaranty fund to pay same, then the same may be paid by issuance and delivery of a warrant upon the local improvement guaranty fund.

(5) Whenever the cash balance in the local improvement guaranty fund is insufficient for the required purposes, warrants drawing interest at a rate determined by the commissioners may be issued by the applicable county auditor, against the fund to meet any liability accrued against it and must be issued upon demand of the holders of any maturing coupons and/or bonds guaranteed by this section, or to pay for any certificates of delinquency for delinquent installments of assessments as provided in subsection (6) of this section. Guaranty fund warrants shall be a first lien in their order of issuance upon the gross revenues set aside and paid into that fund.

(6) Within twenty days after the date of delinquency of any annual installment of assessments levied for the purpose of paying the local improvement bonds of any district guaranteed under the provisions of this section, it shall be mandatory for the county treasurer of the county in which the real property is located to compile a statement of all installments delinquent, together with the amount of accrued interest and penalty appurtenant to each of the installments. Thereupon the applicable county treasurer shall forthwith purchase (for the district) certificates of delinquency for all such delinquent installments. Payment for all such certificates of delinquency shall be made from the local improvement guaranty fund and if there shall not be sufficient money in the fund to pay for such certificates of delinquency, the applicable county treasurer shall accept the local improvement guaranty fund warrants in payment therefor. All of those certificates of delinquency shall be issued in the name of the local improvement guaranty fund and all guaranty fund warrants issued in payment therefor shall be issued in the name of the appropriate

local improvement district fund. Whenever any market is available and the commissioners of the district so direct, the applicable county treasurer shall sell any certificates of delinquency belonging to the local improvement guaranty fund. However, any such sale must not be for less than face value thereof plus accrued interest from date of issuance to date of sale.

(7) Certificates of delinquency, as provided in subsection (6) of this section, shall be issued by the county treasurer of the county in which the real property is located, shall bear interest at the rate of ten percent per annum, shall be in each instance for the face value of the delinquent installment, plus accrued interest to date of issuance of certificate of delinquency, plus a penalty of five percent of such face value, and shall set forth:

- (a) Description of property assessed;
- (b) Date installment of assessment became delinquent;
- (c) Name of owner or reputed owner, if known.

The certificates of delinquency may be redeemed by the owner of the property assessed at any time up to two years from the date of foreclosure of such certificate of delinquency. If any such certificate of delinquency is not redeemed on the second occurring first day of January subsequent to its issuance, the county treasurer who issued the certificate of delinquency shall then proceed to foreclose such certificate of delinquency in the manner specified for the foreclosure of the lien of local improvement assessments, pursuant to chapter 35.50 RCW and if no redemption be made within the succeeding two years shall execute and deliver a deed conveying fee simple title to the property described in the foreclosed certificate of delinquency. [1996 c 230 § 710; 1982 1st ex.s. c 17 § 20; 1981 c 156 § 20; 1937 c 102 § 1; 1935 c 82 § 1; RRS § 11589-1. Formerly RCW 57.20.030 through 57.20.070.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.080 Guaranty fund—Subrogation of district as trustee. Whenever there shall be paid out of a guaranty fund any sum on account of principal or interest upon a local improvement bond, or on account of purchase of certificates of delinquency, the district, as trustee for the fund, shall be subrogated to all rights of the owner of the bonds, or any interest, or delinquent assessment installments, so paid; and the proceeds thereof, or of the assessment or assessments underlying the same, shall become a part of the guaranty fund. There shall also be paid into such guaranty fund the interest received from the bank deposits of the fund, as well as any surplus remaining in the local improvement funds guaranteed by the guaranty fund, after the payment of all outstanding bonds payable primarily out of such local improvement funds. As among the several issues of bonds guaranteed by the fund, no preference shall exist, but defaulted bonds and any defaulted interest payments shall be purchased out of the fund in the order of their presentation.

The commissioners of every district that establishes a guaranty fund shall prescribe, by resolution, appropriate rules and regulations for the guaranty fund, not inconsistent herewith. So much of the money of a guaranty fund as is necessary and is not required for other purposes under this section and RCW 57.20.030 and 57.20.090 may, at the discretion of

the commissioners of the district, be used to purchase property at county tax foreclosure sales or from the county after foreclosure in cases where such property is subject to unpaid local improvement assessments securing bonds guaranteed by the guaranty fund and such purchase is deemed necessary for the purpose of protecting the guaranty fund. In such cases the guaranty fund shall be subrogated to all rights of the district. After so acquiring title to real property, the district may lease or resell and convey the same in the same manner that county property is authorized to be leased or resold and for such prices and on such terms as may be determined by resolution of the board of commissioners. Any provision of law to the contrary notwithstanding, all proceeds resulting from such resales shall belong to and be paid into the guaranty fund. [1996 c 230 § 711; 1983 c 167 § 165; 1937 c 102 § 2; 1935 c 82 § 2; RRS § 11589-2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

57.20.090 Rights and remedies of bond owner. The owner of any local improvement bonds guaranteed under the provisions of this section and RCW 57.20.030 and 57.20.080 shall not have any claim therefor against the district by which the same is issued, except for payment from the special assessments made for the improvement for which the local improvement bonds were issued, and except as against the local improvement guaranty fund of the district; and the district shall not be liable to any owner of such local improvement bond for any loss to the guaranty fund occurring in the lawful operation thereof by the district. The remedy of the owner of a local improvement bond, in case of nonpayment, shall be confined to the enforcement of the assessment and to the guaranty fund. A copy of the foregoing part of this section shall be plainly written, printed or engraved on each local improvement bond guaranteed by this section and RCW 57.20.030 and 57.20.080. The establishment of a local improvement guaranty fund by any district shall not be deemed at variance from any comprehensive plan heretofore adopted by that district.

If any local improvement guaranty fund hereunder authorized at any time has a balance therein in cash, and the obligations guaranteed thereby have all been paid off, then such balance shall be transferred to the maintenance fund of the district. [1996 c 230 § 712; 1983 c 167 § 166; 1937 c 102 § 3; 1935 c 82 § 3; RRS § 11589-3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

57.20.105 Vote on general indebtedness. The commissioners may submit to the voters of the district at any general or special election, a proposition that the district incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional tax limitation for the construction of any part or all of the improvements described in its general comprehensive plan or plans. Elections shall be held as provided in RCW 39.36.050. The proposition authorizing both the bond issue and imposition of excess bond

retirement levies must be adopted by three-fifths of the voters voting thereon, at which election the total number of persons voting on the proposition shall constitute not less than forty percent of the total number of votes cast in the district at the last preceding general election. The bonds shall not be issued to run for a period longer than thirty years from the date of the issue. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

Whenever the proposition to issue general obligation bonds and impose such excess bond retirement levies has been approved, there shall be levied by the officers or governing body charged with the duty of levying taxes, annual levies in excess of the constitutional tax limitation sufficient to meet the annual or semiannual payments of principal and interest on the bonds upon all taxable property within the district. [1996 c 230 § 701; 1984 c 186 § 51; 1974 ex.s. c 31 § 1. Prior: 1973 1st ex.s. c 195 § 69; 1959 c 108 § 7; 1959 c 18 § 7; prior: 1953 c 251 § 5; 1951 2nd ex.s. c 25 § 1; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part. Formerly RCW 57.16.020.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—1984 c 186: See note following RCW 39.46.110.

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

Limitation on

levies: State Constitution Art. 7 § 2; RCW 84.52.010, 84.52.050 through 84.52.056.

municipal corporation indebtedness: State Constitution Art. 8 § 6.

57.20.110 Limitation of indebtedness. A district is authorized and empowered by and through its board of commissioners to contract indebtedness for its purposes, and the maintenance thereof not exceeding one-half of one percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015. [1996 c 230 § 713; 1970 ex.s. c 42 § 35; 1929 c 114 § 19; RRS § 11596. Cf. 1913 c 161 § 18.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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

Limitation on municipal corporation indebtedness: State Constitution Art. 8 § 6.

57.20.120 Additional indebtedness—Ballot proposition. A district may contract indebtedness in excess of the amount named in RCW 57.20.110, but not exceeding in amount, together with existing indebtedness, two and one-half percent of the value of the taxable property in that district, as the term "value of the taxable property" is defined in RCW 39.36.015, and impose excess property tax levies to retire the indebtedness whenever a ballot proposition authorizing the indebtedness and excess levies is approved as provided under Article VII, section 2, and Article VIII, section 6, of the state Constitution, at an election to be held in the district in the manner provided by this title and RCW 39.36.050. [1999 c 153 § 17; 1996 c 230 § 714; 1984 c 186 § 55; 1970 ex.s. c 42 § 36; 1929 c 114 § 20; RRS § 11597. Cf. 1913 c 161 § 19.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—1984 c 186: See note following RCW 39.46.110.

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

57.20.130 Bonds—Payment of interest. Any coupons for the payment of interest on bonds of any district shall be considered for all purposes as warrants drawn upon the general fund of the district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such district at maturity, or thereafter, and when so presented, if there are not funds in the treasury to pay the coupons, it shall be the duty of the county treasurer to endorse the coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter the coupons shall bear interest at the same rate as the bonds to which they were attached. When there are no funds in the treasury to make interest payments on bonds not having coupons, the overdue interest payment shall continue bearing interest at the bond rate until it is paid, unless otherwise provided in the proceedings authorizing the sale of the bonds. [1996 c 230 § 715; 1983 c 167 § 167; 1929 c 114 § 22; RRS § 11599. Cf. 1913 c 161 § 21.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

57.20.135 Treasurer—Designation—Approval—Powers and duties—Bond. Upon obtaining the approval of the county treasurer, the board of commissioners of a district with more than twenty-five hundred water customers or sewer customers may designate by resolution some other person having experience in financial or fiscal matters as the treasurer of the district. Such a treasurer shall possess all of the powers, responsibilities, and duties of, and shall be subject to the same restrictions as provided by law for, the county treasurer with regard to a district, and the county auditor with regard to district financial matters. Such treasurer shall be bonded for not less than twenty-five thousand dollars. Approval by the county treasurer authorizing such a district to designate its treasurer shall not be arbitrarily or capriciously withheld. [1996 c 230 § 716; 1988 c 162 § 11; 1983 c 57 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Ratification—1988 c 162 §§ 10 and 11: "Any action taken by a sewer district treasurer or water district treasurer prior to March 21, 1988, and consistent with sections 10 and 11 of this act is ratified and confirmed." [1988 c 162 § 12.]

57.20.140 Maintenance or general fund and special funds. The treasurer shall create and maintain a separate fund designated as the maintenance fund or general fund of the district into which shall be paid all money received by the treasurer from the collection of taxes other than taxes levied for the payment of general obligation bonds of the district and all revenues of the district other than assessments levied in local improvement districts or utility local improvement dis-

tricts, and no money shall be disbursed therefrom except upon warrants of the county auditor issued by authority of the commissioners or upon a resolution of the commissioners ordering a transfer to any other fund of the district. The treasurer also shall maintain such other special funds as may be prescribed by the district, into which shall be placed such money as the board of commissioners may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by authority of the board of commissioners. [1999 c 153 § 18; 1996 c 230 § 717; 1983 c 57 § 3; 1959 c 108 § 14; 1929 c 114 § 23; RRS § 11600. Cf. 1913 c 161 § 22.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.150 Maintenance or general fund and special funds—Use of surplus in maintenance or general fund. Whenever a district has accumulated money in the maintenance fund or general fund of the district in excess of the requirements of that fund, the board of commissioners may in its discretion use any of that surplus money for any of the following purposes: (1) Redemption or servicing of outstanding obligations of the district; (2) maintenance expenses of the district; (3) construction or acquisition of any facilities necessary to carry out the purposes of the district; or (4) any other proper district purpose. [1996 c 230 § 718; 1959 c 108 § 15.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.160 Maintenance or general fund and special funds—Deposits and investments. Whenever there shall have accumulated in any general or special fund of a district money, the disbursement of which is not yet due, the board of commissioners may, by resolution, authorize the treasurer to deposit or invest such money in qualified public depositories, or to invest such money in any investment permitted at any time by RCW 36.29.020. However, the county treasurer may refuse to invest any district money the disbursement of which will be required during the period of investment to meet outstanding obligations of the district. [1996 c 230 § 719; 1986 c 294 § 13; 1983 c 66 § 22; 1981 c 24 § 4; 1973 1st ex.s. c 140 § 3; 1959 c 108 § 16.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1983 c 66: See note following RCW 39.58.010.

Public depositories: Chapter 39.58 RCW.

57.20.165 Deposit account requirements. District money shall be deposited by the district in any account, which may be interest-bearing, subject to such requirements and conditions as may be prescribed by the state auditor. The account shall be in the name of the district except upon request by the treasurer, the accounts shall be in the name of the ". . . (name of county). . . county treasurer." The treasurer may instruct the financial institutions holding the deposits to transfer them to the treasurer at such times as the treasurer may deem appropriate, consistent with regulations governing and policies of the financial institution. [1996 c 230 § 720; 1981 c 24 § 2.]

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Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.20.170 Maintenance or general fund and special funds—Loans from maintenance or general funds to construction funds or other funds. The board of commissioners of any district may, by resolution, authorize and direct a loan or loans from maintenance funds or general funds of the district to construction funds or other funds of the district, so long as that loan or loans do not, in the opinion of the board of commissioners, impair the ability of the district to operate and maintain its water supply, sewer, drainage, or street lighting systems. [1996 c 230 § 721; 1959 c 108 § 17.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.22 RCW

CONTRACTS FOR SYSTEM EXTENSIONS

Sections

57.22.010	Contracts—Conditions.
57.22.020	Reimbursement to owner.
57.22.030	Scope of reimbursement.
57.22.040	Reimbursement—Procedures.
57.22.050	District participation in financing project.

57.22.010 Contracts—Conditions. If the district approves an extension to the system, the district shall contract with owners of real estate located within the district boundaries, at an owner's request, for the purpose of permitting extensions to the district's system to be constructed by such owner at such owner's sole cost where such extensions are required as a prerequisite to further property development. The contract shall contain such conditions as the district may require pursuant to the district's adopted policies and standards. The district shall request comprehensive plan approval for such extension, if required, and connection of the extension to the district system is conditioned upon:

- (1) Construction of such extension according to plans and specifications approved by the district;
- (2) Inspection and approval of such extension by the district;
- (3) Transfer to the district of such extension without cost to the district upon acceptance by the district of such extension;
- (4) Payment of all required connection charges to the district;
- (5) Full compliance with the owner's obligations under such contract and with the district's rules and regulations;
- (6) Provision of sufficient security to the district to ensure completion of the extension and other performance under the contract;
- (7) Payment by the owner to the district of all of the district's costs associated with such extension including, but not limited to, the district's engineering, legal, and administrative costs; and
- (8) Verification and approval of all contracts and costs related to such extension. [1996 c 230 § 801; 1989 c 389 § 11.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.22.020 Reimbursement to owner. The contract shall also provide, subject to the terms and conditions in this section, for the reimbursement to the owner or the owner's assigns for a period not to exceed fifteen years of a portion of the costs of the facilities constructed pursuant to such contract from connection charges received by the district from other property owners who subsequently connect to or use the facilities within the fifteen-year period and who did not contribute to the original cost of such facilities. [1996 c 230 § 802; 1989 c 389 § 12.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.22.030 Scope of reimbursement. The reimbursement shall be a pro rata share of construction and contract administration costs of the project. Reimbursement for projects shall include, but not be limited to, design, engineering, installation, and restoration. [1996 c 230 § 803; 1989 c 389 § 13.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.22.040 Reimbursement—Procedures. The procedures for reimbursement contracts shall be governed by the following:

(1) A reimbursement area shall be formulated by the board of commissioners within a reasonable time after the acceptance of the extension. The reimbursement shall be based upon a determination by the board of commissioners of which parcels would require similar improvements upon development.

(2) The contract must be recorded in the appropriate county auditor's office after the final execution of the agreement. [1996 c 230 § 804; 1989 c 389 § 14.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.22.050 District participation in financing project. As an alternative to financing projects under this chapter solely by owners of real estate, districts may join in the financing of improvement projects and may be reimbursed in the same manner as the owners of real estate who participate in the projects, if the board of commissioners has specified the conditions of its participation in a resolution. [1996 c 230 § 805; 1989 c 389 § 15.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.24 RCW

ANNEXATION OF TERRITORY

Sections

57.24.001	Actions subject to review by boundary review board.
57.24.010	Annexation authorized—Petition—Notice of hearing.
57.24.020	Hearing procedure—Boundaries—Election, notice, judges.
57.24.040	Election—Qualification of voters.
57.24.050	Expense of election.
57.24.060	Petition method is alternative to election method.
57.24.070	Petition method—Petition—Signers—Content—Certain public properties excluded from local improvement districts.
57.24.080	Petition method—Hearing—Notice.
57.24.090	Petition method—Resolution providing for annexation.
57.24.100	Petition method—Effective date of annexation—Prior indebtedness.

57.24.170	Annexation of certain unincorporated territory—Authorized—Hearing.
57.24.180	Annexation of certain unincorporated territory—Opportunity to be heard—Effective date of annexation resolution—Notice—Referendum.
57.24.190	Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation.
57.24.200	Expenditure of funds to provide certain information authorized—Limits.
57.24.210	Annexation of certain unincorporated territory with boundaries contiguous to two municipal corporations providing water or sewer service—Procedure.
57.24.220	Assumption of substandard water system—Limited immunity from liability.

57.24.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 901; 1989 c 84 § 58.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.010 Annexation authorized—Petition—Notice of hearing. Territory within the county or counties in which a district is located, or territory adjoining or in close proximity to a district but which is located in another county, may be annexed to and become a part of the district. All annexations shall be accomplished in the following manner: Ten percent of the number of registered voters residing in the territory proposed to be annexed who voted in the last municipal general election may file a petition with the district commissioners and cause the question to be submitted to the voters of the territory whether such territory will be annexed and become a part of the district. If the commissioners concur in the petition, they shall file it with the county auditor of the county in which all or the largest geographic portion of the real property proposed to be annexed is located, who shall, within ten days, examine the signatures thereon and certify to the sufficiency or insufficiency thereof. If the area proposed to be annexed is located in more than one county, the auditor of the county in which the largest geographic portion of the area proposed to be annexed is located shall be the lead auditor and shall immediately transfer a copy of the petitions to the auditor of each other county in which the area proposed to be annexed is located. Within ten days after the lead auditor received the petition, the auditors of these other counties shall certify to the lead auditor: (1) The number of voters of that county residing in the area proposed to be annexed who voted at the last municipal general election; and (2) the number of valid signatures on the petition of voters of that county residing in the area proposed to be annexed. The lead auditor shall certify the sufficiency of the petition after receiving this information. If the petition contains a sufficient number of valid signatures, the lead county auditor shall transmit it, together with a certificate of sufficiency attached thereto, to the commissioners of the district.

If there are no registered voters residing in the territory to be annexed, the petition may be signed by such a number as appear of record to own at least a majority of the acreage in the territory, and the petition shall disclose the total number of acres of land in the territory and the names of all record owners of land therein. If the commissioners are satisfied as to the sufficiency of the petition and concur therein, they shall send it, together with their certificate of concurrence

attached thereto to the county legislative authority of each county in which the territory proposed to be annexed is located.

The county legislative authority, upon receipt of a petition certified to contain a sufficient number of signatures of registered voters, or upon receipt of a petition signed by such a number as own at least a majority of the acreage, together with a certificate of concurrence signed by the commissioners, at a regular or special meeting shall cause to be published once a week for at least two weeks in a newspaper in general circulation throughout the territory proposed to be annexed a notice that the petition has been filed, stating the time of the meeting at which it shall be presented, and setting forth the boundaries of the territory proposed to be annexed. [1996 c 230 § 902; 1990 c 259 § 31; 1989 c 308 § 4; 1988 c 162 § 14; 1982 1st ex.s. c 17 § 21; 1959 c 18 § 15. Prior: 1951 2nd ex.s. c 25 § 5; 1931 c 72 § 5, part; 1929 c 114 § 15, part; RRS § 11593, part. Cf. 1913 c 161 § 15, part.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.020 Hearing procedure—Boundaries—Election, notice, judges. When such petition is presented for hearing, the legislative authority of each county in which the territory proposed to be annexed is located shall hear the petition or may adjourn the hearing from time to time not exceeding one month in all, and any person, firm, or corporation may appear before the county legislative authority and make objections to the proposed boundary lines or to annexation of the territory described in the petition. Upon a final hearing each county legislative authority shall make such changes in the proposed boundary lines within the county as it deems to be proper and shall establish and define such boundaries and shall find whether the proposed annexation as established by the county legislative authority to the district will be conducive to the public health, welfare and convenience and will be of special benefit to the land included within the boundaries of the territory proposed to be annexed to the district. No lands which will not, in the judgment of the county legislative authority, be benefited by inclusion therein, shall be included within the boundaries of the territory as so established and defined. No change shall be made by the county legislative authority in the boundary lines, including any territory outside of the boundary lines described in the petition. No person having signed such petition shall be allowed to withdraw such person's name therefrom after the filing of the petition with the board of commissioners.

Upon the entry of the findings of the final hearing each county legislative authority, if it finds the proposed annexation to be conducive to the public health, welfare, and convenience and to be of special benefit to the land proposed to be annexed and included within the boundaries of the district, shall give notice of a special election to be held within the boundaries of the territory proposed to be annexed to the district for the purpose of determining whether the same shall be annexed to the district. The notice shall particularly describe the boundaries established by the county legislative authority, and shall state the name of the district to which the territory is proposed to be annexed, and the notice shall be published in a newspaper of general circulation in the territory proposed to be annexed at least once a week for a minimum

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of two successive weeks prior to the election and shall be posted for the same period in at least four public places within the boundaries of the territory proposed to be annexed, which notice shall designate the places within the territory proposed to be annexed where the election shall be held, and the proposition to the voters shall be expressed on ballots which contain the words:

For Annexation to District
or
Against Annexation to District

The county legislative authority shall name the persons to act as judges at that election. [1996 c 230 § 903; 1982 1st ex.s. c 17 § 22; 1959 c 18 § 16. Prior: 1931 c 72 § 5; 1929 c 114 § 15; RRS § 11593. Cf. 1913 c 161 § 15. Formerly RCW 57.24.010, 57.24.020, and 57.24.030.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.040 Election—Qualification of voters. (1) The annexation election shall be held on the date designated in the notice and shall be conducted in accordance with the general election laws of the state. If the original petition for annexation is signed by qualified voters, then only qualified voters at the date of election residing in the territory proposed to be annexed, shall be permitted to vote at the election.

(2) If the original petition for annexation is signed by property owners as provided for in this chapter, then no person shall be entitled to vote at that election unless at the time of the filing of the original petition he or she owned land in the district of record and in addition thereto at the date of election shall be a qualified voter of the county in which such district is located. It shall be the duty of the county auditor, upon request of the county legislative authority, to certify the names of all persons owning land in the district at the date of the filing of the original petition as shown by the records of the auditor's office; and at any such election the county auditor may require any such property owner offering to vote to take an oath that the property owner is a qualified voter of the county before the property owner shall be allowed to vote. However, at any election held under the provisions of this chapter an officer or agent of any corporation having its principal place of business in the county and owning land at the date of filing the original petition in the district duly authorized in writing may cast a vote on behalf of such corporation. When so voting the person shall file with the county auditor such a written instrument of that person's authority.

(3) If the majority of the votes cast upon the question of such election shall be for annexation, then the territory concerned shall immediately be and become annexed to such district and the same shall then forthwith be a part of the district, the same as though originally included in that district. [1999 c 153 § 19; 1996 c 230 § 904; 1929 c 114 § 16; RRS § 11593-1.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.050 Expense of election. All elections held pursuant to this chapter, whether general or special, shall be con-

ducted by the county auditor of the county in which the district is located. The expense of all such elections shall be paid for out of the funds of such district. [1999 c 153 § 20; 1996 c 230 § 905; 1929 c 114 § 17; RRS § 11594. Cf. 1913 c 161 § 16.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.060 Petition method is alternative to election method. The method of annexation provided for in RCW 57.24.070 through 57.24.100 shall be an alternative method to that specified in RCW 57.24.010 through 57.24.050. [1953 c 251 § 22.]

57.24.070 Petition method—Petition—Signers—Content—Certain public properties excluded from local improvement districts. As an alternative method of annexation, a petition for annexation of an area contiguous to a district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, excluding county and state rights of way, parks, tidelands, lakes, retention ponds, and stream and water courses. Additionally, the petition shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. Those county and state properties shall be excluded from local improvement districts or utility local improvement districts in the annexed area and from special assessments, rates, or charges of the district except where service has been regulated and provided to such properties. The owners of such property shall be invited to be included within local improvement districts or utility local improvement districts at the time they are proposed for formation. [1996 c 230 § 906; 1985 c 141 § 8; 1953 c 251 § 18.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.080 Petition method—Hearing—Notice. If the petition for annexation filed with the board of commissioners complies with the requirements of law, as proved to the satisfaction of the board of commissioners, it may entertain the petition, fix the date for public hearing thereon, and cause notice of the hearing to be published in one issue of a newspaper of general circulation in the area proposed to be annexed and also posted in three public places within the area proposed for annexation. The notice shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of publication and posting of the notice shall be borne by the signers of the petition. [1953 c 251 § 19.]

57.24.090 Petition method—Resolution providing for annexation. Following the hearing the board of commissioners shall determine by resolution whether annexation shall be made. It may annex all or any portion of the proposed area but may not include in the annexation any property not

described in the petition. Upon passage of the resolution a certified copy shall be filed with the legislative authority of the county in which the annexed property is located. [1996 c 230 § 907; 1953 c 251 § 20.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

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

No property within the limits of the territory so annexed shall ever be taxed or assessed to pay any portion of the indebtedness of the district to which it is annexed contracted prior to or existing at the date of annexation; nor shall any such property be released from any taxes or assessments levied against it or from liability for payment of outstanding bonds or warrants issued prior to such annexation. [1953 c 251 § 21.]

57.24.170 Annexation of certain unincorporated territory—Authorized—Hearing. When there is, within a district, unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to the district, the board of commissioners may resolve to annex that territory to the district. The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the district and one or more newspapers of general circulation within the area to be annexed. [1996 c 230 § 908; 1982 c 146 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.180 Annexation of certain unincorporated territory—Opportunity to be heard—Effective date of annexation resolution—Notice—Referendum. On the date set for hearing under RCW 57.24.170, residents or property owners of the area included in the resolution for annexation shall be afforded an opportunity to be heard. The board of commissioners may provide by resolution for annexation of the territory described in the resolution, but the effective date of the resolution shall be not less than forty-five days after the passage thereof. The board of commissioners shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the resolution, in one or more newspapers of general circulation within the district and in one or more newspapers of general circulation within the area to be annexed. Upon the filing of a timely and sufficient referendum petition under RCW 57.24.190, a referendum election shall be held under RCW 57.24.190, and the annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto. After the expiration of the forty-fifth day from but excluding the date of passage of the annexation resolution, if no timely and sufficient referendum petition has been filed, under RCW

57.24.190, the area annexed shall become a part of the district upon the date fixed in the resolution of annexation. [1996 c 230 § 909; 1982 c 146 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.190 Annexation of certain unincorporated territory—Referendum authorized—Petition—Election—Effective date of annexation. The annexation resolution under RCW 57.24.180 shall be subject to referendum for forty-five days after the passage thereof. Upon the filing of a timely and sufficient referendum petition with the board of commissioners, signed by registered voters in number equal to not less than ten percent of the registered voters in the area to be annexed who voted in the last municipal general election, the question of annexation shall be submitted to the voters of such area in a general election if one is to be held within ninety days or at a special election called for that purpose by the board of commissioners in accordance with *RCW 29.13.010 and 29.13.020. Notice of that election shall be given under RCW 57.24.020 and the election shall be conducted under RCW 57.24.040. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation resolution, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the district upon the date fixed in the resolution of annexation upon transmitting the resolution to the county legislative authority. [1996 c 230 § 910; 1990 c 259 § 32; 1982 c 146 § 6.]

***Reviser's note:** RCW 29.13.010 and 29.13.020 were recodified as RCW 29A.04.320 and 29A.04.330, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.200 Expenditure of funds to provide certain information authorized—Limits. A district may expend funds to inform residents in areas proposed for annexation into the district of the following:

- (1) Technical information and data;
- (2) The fiscal impact of the proposed improvement; and
- (3) The types of improvements planned.

Expenditures under this section shall be limited to research, preparation, printing, and mailing of the information. [1996 c 230 § 911; 1986 c 258 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.210 Annexation of certain unincorporated territory with boundaries contiguous to two municipal corporations providing water or sewer service—Procedure. When there is unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to two municipal corporations providing either water or sewer service, one of which is a water-sewer district, the legislative authority of either of the contiguous municipal corporations may resolve to annex such territory to that municipal corporation, provided a

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majority of the legislative authority of the other contiguous municipal corporation concurs. In such event, the municipal corporation resolving to annex such territory may proceed to effect the annexation by complying with RCW 57.24.170 through 57.24.190. For purposes of this section, "municipal corporation" means a water-sewer district, city, or town. [2002 c 76 § 1; 1996 c 230 § 912; 1995 c 279 § 2; 1987 c 449 § 17.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.24.220 Assumption of substandard water system—Limited immunity from liability. A district assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the district has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1996 c 230 § 913; 1994 c 292 § 8.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Findings—Intent—1994 c 292: See note following RCW 57.04.050.

Chapter 57.28 RCW

WITHDRAWAL OF TERRITORY

Sections

57.28.001	Actions subject to review by boundary review board.
57.28.010	Withdrawal authorized—Petition.
57.28.020	Petition of residents.
57.28.030	Petition of landowners.
57.28.035	Alternative procedure—Resolution.
57.28.040	Notice of hearing—Bond for costs.
57.28.050	Hearing—Findings.
57.28.060	Transmission to county legislative authorities.
57.28.070	Notice of hearing before county legislative authority.
57.28.080	Hearing—Findings.
57.28.090	Election on withdrawal.
57.28.100	Notice of election—Election—Canvass.
57.28.110	Taxes and assessments unaffected.

57.28.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 1001; 1989 c 84 § 59.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.010 Withdrawal authorized—Petition. Territory within a district may be withdrawn therefrom in the following manner and upon the following conditions: The petition for withdrawal shall be in writing and shall designate the boundaries of the territory proposed to be withdrawn from the district and shall be signed by at least twenty-five percent of the qualified voters residing within the territory so designated who are qualified voters on the date of filing such peti-

tion. The petition shall set forth that the territory proposed to be withdrawn is of such location or character that water and sewer services cannot be furnished to it by the district at reasonable cost, and shall further set forth that the withdrawal of such territory will be of benefit to such territory and conducive to the general welfare of the balance of the district. [1996 c 230 § 1002; 1941 c 55 § 1; Rem. Supp. 1941 § 11604-1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.020 Petition of residents. The petition for withdrawal shall be filed with the county auditor of each county in which the district is located, and after the filing no person having signed the petition shall be allowed to withdraw the person's name therefrom. Within ten days after such filing, each county auditor shall examine and verify the signatures of signers residing in the respective county. The petition shall be transmitted to the auditor of the county in which all or the major geographic portion of the district is located, who shall certify to the sufficiency or insufficiency of the signatures. If the area proposed to be withdrawn is located in more than one county, the auditor of the county in which the largest geographic portion of the area proposed to be withdrawn is located shall be the lead auditor and shall immediately transfer a copy of the petitions to the auditor of each other county in which the area proposed to be withdrawn is located. Within ten days after the lead auditor received the petition, the auditors of these other counties shall certify to the lead auditor: (1) The number of voters of that county residing in the area proposed to be withdrawn who voted at the last municipal general election; and (2) the number of valid signatures on the petition of voters of that county residing in the area proposed to be withdrawn. The lead auditor shall certify the sufficiency of the petition after receiving this information. If such petition be found by such county auditor to contain sufficient signatures, the petition, together with a certificate of sufficiency attached thereto, shall be transmitted to the board of commissioners of the district. [1996 c 230 § 1003; 1982 1st ex.s. c 17 § 23; 1941 c 55 § 2; Rem. Supp. 1941 § 11604-2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.030 Petition of landowners. In the event there are no qualified voters residing within the territory proposed to be withdrawn, the petition for withdrawal may be signed by such persons as appear of record to own at least a majority of the acreage within such territory, in which event the petition shall also state the total number of acres and the names of all record owners of the land within such territory. The petition so signed shall be filed with the board of commissioners of the district, and after such filing no person having signed the same shall be allowed to withdraw that person's name. [1996 c 230 § 1004; 1941 c 55 § 3; Rem. Supp. 1941 § 11604-3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.035 Alternative procedure—Resolution. As an alternative procedure to those set forth in RCW 57.28.010

through 57.28.030, the withdrawal of territory within a district may be commenced by a resolution of the board of commissioners that sets forth boundaries of the territory to be withdrawn and sets a date for the public hearing required under RCW 57.28.050. Upon the final hearing, the board of commissioners shall make such changes in the proposed boundaries as they deem proper, except that no changes in the boundary lines may be made by the board of commissioners to include lands not within the boundaries of the territory as described in such resolution.

Whenever the board of commissioners proposes to commence the withdrawal of any portion of its territory located within a city or town using the alternative procedures herein authorized, it shall first notify such city or town of their [its] intent to withdraw the territory. If the legislative authority of the city or town takes no action within sixty days of receipt of notification, the district may proceed with the resolution method.

If the city or town legislative authority disapproves of use of the alternative procedures, the board of commissioners may proceed using the process established under RCW 57.28.010 through 57.28.030.

A withdrawal procedure commenced under this section shall be subject to the procedures and requirements set forth in RCW 57.28.040 through 57.28.110. [1996 c 230 § 1005; 1985 c 153 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.040 Notice of hearing—Bond for costs. Upon receipt by the board of commissioners of a petition and certificate of sufficiency of the auditor, or if the petition is signed by landowners and the board of commissioners is satisfied as to the sufficiency of the signatures thereon, it shall at a regular or special meeting fix a date for hearing on the petition and give notice that the petition has been filed, stating the time and place of the meeting of the board of commissioners at which the petition will be heard and setting forth the boundaries of the territory proposed to be withdrawn. The notice shall be published at least once a week for two successive weeks in a newspaper of general circulation therein, and if no such newspaper is printed in the county, then in some newspaper of general circulation in the county and district. Any additional notice of the hearing may be given as the board of commissioners may by resolution direct.

Prior to fixing the time for a hearing on any such petition, the board of commissioners in its discretion may require the petitioners to furnish a satisfactory bond conditioned that the petitioners shall pay all costs incurred by the district in connection with the petition, including the cost of an election if one is held pursuant thereto, and should the petitioners fail or refuse to post such a bond, if one is required by the district board of commissioners, then there shall be no duty on the part of the board of commissioners to act upon the petition. [1996 c 230 § 1006; 1985 c 469 § 59; 1951 c 112 § 3; 1941 c 55 § 4; Rem. Supp. 1941 § 11604-4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.050 Hearing—Findings. The petition for withdrawal shall be heard at the time and place specified in such

notice or the hearing may be adjourned from time to time, not exceeding one month in all, and any person may appear at such hearing and make objections to the withdrawal of such territory or to the proposed boundary lines thereof. Upon final hearing on the petition for withdrawal, the board of commissioners of the district shall make such changes in the proposed boundary lines as it deems to be proper, except that no changes in the boundary lines shall be made by the board of commissioners to include lands not within the boundaries of the territory as described in such petition. In establishing and defining such boundaries the board of commissioners shall exclude any property which is then being furnished with water, sewer, or drainage service by the district or which is included in any distribution or collection system the construction of which is included within any duly established local improvement district or utility local improvement district, and the territory as finally established and defined must be substantial in area and consist of adjoining or contiguous properties. The board of commissioners shall thereupon make and by resolution adopt findings of fact as to the following questions:

- (1) Would the withdrawal of such territory be of benefit to such territory?
- (2) Would such withdrawal be conducive to the general welfare of the balance of the district?

Such findings shall be entered in the records of the district, together with any recommendations the board of commissioners may by resolution adopt. [1999 c 153 § 21; 1996 c 230 § 1007; 1986 c 109 § 1; 1941 c 55 § 5; Rem. Supp. 1941 § 11604-5.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.060 Transmission to county legislative authorities. Within ten days after the final hearing the board of commissioners of the district shall transmit to the county legislative authority of each county in which the district is located the petition for withdrawal, together with a copy of the findings and recommendations of the board of commissioners of the district certified by the secretary of the district to be a true and correct copy of such findings and recommendations as the same appear on the records of the district. [1996 c 230 § 1008; 1982 1st ex.s. c 17 § 24; 1941 c 55 § 6; Rem. Supp. 1941 § 11604-6.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.070 Notice of hearing before county legislative authority. Upon receipt of the petition and certified copy of the findings and recommendations adopted by the district commissioners, the county legislative authority of each county in which the district is located at a regular or special meeting shall fix a time and place for hearing thereon and shall cause to be published at least once a week for two or more weeks in successive issues of a newspaper of general circulation in the district, a notice that such petition has been presented to the county legislative authority stating the time and place of the hearing thereon, setting forth the boundaries of the territory proposed to be withdrawn as such boundaries

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are established and defined in the findings or recommendations of the board of commissioners of the district. [1996 c 230 § 1009; 1982 1st ex.s. c 17 § 25; 1941 c 55 § 7; Rem. Supp. 1941 § 11604-7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.080 Hearing—Findings. The petition shall be heard at the time and place specified in the notice, or the hearing may be adjourned from time to time, not exceeding one month in all, and any person may appear at the hearing and make objections to the withdrawal of the territory. Upon final hearing on the petition the county legislative authority shall thereupon make, enter, and by resolution adopt its findings of fact on the questions set forth in RCW 57.28.050. If the findings of fact answer the questions affirmatively, and if they are the same as the findings made by the district commissioners, then the county legislative authority shall by resolution declare that the territory be withdrawn from that district, and thereupon the territory shall be withdrawn and excluded from that district the same as if it had never been included therein except for the lien of taxes as hereinafter set forth. However, the boundaries of the territory withdrawn shall be the boundaries established and defined by the district board of commissioners and shall not be altered or changed by the county legislative authority unless the unanimous consent of the district commissioners be given in writing to any such alteration or change. [1996 c 230 § 1010; 1941 c 55 § 8; Rem. Supp. 1941 § 11604-8.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.090 Election on withdrawal. If the findings of any county legislative authority answer any of the questions of fact set forth in RCW 57.28.050 in the negative, or if any of the findings of the county legislative authority are not the same as the findings of the district board of commissioners upon the same question, then in either of such events, the petition for withdrawal shall be deemed denied. Thereupon, and in such event, the county legislative authority of each county in which the district is located shall by resolution cause a special election to be held not less than thirty days or more than sixty days from the date of the final hearing of any county legislative authority upon the petition for withdrawal, at which election the proposition expressed on the ballots shall be substantially as follows:

"Shall the territory established and defined by the district board of commissioners at its meeting held on the (insert date of final hearing of district board of commissioners upon the petition for withdrawal) be withdrawn from district (naming it).

YES NO

[1996 c 230 § 1011; 1982 1st ex.s. c 17 § 26; 1941 c 55 § 9; Rem. Supp. 1941 § 11604-9.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.100 Notice of election—Election—Canvass. Notice of the election shall be posted and published in the

same manner provided by law for the posting and publication of notice of elections to annex territory to districts. The territory described in the notice shall be that established and defined by the district board of commissioners. All qualified voters residing within the district shall have the right to vote at the election. If a majority of the votes cast favor the withdrawal from the district of such territory, then within ten days after the official canvass of the election the county legislative authority of each county in which the district is located shall by resolution establish that the territory has been withdrawn, and the territory shall thereupon be withdrawn and excluded from the district the same as if it had never been included therein except for the lien of any taxes as hereinafter set forth. [1996 c 230 § 1012; 1982 1st ex.s. c 17 § 27; 1941 c 55 § 10; Rem. Supp. 1941 § 11604-10.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.28.110 Taxes and assessments unaffected. Taxes or assessments levied or assessed against property located in territory withdrawn from a district shall remain a lien and be collected as by law provided when the taxes or assessments are levied or assessed prior to the withdrawal or when the levies or assessments are duly made to provide revenue for the payment of general obligations or general obligation bonds of the district duly incurred or issued prior to the withdrawal. [1996 c 230 § 1013; 1941 c 55 § 11; Rem. Supp. 1941 § 11604-11.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.32 RCW

CONSOLIDATION OF DISTRICTS—TRANSFER OF PART OF DISTRICT

Sections

57.32.001	Actions subject to review by boundary review board.
57.32.010	Consolidation authorized—Petition method—Resolution method.
57.32.020	Certificate of sufficiency.
57.32.021	Procedure upon receipt of certificate of sufficiency—Agreement, contents—Comprehensive plan.
57.32.022	Certification of agreement—Election, notice and conduct.
57.32.023	When consolidation effective—Cessation of former districts—Rights and powers of consolidated district.
57.32.024	Vesting of funds and property in consolidated district—Outstanding indebtedness.
57.32.130	Commissioners—Number.
57.32.160	Transfer of part of district—Procedure.

Assumption of jurisdiction over water or sewer district by city: Chapter 35.13A RCW.

57.32.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 1101; 1989 c 84 § 60.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.010 Consolidation authorized—Petition method—Resolution method. Two or more districts may be joined into one consolidated district. The consolidation may be initiated in either of the following ways: (1) Ten percent of the voters residing within each of the districts pro-

posed to be consolidated may petition the board of commissioners of their respective districts to cause the question to be submitted to the voters of the districts proposed to be consolidated; or (2) the board of commissioners of each of the districts proposed to be consolidated may by resolution determine that the consolidation of the districts shall be conducive to the public health, welfare, and convenience and to be of special benefit to the lands of the districts. [1996 c 230 § 1102; 1989 c 308 § 11; 1982 1st ex.s. c 17 § 28; 1967 ex.s. c 39 § 1; 1943 c 267 § 1; Rem. Supp. 1943 § 11604-20.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.020 Certificate of sufficiency. If the consolidation proceedings are initiated by petitions, upon the filing of such petitions with the boards of commissioners of the districts, the boards of commissioners of each district shall file such petitions with the auditor of the county in which all or the largest geographic portion of the respective districts is located, who shall within ten days examine and verify the signatures of the signers residing in the county. If the districts proposed to be consolidated include areas located in more than one county, the auditor of the county in which the largest geographic portion of the consolidating districts is located shall be the lead auditor and shall immediately transfer a copy of the petitions to the auditor of each other county in which the consolidating districts are located. Within ten days after the lead auditor received the petition, the auditors of these other counties shall certify to the lead auditor: (1) The number of voters of that county residing in each consolidating district; and (2) the number of valid signatures on the petition of voters of that county residing in each consolidating district. The lead auditor shall certify the sufficiency of the petition after receiving this information. If all of such petitions shall be found to contain a sufficient number of signatures, the county auditor shall transmit the same, together with a certificate of sufficiency attached thereto, to the board of commissioners of each of the districts proposed for consolidation.

If there are no voters residing in one or more of the districts proposed to be consolidated, such petitions may be signed by such a number of landowners as appear of record to own at least a majority of the acreage in the pertinent district, and the petitions shall disclose the total number of acres of land in that district and shall also contain the names of all record owners of land therein. [1996 c 230 § 1103; 1982 1st ex.s. c 17 § 30; 1967 ex.s. c 39 § 2; 1943 c 267 § 2; Rem. Supp. 1943 § 11604-21.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.021 Procedure upon receipt of certificate of sufficiency—Agreement, contents—Comprehensive plan. Upon receipt by the boards of commissioners of the districts proposed for consolidation, hereinafter referred to as the "consolidating districts", of the lead county auditor's certificate of sufficiency of the petitions, or upon adoption by the boards of commissioners of the consolidating districts of their resolutions for consolidation, the boards of commissioners of the consolidating districts shall, within ninety days, enter into an agreement providing for consolidation. The agreement shall set forth the method and manner of consoli-

dation, a comprehensive plan or scheme of water supply, sewer, and drainage services for the consolidated district, and if the comprehensive plan or scheme of water supply, sewer, and drainage services provides that one or more of the consolidating districts or the proposed consolidated district issue revenue bonds for either the construction or other costs of any part or all of the comprehensive plan, or both, then the details thereof shall be set forth. The requirement that a comprehensive plan or scheme of water supply, sewer, and drainage services for the consolidated district be set forth in the agreement for consolidation shall be satisfied if the existing comprehensive plans or schemes of the consolidating districts are incorporated therein by reference and any changes or additions thereto are set forth in detail. [1996 c 230 § 1104; 1967 ex.s. c 39 § 8.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.022 Certification of agreement—Election, notice and conduct. The boards of commissioners of the consolidating districts shall certify the agreement to the county auditors of the respective counties in which the districts are located. A special election shall be called by the county auditors for the purpose of submitting to the voters of each of the consolidating districts the proposition of whether or not the several districts shall be consolidated into one district. The proposition shall give the title of the proposed consolidated district. Notice of the election shall be given and the election conducted in accordance with the general election laws. [1996 c 230 § 1105; 1994 c 223 § 71; 1982 1st ex.s. c 17 § 31; 1967 ex.s. c 39 § 9.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.023 When consolidation effective—Cessation of former districts—Rights and powers of consolidated district. If at the election a majority of the voters in each of the consolidating districts vote in favor of the consolidation, the consolidation shall be authorized. The consolidation shall be effective and the consolidating districts shall cease to exist and shall then be and become a new district and municipal corporation of the state of Washington, upon the certification of the election results. The name of the new district shall be ". . . . Water-Sewer District," ". . . . Water District," ". . . . Sewer District," or ". . . . District No.," which shall be the name appearing on the ballot. The district shall have all and every power, right, and privilege possessed by other water-sewer, sewer, or water districts of the state of Washington. The district may issue revenue bonds to pay for the construction of any additions and betterments set forth in the comprehensive plan of water supply, sewer, and drainage services contained in the agreement for consolidation and any future additions and betterments to the comprehensive plan of water supply, sewer, and drainage services, as its board of district commissioners shall by resolution adopt, without submitting a proposition therefor to the voters of the district. [1999 c 153 § 22; 1996 c 230 § 1106; 1994 c 223 § 72; 1982 1st ex.s. c 17 § 32; 1967 ex.s. c 39 § 10.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

(2004 Ed.)

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.024 Vesting of funds and property in consolidated district—Outstanding indebtedness. Upon the formation of any consolidated district, all funds, rights, and property, real and personal, of the former districts, shall vest in and become the property of the consolidated district. Unless the agreement for consolidation provides to the contrary, any outstanding indebtedness of any form, owed by the districts, shall remain the obligation of the area of the original debtor district and the board of commissioners of the consolidated district shall make such levies, assessments, or charges for service upon that area or the users therein as shall pay off the indebtedness at maturity. [1996 c 230 § 1107; 1967 ex.s. c 39 § 11.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.130 Commissioners—Number. The commissioners of the districts consolidated into any new consolidated district shall become commissioners thereof until their respective terms of office expire or until they resign from office if the resignation is before the expiration of their terms of office. At each election of commissioners following the consolidation, only one position shall be filled, so that as the terms of office expire, the total number of commissioners in the consolidated district shall be reduced to three. However, if the agreement provides that the consolidated district eventually will be governed by a five-member board of commissioners, one commissioner shall be elected to a six-year term of office at the first district general election following the consolidation, two commissioners shall be elected to six-year terms of office at the second district general election following the consolidation, and two commissioners shall be elected to six-year terms of office at the third district general election following the consolidation. [1996 c 230 § 1108; 1985 c 141 § 9; 1943 c 267 § 13; Rem. Supp. 1943 § 11604-32.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.32.160 Transfer of part of district—Procedure. A part of one district may be transferred into an adjacent district if the area can be better served thereby. Such transfer can be accomplished by a petition, directed to both districts, signed by the owners according to the records of the county auditor of not less than sixty percent of the area of land to be transferred. If a majority of the commissioners of each district approves the petition, copies of the approving resolutions shall be filed with the county legislative authority which shall act upon the petition as a proposed action in accordance with RCW 57.02.040. [1996 c 230 § 1109; 1987 c 449 § 18.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.36 RCW MERGER OF DISTRICTS

Sections

57.36.001 Actions subject to review by boundary review board.
57.36.010 Merger of districts authorized.

- 57.36.020 Initiation of merger—Procedure.
 57.36.030 Agreement—Certification to county auditor—Election—
 Notice, conduct.
 57.36.040 When merger effective—Cessation of merging district—Com-
 missioners.
 57.36.050 Vesting of funds and property in merger district—Outstanding
 indebtedness.
 57.36.060 Persons serving on both boards to hold only one position after
 merger.

57.36.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 1201; 1989 c 84 § 61.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.010 Merger of districts authorized. Whenever one or more districts desire to merge into another district, the district or districts desiring to merge into the other district shall be referred to as the "merging district" or "merging districts" and the district into which the merging district or districts desire to merge shall be referred to as the "merger district." After the merger, the merger district shall survive under its original name or number. [1996 c 230 § 1202; 1989 c 308 § 12; 1982 1st ex.s. c 17 § 29; 1967 ex.s. c 39 § 3; 1961 c 28 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.020 Initiation of merger—Procedure. A merger of districts may be initiated in either of the following ways:

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

(2) Whenever ten percent of the voters residing within the merging district or districts petition the board of commissioners of the merging district or districts for a merger, and the board of commissioners of the merger district determines by resolution that the merger of the districts shall be conducive to the public health, welfare, and convenience of the districts. [1996 c 230 § 1203; 1967 ex.s. c 39 § 4; 1961 c 28 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.030 Agreement—Certification to county auditor—Election—Notice, conduct. Whenever a merger is initiated in either of the two ways provided under this chapter, the boards of commissioners of the districts shall enter into an agreement providing for the merger. The agreement must be entered into within ninety days following completion of the last act in initiation of the merger.

The respective boards of commissioners shall certify the agreement to the county auditor of each county in which the districts are located. Each county auditor shall call a special election for the purpose of submitting to the voters of the respective districts the proposition of whether the merging district or districts shall be merged into the merger district. Notice of the elections shall be given and the elections conducted in accordance with the general election laws. [1996 c

230 § 1204; 1982 1st ex.s. c 17 § 33; 1967 ex.s. c 39 § 5; 1961 c 28 § 3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.040 When merger effective—Cessation of merging district—Commissioners. If at such election a majority of the voters of the merging district or districts shall vote in favor of the merger, the merger shall be authorized. The merger shall be effective and the merging district or districts shall cease to exist and shall become a part of the merger district, upon the certification of the election results. The commissioners of the merging district or districts shall hold office as commissioners of the new merged district until their respective terms of office expire or until they resign from office if the resignation is before the expiration of their terms of office. The election of commissioners in the merger district after the merger shall occur as provided in RCW 57.32.130 in a consolidated district after the consolidation. [1999 c 153 § 23; 1996 c 230 § 1205; 1982 c 104 § 2; 1967 ex.s. c 39 § 6; 1961 c 28 § 4.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.050 Vesting of funds and property in merger district—Outstanding indebtedness. All funds and property, real and personal, of the merging district or districts, shall vest in and become the property of the merger district. Unless the agreement of merger provides to the contrary, any outstanding indebtedness of any form, owed by the districts, shall remain the obligation of the area of the original debtor district; and the commissioners of the merger district shall make such levies, assessments, or charges for service upon such area or the users therein as shall pay off such indebtedness at maturity. [1996 c 230 § 1207; 1967 ex.s. c 39 § 7; 1961 c 28 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.36.060 Persons serving on both boards to hold only one position after merger. A person who serves on the board of commissioners of a merging district and a merger district shall hold only one position on the board of commissioners of the merger district and shall only receive compensation, expenses, and benefits that are available to a single commissioner. [1996 c 230 § 1206; 1988 c 162 § 4. Formerly RCW 57.40.135.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.42 RCW

DISPOSITION OF PROPERTY TO PUBLIC UTILITY DISTRICT

Sections

- 57.42.010 Authorized.
 57.42.020 Disposition must be in public interest—Filings—Indebtedness.
 57.42.030 Hearing—Notice—Decree.

57.42.010 Authorized. Subject to the provisions of RCW 57.42.020 and 57.42.030, any district created under the provisions of this title may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to a public utility district in the same county on such terms as may be mutually agreed upon by the board of commissioners of each district. [1996 c 230 § 1301; 1973 1st ex.s. c 56 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.42.020 Disposition must be in public interest—Filings—Indebtedness. No district shall dispose of its property to a public utility district unless the respective board of commissioners of each district shall determine by resolution that such disposition is in the public interest and conducive to the public health, welfare, and convenience. Copies of each resolution, together with copies of the proposed disposition agreement, shall be filed with the legislative authority of the county in which the district is located and with the superior court of that county. Unless the proposed agreement provides otherwise, any outstanding indebtedness of any form owed by the water district shall remain the obligation of the area of the district, and the board of commissioners of the public utility district shall be empowered to make such levies, assessments, or charges upon that area or the water, sewer, or drainage users therein as shall pay off the indebtedness at maturity. [1996 c 230 § 1302; 1973 1st ex.s. c 56 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.42.030 Hearing—Notice—Decree. Within ninety days after the resolutions and proposed agreement have been filed with the court, the court shall fix a date for a hearing and shall direct that notice of the hearing be given by publication. After reviewing the proposed agreement and considering other evidence presented at the hearing, the court may determine by decree that the proposed disposition is in the public interest and conducive to the public health, welfare, and convenience. In addition, the decree shall authorize the payment of all or a portion of the indebtedness of the district relating to property disposed of under such decree. Pursuant to the court decree, the district shall dispose of its property under the terms of the disposition agreement with the public utility district. [1996 c 230 § 1303; 1973 1st ex.s. c 56 § 3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.46 RCW

VOLUNTARY CONTRIBUTIONS TO ASSIST LOW-INCOME CUSTOMERS

Sections

- 57.46.010 Voluntary contributions to assist low-income residential customers—Administration.
- 57.46.020 Disbursement of contributions—Quarterly report.
- 57.46.030 Contributions not considered commingling of funds.

57.46.010 Voluntary contributions to assist low-income residential customers—Administration. A district

may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their district bills. All funds received by the district in response to such requests shall be transmitted to the grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs for the state in the district's service area or to a charitable organization within the district's service area. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their district bills. The grantee or charitable organization shall be responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified. [1996 c 230 § 1401; 1995 c 399 § 149; 1993 c 45 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.46.020 Disbursement of contributions—Quarterly report. All assistance provided under this chapter shall be disbursed by the grantee or charitable organization. Where possible the district shall be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check shall be issued jointly payable to the customer and the district. The availability of funds for assistance to a district's low-income customers as a result of voluntary contributions shall not reduce the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community, trade, and economic development within the district's service area. The grantee or charitable organization shall provide the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance. [1996 c 230 § 1402; 1995 c 399 § 150; 1993 c 45 § 6.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.46.030 Contributions not considered commingling of funds. Contributions received under a program implemented by a district in compliance with this chapter shall not be considered a commingling of funds. [1996 c 230 § 1403; 1993 c 45 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.90 RCW

DISINCORPORATION OF DISTRICTS IN COUNTIES WITH 210,000 POPULATION OR MORE

Sections

- 57.90.001 Actions subject to review by boundary review board.
- 57.90.010 Disincorporation authorized.
- 57.90.020 Proceedings, how commenced—Public hearings.
- 57.90.030 Findings—Order—Supervision of liquidation.
- 57.90.040 Distribution of assets.

- 57.90.050 Assessments to retire indebtedness.
 57.90.100 Disposal of real property on abandonment of irrigation district right of way—Right of adjacent owners.

*Dissolution of port districts: RCW 53.46.060.
 water-sewer districts: Chapter 57.04 RCW.*

57.90.001 Actions subject to review by boundary review board. Actions taken under this chapter may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1996 c 230 § 1501; 1989 c 84 § 63.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.90.010 Disincorporation authorized. Water-sewer, park and recreation, metropolitan park, county rural library, cemetery, flood control, mosquito control, diking and drainage, irrigation or reclamation, weed, health, or fire protection districts, and any air pollution control authority or regional fire protection service authority, hereinafter referred to as "special districts," which are located wholly or in part within a county with a population of two hundred ten thousand or more may be disincorporated when the district has not actively carried out any of the special purposes or functions for which it was formed within the preceding consecutive five-year period. [2004 c 129 § 13; 1999 c 153 § 24; 1996 c 230 § 1502; 1991 c 363 § 137; 1979 ex.s. c 30 § 11; 1963 c 55 § 1.]

Captions not law—Severability—2004 c 129: See RCW 52.26.900 and 52.26.901.

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

57.90.020 Proceedings, how commenced—Public hearings. Upon the filing with the county legislative authority of each county in which the district is located of a resolution of any governmental unit calling for the disincorporation of a special district, or upon the filing with the county legislative authority of each county in which the district is located of the petition of twenty percent of the voters within a special district calling for the disincorporation of the special district, the county legislative authority shall hold public hearings to determine whether or not any services have been provided within a consecutive five year period and whether the best interests of all persons concerned will be served by the proposed dissolution of the special district. [1996 c 230 § 1503; 1982 1st ex.s. c 17 § 35; 1963 c 55 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.90.030 Findings—Order—Supervision of liquidation. If the county legislative authority finds that no services have been provided within the preceding consecutive five-year period and that the best interests of all persons concerned will be served by disincorporating the special district, it shall order that such action be taken, specify the manner in which it is to be accomplished and supervise the liquidation

of any assets and the satisfaction of any outstanding indebtedness. [1996 c 230 § 1504; 1963 c 55 § 3.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.90.040 Distribution of assets. If a special district is disincorporated the proceeds of the sale of any of its assets, together with money on hand in the treasury of the special district, shall after payment of all costs and expenses and all outstanding indebtedness be paid to the county treasurer to be placed to the credit of the school district, or districts, in which such special district is situated. [1996 c 230 § 1505; 1963 c 55 § 4.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.90.050 Assessments to retire indebtedness. If a special district is disincorporated and the proceeds of the sale of any of its assets, together with money on hand in the treasury of the special district, are insufficient to retire any outstanding indebtedness, together with all costs and expenses of liquidation, the county legislative authority shall levy assessments in the manner provided by law against the property in the special district in amounts sufficient to retire the indebtedness and pay the costs and expenses. [1996 c 230 § 1506; 1963 c 55 § 5.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.90.100 Disposal of real property on abandonment of irrigation district right of way—Right of adjacent owners. Whenever as the result of abandonment of an irrigation district right of way real property held by an irrigation district is to be sold or otherwise disposed of, notice shall be given to the owners of the lands adjoining that real property and such owners shall have the right of first refusal to purchase at the appraised price all or any part of the real property to be sold or otherwise disposed of which adjoins or is adjacent to their land.

Real property to be sold or otherwise disposed of under this section shall have been first appraised by the county assessor or by a person designated by the county assessor.

Notice under this section shall be sufficient if sent by registered mail to the owner at the address shown in the tax records of the county in which the land is situated. Notice under this section shall be in addition to any notice required by law.

After sixty days from the date of sending of notice, if no applications for purchase have been received by the irrigation district or other person or entity sending notice, the rights of first refusal of owners of adjoining lands shall be deemed to have been waived, and the real property may be disposed of or sold.

If two or more owners of adjoining lands apply to purchase the same real property, or apply to purchase overlapping parts of the real property, the respective rights of the applicants may be determined in the superior court of the county in which the real property is situated. The court may divide the real property in question between some or all of the applicants or award the whole to one applicant, as justice may require. [1996 c 230 § 1507; 1971 ex.s. c 125 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Title 58

BOUNDARIES AND PLATS

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(2004 Ed.)

Chapter 58.04 RCW

BOUNDARIES

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Survey of county boundaries: RCW 36.04.400.

Tidelands, shorelands—Boundary of shorelands when water lowered: RCW 79.94.220.

58.04.001 Purpose—Remedies. The purpose of this chapter is to provide alternative procedures for fixing boundary points or lines when they cannot be determined from the existing public record and landmarks or are otherwise in dispute. This chapter does not impair, modify, or supplant any other remedy available at law or equity. [1996 c 160 § 1.]

58.04.003 Definition of surveyor. As used in this chapter, "surveyor" means every person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW. [1996 c 160 § 2.]

58.04.007 Affected landowners may resolve dispute over location of a point or line—Procedures. Whenever a point or line determining the boundary between two or more parcels of real property cannot be identified from the existing

public record, monuments, and landmarks, or is in dispute, the landowners affected by the determination of the point or line may resolve any dispute and fix the boundary point or line by one of the following procedures:

(1) If all of the affected landowners agree to a description and marking of a point or line determining a boundary, they shall document the agreement in a written instrument, using appropriate legal descriptions and including a survey map, filed in accordance with chapter 58.09 RCW. The written instrument shall be signed and acknowledged by each party in the manner required for a conveyance of real property. The agreement is binding upon the parties, their successors, assigns, heirs and devisees and runs with the land. The agreement shall be recorded with the real estate records in the county or counties in which the affected parcels of real estate or any portion of them is located;

(2) If all of the affected landowners cannot agree to a point or line determining the boundary between two or more parcels of real estate, any one of them may bring suit for determination as provided in RCW 58.04.020. [1996 c 160 § 3.]

58.04.011 Authorization to enter upon any land or waters for purpose of resolving dispute. Any surveyor authorized by the court and the surveyor's employees may, without liability for trespass, enter upon any land or waters and remain there while performing the duties as required in RCW 58.04.001 through 58.04.007 and this section. The persons named in this section may, without liability for trespass, investigate, construct, or place a monument or reference monuments for the position of any land boundary mark or general land office corner or mark and subdivisional corners thereof. Persons entering lands under the authority of RCW 58.04.001 through 58.04.007 and this section must exercise due care not to damage property while on land or waters performing their duties, and are liable for property damage, if any, caused by their negligence or willful misconduct. Where practical, the persons named in this section must announce and identify themselves and their intention before entering upon private property in the performance of their duties. [1996 c 160 § 4.]

58.04.015 Disturbing a survey monument—Penalty—Cost. A person who intentionally disturbs a survey monument placed by a surveyor in the performance of the surveyor's duties is guilty of a gross misdemeanor and is liable for the cost of the reestablishment. [1996 c 160 § 5.]

58.04.020 Suit to establish lost or uncertain boundaries—Mediation may be required. (1) Whenever the boundaries of lands between two or more adjoining proprietors have been lost, or by time, accident or any other cause, have become obscure, or uncertain, and the adjoining proprietors cannot agree to establish the same, one or more of the adjoining proprietors may bring a civil action in equity, in the superior court, for the county in which such lands, or part of them are situated, and that superior court, as a court of equity, may upon the complaint, order such lost or uncertain boundaries to be erected and established and properly marked.

(2) The superior court may order the parties to utilize mediation before the civil action is allowed to proceed. [1996 c 160 § 8; 1886 p 104 § 1; RRS § 947.]

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

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

Chapter 58.08 RCW PLATS—RECORDING

Sections

58.08.010	Town plat to be recorded—Requisites.
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Cities and towns—Recording of ordinance and plat on effective date of reduction: RCW 35.16.050.

Record of platted tide and shore lands: RCW 79.94.040.

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

58.08.015 Effect of donation marked on plat. Every donation or grant to the public, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town, or wherein such donation or grant may have been made, shall be considered, to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees, for his, her

or their use, for the purposes intended by the donor or donors, grantor or grantors, as aforesaid. [Code 1881 § 2329; 1862 p 431 § 2; 1857 p 26 § 2; RRS § 9310. Formerly RCW 58.08.060.]

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

58.08.030 Plats to be acknowledged—Certificate that taxes and assessments are paid. Every person whose duty it may be to comply with the foregoing regulations shall at or before the time of offering such plat for record, acknowledge the same before the auditor of the proper county, or any other officer who is authorized by law to take acknowledgment of deeds, a certificate of which acknowledgment shall be indorsed on or annexed to such plat and recorded therewith. In all cases where any person or persons, corporation or corporations shall desire to file a plat, map, subdivision or replat of any property or shall desire to vacate the whole or any portion of any existing plat, map, subdivision or replat, such person or persons, corporation or corporations must, at the time of filing the same for record or of filing a petition for vacation thereof, file therewith a certificate from the proper officer or officers who may be in charge of the collection of taxes for which the property affected may be liable at that date, that all taxes which have been levied and become chargeable against such property at such date have been duly paid, satisfied and discharged and must file therewith a certificate from the proper officer or officers, who may be in charge of the collections, that all delinquent assessments for which the property affected may be liable at that date and that all special assessments assessed against said property, which, under the plat filed, become streets, alleys and other public places, have been paid. [1927 c 188 § 1; 1893 c 129 § 1; Code 1881 § 2331; 1862 p 431 § 4; 1857 p 26 § 4; RRS § 9290.]

Acknowledgments: Chapter 64.08 RCW.

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

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

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

Platted streets as public highways: RCW 58.08.050.

Regulation of surveys and plats: RCW 58.10.040.

(2004 Ed.)

58.08.040 Deposit to cover anticipated taxes and assessments. Prior to any person recording a plat, replat, altered plat, or binding site plan subsequent to May 31st in any year and prior to the date of the collection of taxes in the ensuing year, the person shall deposit with the county treasurer a sum equal to the product of the county assessor's latest valuation on the property less improvements in such subdivision multiplied by the current year's dollar rate increased by twenty-five percent on the property platted. The treasurer's receipt shall be evidence of the payment. The treasurer shall appropriate so much of the deposit as will pay the taxes and assessments on the property when the levy rates are certified by the assessor using the value of the property at the time of filing a plat, replat, altered plat, or binding site plan, and in case the sum deposited is in excess of the amount necessary for the payment of the taxes and assessments, the treasurer shall return, to the party depositing, the amount of excess. [1997 c 393 § 11; 1994 c 301 § 16; 1991 c 245 § 14; 1989 c 378 § 2; 1973 1st ex.s. c 195 § 74; 1969 ex.s. c 271 § 34; 1963 c 66 § 1; 1909 c 200 § 1; 1907 c 44 § 1; 1893 c 129 § 2; RRS § 9291.]

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

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

Assessment date: RCW 84.40.020.

Property taxes—Collection of taxes: Chapter 84.56 RCW.

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

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

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

Streets over tidelands declared public highways: RCW 35.21.230.

Chapter 58.09 RCW SURVEYS—RECORDING

Sections

58.09.010	Purpose—Short title.
58.09.020	Definitions.
58.09.030	Compliance with chapter required.
58.09.040	Records of survey—Contents—Filing—Replacing corner, filing record.
58.09.050	Records of survey—Processing—Requirements.
58.09.060	Records of survey, contents—Record of corner, information.
58.09.070	Coordinates—Map showing control scheme required.
58.09.080	Certificates—Required—Forms.
58.09.090	When record of survey not required.
58.09.100	Filing fee.
58.09.110	Duties of county auditor.
58.09.120	Monuments—Requirements.
58.09.130	Monuments disturbed by construction activities—Procedure—Requirements.
58.09.140	Noncompliance grounds for revocation of land surveyor's license.
58.09.900	Severability—1973 c 50.

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

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

58.09.020 Definitions. As used in this chapter:

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

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

(3) "Survey" shall mean the locating and monumenting in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners. [1973 c 50 § 2.]

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

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

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

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

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

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

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

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

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

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

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

(1)(a) The record of survey filed under RCW 58.09.040(1) shall be an original map, eighteen by twenty-four inches, that is legibly drawn in black ink on mylar and is suitable for producing legible prints through scanning, microfilming, or other standard copying procedures.

(b) The following are allowable formats for the original that may be used in lieu of the format set forth under (a) of this subsection:

(i) Photo mylar with original signatures;

(ii) Any standard material as long as the format is compatible with the auditor's recording process and records storage system. This format is only allowed in those counties that are excepted from permanently storing the original document as required in RCW 58.09.110(5);

(iii) An electronic version of the original if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

A two inch margin on the left edge and a one-half inch margin on other edges of the map shall be provided. The auditor shall reject for recording any maps not suitable for producing legible prints through scanning, microfilming, or other standard copying procedures.

(2) Information required by RCW 58.09.040(2) shall be filed on a standard form eight and one-half inches by fourteen inches as designed and prescribed by the department of natural resources. The auditor shall reject for recording any records of corner information not suitable for producing legible prints through scanning, microfilming, or other standard copying procedures. An electronic version of the standard form may be filed if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

(3) Two legible prints of each record of survey as required under the provisions of this chapter shall be furnished to the county auditor in the county in which the survey is to be recorded. The auditor, in those counties using imaging systems, may require only the original, and fewer prints, as needed, to meet the requirements of their duties. If any of

the prints submitted are not suitable for scanning or micro-filing the auditor shall not record the original.

(4) Legibility requirements are set forth in the recorder's checklist under RCW 58.09.110. [1999 c 39 § 1; 1973 c 50 § 5.]

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

- (a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location and giving other data relating thereto;
- (b) Bearing trees, corner accessories or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow;
- (c) Name and legal description of tract in which the survey is located and ties to adjoining surveys of record;
- (d) Certificates required by RCW 58.09.080;
- (e) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines and areas shown.

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

- (a) An accurate description and location, in reference to the corner position, of all monuments and accessories found at the corner;
- (b) An accurate description and location, in reference to the corner position, of all monuments and accessories placed or replaced at the corner;
- (c) Basis of bearings used to describe or locate such monuments or accessories;
- (d) Corollary information that may be helpful to relocate or identify the corner position;
- (e) Certificate required by RCW 58.09.080. [1973 c 50 § 6.]

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

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

SURVEYOR'S CERTIFICATE

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

Name of Person
(Signed and Sealed)
Certificate No.

AUDITOR'S CERTIFICATE

Filed for record this day of, 19. . . atM. in book of at page at the request of

(Signed)
County Auditor

[1973 c 50 § 8.]

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

- (a) When it has been made by a public officer in his official capacity and a reproducible copy thereof has been filed with the county engineer of the county in which the land is located. A map so filed shall be indexed and kept available for public inspection. A record of survey shall not be required of a survey made by the United States bureau of land management. A state agency conducting surveys to carry out the program of the agency shall not be required to use a land surveyor as defined by this chapter;
- (b) When it is of a preliminary nature;
- (c) When a map is in preparation for recording or shall have been recorded in the county under any local subdivision or platting law or ordinance;
- (d) When it is a retracement or resurvey of boundaries of platted lots, tracts, or parcels shown on a filed or recorded and surveyed subdivision plat or filed or recorded and surveyed short subdivision plat in which monuments have been set to mark all corners of the block or street centerline intersections, provided that no discrepancy is found as compared to said recorded information or information revealed on other subsequent public survey map records, such as a record of survey or city or county engineer's map. If a discrepancy is found, that discrepancy must be clearly shown on the face of the required new record of survey. For purposes of this exemption, the term discrepancy shall include:

- (i) A nonexistent or displaced original or replacement monument from which the parcel is defined and which non-existence or displacement has not been previously revealed in the public record;
- (ii) A departure from proportionate measure solutions which has not been revealed in the public record;
- (iii) The presence of any physical evidence of encroachment or overlap by occupation or improvement; or
- (iv) Differences in linear and/or angular measurement between all controlling monuments that would indicate differences in spatial relationship between said controlling monuments in excess of 0.50 feet when compared with all locations of public record: That is, if these measurements agree with any previously existing public record plat or map within the stated tolerance, a discrepancy will not be deemed to exist under this subsection.

(2) Surveys exempted by foregoing subsections of this section shall require filing of a record of corner information pursuant to RCW 58.09.040(2). [1992 c 106 § 1; 1973 c 50 § 9.]

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

58.09.110 Duties of county auditor. The auditor shall accept for recording those records of survey and records of corner information that are in compliance with the recorder's checklist as jointly developed by a committee consisting of

the survey advisory board and two representatives from the Washington state association of county auditors. This checklist shall be adopted in rules by the department of natural resources.

(1) The auditor shall keep proper indexes of such record of survey by the name of owner and by quarter-quarter section, township, and range, with reference to other legal subdivisions.

(2) The auditor shall keep proper indexes of the record of corner information by section, township, and range.

(3) After entering the recording data on the record of survey and all prints received from the surveyor, the auditor shall send one of the surveyor's prints to the department of natural resources in Olympia, Washington, for incorporation into the statewide survey records repository. However, the county and the department of natural resources may mutually agree to process the original or an electronic version of the original in lieu of the surveyor's print.

(4) After entering the recording data on the record of corner information the auditor shall send a legible copy, suitable for scanning, to the department of natural resources in Olympia, Washington. However, the county and the department of natural resources may mutually agree to process the original or an electronic version of the original in lieu of the copy.

(5) The auditor shall permanently keep the original document filed using storage and handling processes that do not cause excessive deterioration of the document. A county may be excepted from the requirement to permanently store the original document if it has a document scanning, filming, or other process that creates a permanent, archival record that meets or surpasses the standards as adopted in rule by the division of archives and records management in chapter 434-663 or 434-677 WAC. The auditor must be able to provide full-size copies upon request. The auditor shall maintain a copy or image of the original for public reference.

(6) If the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system, the auditor may accept for recording electronic versions of the documents required by this chapter. The electronic version shall be a standard raster file format acceptable to the county.

(7) This section does not supersede other existing recording statutes. [1999 c 39 § 2; 1973 c 50 § 11.]

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

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

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

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

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

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

Chapter 58.10 RCW

DEFECTIVE PLATS LEGALIZED

Sections

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

58.10.010 Defective plats legalized—1881 Code. All city or town plats or any addition or additions thereto, heretofore made and recorded in the county auditor's office of any county in Washington state, showing lots, blocks, streets, alleys or public grounds, shall be conclusive evidence of the location and size of the lots, blocks and public grounds and the location and width of each and every street or alley marked, laid down or appearing on such plat, and that all the right, title, interest or estate which the person or persons making or recording such plat, or causing the same to be made, or

recorded, had at the time of making or recording such plat in or to such streets, alleys or public grounds was thereby dedicated to public use, whether the same was made, executed or acknowledged in accordance with the provisions of the laws of this state in force at the time of making the same or not. [Code 1881 § 2338; RRS § 9306. Formerly RCW 58.08.080.]

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

Rules of court: ER 803(a)(14).

Certified copies

of instruments, or transcripts of county commissioners' proceedings: RCW 5.44.070.

of recorded instruments as evidence: RCW 5.44.060.

Copies of business and public records as evidence: RCW 5.46.010.

Instruments to be recorded or filed: RCW 65.04.030.

Photostatic or photographic copies of public or business records admissible in evidence: RCW 40.20.030.

58.10.030 Resurvey and corrected plat—Corrected plat as evidence. Whenever the recorded plat of any city or addition thereto does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or addition, the city council of the city in which the land so platted is located, is hereby authorized and empowered by ordinance and the action of its proper officers, to cause a new and correct survey and plat of such city or addition to be made, and recorded in the office of the county auditor of the county in which such city or addition is located, which corrected plat shall follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the officer or surveyor making the same shall be endorsed thereon, referring to the original plat corrected thereby, and the deficit existing therein, and corrected by such new survey and plat; and the ordinance authorizing the making of such plat shall be recorded in the office of the county auditor of said county and said certificate shall show where said ordinance is recorded, and such plat when so made and recorded, or a copy thereof certified as provided in RCW 58.10.020 shall be admissible in evidence in all the courts in this state. [Code 1881 § 2340; RRS § 9308. Formerly RCW 58.12.130.]

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

(2004 Ed.)

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

Chapter 58.17 RCW

PLATS—SUBDIVISIONS—DEDICATIONS

Sections

- 58.17.010 Purpose.
- 58.17.020 Definitions.
- 58.17.030 Subdivisions to comply with chapter, local regulations.
- 58.17.033 Proposed division of land—Consideration of application for preliminary plat or short plat approval—Requirements defined by local ordinance.
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- 58.17.065 Short plats and short subdivisions—Filing.
- 58.17.070 Preliminary plat of subdivisions and dedications—Submission for approval—Procedure.
- 58.17.080 Filing of preliminary plat—Notice.
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- 58.17.100 Review of preliminary plats by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval.
- 58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages.
- 58.17.120 Disapproval due to flood, inundation or swamp conditions—Improvements—Approval conditions.
- 58.17.130 Bond in lieu of actual construction of improvements prior to approval of final plat—Bond or security to assure successful operation of improvements.
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- 58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies.
- 58.17.180 Review of decision.
- 58.17.190 Approval of plat required before filing—Procedure when unapproved plat filed.
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- 58.17.200 Injunctive action to restrain subdivision, sale, transfer of land where final plat not filed.
- 58.17.205 Agreements to transfer land conditioned on final plat approval—Authorized.
- 58.17.210 Building, septic tank or other development permits not to be issued for land divided in violation of chapter or regulations—Exceptions—Damages—Rescission by purchaser.
- 58.17.212 Vacation of subdivision—Procedure.
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- 58.17.225 Easement over public open space—May be exempt from RCW 58.17.215—Hearing—Notice.
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- 58.17.250 Survey of subdivision and preparation of plat.
- 58.17.255 Survey discrepancy—Disclosure.
- 58.17.260 Joint committee—Members—Recommendations for surveys, monumentation and plat drawings.
- 58.17.275 Proposals to adopt, amend, or repeal local ordinances—Advance notice.
- 58.17.280 Naming and numbering of short subdivisions, subdivisions, streets, lots and blocks.
- 58.17.290 Copy of plat as evidence.
- 58.17.300 Violations—Penalties.

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58.17.310	Approval of plat within irrigation district without provision for irrigation prohibited.
58.17.320	Compliance with chapter and local regulations—Enforcement.
58.17.330	Hearing examiner system—Adoption authorized—Procedures—Decisions.
58.17.900	Validation of existing ordinances and resolutions.
58.17.910	Severability—1969 ex.s. c 271.
58.17.920	Effective date and application of 1974 ex.s. c 134.

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

58.17.010 Purpose. The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state. The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to promote effective use of land; to promote safe and convenient travel by the public on streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; to provide for the expeditious review and approval of proposed subdivisions which conform to zoning standards and local plans and policies; to adequately provide for the housing and commercial needs of the citizens of the state; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description. [1981 c 293 § 1; 1969 ex.s. c 271 § 1.]

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

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

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

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

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

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

A dedication of an area of less than two acres for use as a public park may include a designation of a name for the park, in honor of a deceased individual of good character.

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

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

(6) "Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. However, the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine. The legislative authority of any county planning under RCW 36.70A.040 that has adopted a comprehensive plan and development regulations in compliance with chapter 36.70A RCW may by ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine in any urban growth area.

(7) "Binding site plan" means a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

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

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

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

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

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

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

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

(15) "County commissioner" shall be as defined in chapter 36.32 RCW or the body assigned such duties under a county charter. [2002 c 262 § 1; 1995 c 32 § 2; 1983 c 121 § 1. Prior: 1981 c 293 § 2; 1981 c 292 § 1; 1969 ex.s. c 271 § 2.]

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

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

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

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

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

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

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

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

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

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

Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan or without bind-

ing site plan approval, shall be considered a violation of chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in chapter 58.17 RCW. [1987 c 354 § 2.]

58.17.040 Chapter inapplicable, when. The provisions of this chapter shall not apply to:

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

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

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

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

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

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

(7) Divisions of land into lots or tracts if: (a) Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land; (b) the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (c) a city, town, or county has approved the binding site plan for all such land; (d) such approved binding site plan is recorded in the county or counties in which such land is located; and (e) the binding site plan contains thereon the following statement: "All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal

entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein." The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to have been approved if the site plan was approved by a city, town, or county: (i) In connection with the final approval of a subdivision plat or planned unit development with respect to all of such land; or (ii) in connection with the issuance of building permits or final certificates of occupancy with respect to all of such land; or (iii) if not approved pursuant to (i) and (ii) of this subsection (7)(e), then pursuant to such other procedures as such city, town, or county may have established for the approval of a binding site plan;

(8) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. "Personal wireless services" means any federally licensed personal wireless service. "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures; and

(9) A division of land into lots or tracts of less than three acres that is recorded in accordance with chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities. For purposes of this subsection, "electric utility facilities" means unstaffed facilities, except for the presence of security personnel, that are used for or in connection with or to facilitate the transmission, distribution, sale, or furnishing of electricity including, but not limited to, electric power substations. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of cities, towns, counties, and municipal corporations. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility's existing and new customers. New customers are defined as electric service locations not already in existence as of the date that electric utility facilities subject to the provisions of this subsection are planned and constructed. [2004 c 239 § 1; 2002 c 44 § 1; 1992 c 220 § 27; 1989 c 43 § 4-123. Prior: 1987 c 354 § 1; 1987 c 108 § 1; 1983 c 121 § 2; prior: 1981 c 293 § 3; 1981 c 292 § 2; 1974 ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

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

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

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

58.17.060 Short plats and short subdivisions—Summary approval—Regulations—Requirements. (1) The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivi-

sions or alteration or vacation thereof. When an alteration or vacation involves a public dedication, the alteration or vacation shall be processed as provided in RCW 58.17.212 or 58.17.215. Such regulations shall be adopted by ordinance and shall provide that a short plat and short subdivision may be approved only if written findings that are appropriate, as provided in RCW 58.17.110, are made by the administrative personnel, and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat, or alteration or vacation thereof, for record in the office of the county auditor: PROVIDED, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat, except that when the short plat contains fewer than four parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to a total of four lots within the original short plat boundaries: PROVIDED FURTHER, That such regulations are not required to contain a penalty clause as provided in RCW 36.32.120 and may provide for wholly injunctive relief.

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

(2) Cities, towns, and counties shall include in their short plat regulations and procedures pursuant to subsection (1) of this section provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school. [1990 1st ex.s. c 17 § 51; 1989 c 330 § 2; 1987 c 354 § 5; 1987 c 92 § 1; 1974 ex.s. c 134 § 3; 1969 ex.s. c 271 § 6.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

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

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

Unless an applicant for preliminary plat approval requests otherwise, a preliminary plat shall be processed simultaneously with applications for rezones, variances, planned unit developments, site plan approvals, and similar quasi-judicial or administrative actions to the extent that procedural requirements applicable to these actions permit simultaneous processing. [1981 c 293 § 4; 1969 ex.s. c 271 § 7.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.080 Filing of preliminary plat—Notice. Notice of the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of

a city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities. Any notice required by this chapter shall include the hour and location of the hearing and a description of the property to be platted. Notice of the filing of a preliminary plat of a proposed subdivision located in a city or town and adjoining the municipal boundaries thereof shall be given to appropriate county officials. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway or within two miles of the boundary of a state or municipal airport shall be given to the secretary of transportation. In the case of notification to the secretary of transportation, the secretary shall respond to the notifying authority within fifteen days of such notice as to the effect that the proposed subdivision will have on the state highway or the state or municipal airport. [1982 c 23 § 1; 1969 ex.s. c 271 § 8.]

58.17.090 Notice of public hearing. (1) Upon receipt of an application for preliminary plat approval the administrative officer charged by ordinance with responsibility for administration of regulations pertaining to platting and subdivisions shall provide public notice and set a date for a public hearing. Except as provided in RCW 36.70B.110, at a minimum, notice of the hearing shall be given in the following manner:

(a) Notice shall be published not less than ten days prior to the hearing in a newspaper of general circulation within the county and a newspaper of general circulation in the area where the real property which is proposed to be subdivided is located; and

(b) Special notice of the hearing shall be given to adjacent landowners by any other reasonable method local authorities deem necessary. Adjacent landowners are the owners of real property, as shown by the records of the county assessor, located within three hundred feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, notice under this subsection (1)(b) shall be given to owners of real property located within three hundred feet of any portion of the boundaries of such adjacently located parcels of real property owned by the owner of the real property proposed to be subdivided.

(2) All hearings shall be public. All hearing notices shall include a description of the location of the proposed subdivision. The description may be in the form of either a vicinity location sketch or a written description other than a legal description. [1995 c 347 § 426; 1981 c 293 § 5; 1974 ex.s. c 134 § 4; 1969 ex.s. c 271 § 9.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.092 Public notice—Identification of affected property. Any notice made under chapter 58.17 or 36.70B RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an

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address, written description, vicinity sketch, or other reasonable means. [1995 c 347 § 427; 1988 c 168 § 12.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

58.17.095 Ordinance may authorize administrative review of preliminary plat without public hearing. A county, city, or town may adopt an ordinance providing for the administrative review of a preliminary plat without a public hearing by adopting an ordinance providing for such administrative review. The ordinance may specify a threshold number of lots in a subdivision above which a public hearing must be held, and may specify other factors which necessitate the holding of a public hearing. The administrative review process shall include the following minimum conditions:

(1) The notice requirements of RCW 58.17.090 shall be followed, except that the publication shall be made within ten days of the filing of the application. Additionally, at least ten days after the filing of the application notice both shall be: (a) Posted on or around the land proposed to be subdivided in at least five conspicuous places designed to attract public awareness of the proposal; and (b) mailed to the owner of each lot or parcel of property located within at least three hundred feet of the site. The applicant shall provide the county, city, or town with a list of such property owners and their addresses. The notice shall include notification that no public hearing will be held on the application, except as provided by this section. The notice shall set out the procedures and time limitations for persons to require a public hearing and make comments.

(2) Any person shall have a period of twenty days from the date of the notice to comment upon the proposed preliminary plat. All comments received shall be provided to the applicant. The applicant has seven days from receipt of the comments to respond thereto.

(3) A public hearing on the proposed subdivision shall be held if any person files a request for a hearing with the county, city, or town within twenty-one days of the publishing of such notice. If such a hearing is requested, notice requirements for the public hearing shall be in conformance with RCW 58.17.090, and the ninety-day period for approval or disapproval of the proposed subdivision provided for in RCW 58.17.140 shall commence with the date of the filing of the request for a public hearing. Any hearing ordered under this subsection shall be conducted by the planning commission or hearings officer as required by county or city ordinance.

(4) On its own initiative within twenty-one days of the filing of the request for approval of the subdivision, the governing body, or a designated employee or official, of the county, city, or town, shall be authorized to cause a public hearing to be held on the proposed subdivision within ninety days of the filing of the request for the subdivision.

(5) If the public hearing is waived as provided in this section, the planning commission or planning agency shall complete the review of the proposed preliminary plat and transmit its recommendation to the legislative body as provided in RCW 58.17.100. [1986 c 233 § 1.]

Applicability—1986 c 233: "This act does not affect the provisions of RCW 82.02.020." [1986 c 233 § 3.]

58.17.100 Review of preliminary plats by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval. If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all preliminary plats and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. Reports of the planning commission or agency shall be advisory only: PROVIDED, That the legislative body of the city, town or county may, by ordinance, assign to such commission or agency, or any department official or group of officials, such administrative functions, powers and duties as may be appropriate, including the holding of hearings, and recommendations for approval or disapproval of preliminary plats of proposed subdivisions.

Such recommendation shall be submitted to the legislative body not later than fourteen days following action by the hearing body. Upon receipt of the recommendation on any preliminary plat the legislative body shall at its next public meeting set the date for the public meeting where it shall consider the recommendations of the hearing body and may adopt or reject the recommendations of such hearing body based on the record established at the public hearing. If, after considering the matter at a public meeting, the legislative body deems a change in the planning commission's or planning agency's recommendation approving or disapproving any preliminary plat is necessary, the legislative body shall adopt its own recommendations and approve or disapprove the preliminary plat.

Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

A record of all public meetings and public hearings shall be kept by the appropriate city, town or county authority and shall be open to public inspection.

Sole authority to approve final plats, and to adopt or amend platting ordinances shall reside in the legislative bodies. [1995 c 347 § 428; 1981 c 293 § 6; 1969 ex.s. c 271 § 10.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages. (1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from

school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

(3) If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city, town, or county legislative body must adopt the designated name. [1995 c 32 § 3; 1990 1st ex.s. c 17 § 52; 1989 c 330 § 3; 1974 ex.s. c 134 § 5; 1969 ex.s. c 271 § 11.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

58.17.120 Disapproval due to flood, inundation or swamp conditions—Improvements—Approval conditions. The city, town, or county legislative body shall consider the physical characteristics of a proposed subdivision site and may disapprove a proposed plat because of flood, inundation, or swamp conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat.

No plat shall be approved by any city, town, or county legislative authority covering any land situated in a flood control zone as provided in chapter 86.16 RCW without the prior written approval of the department of ecology of the state of Washington. [1974 ex.s. c 134 § 6; 1969 ex.s. c 271 § 12.]

58.17.130 Bond in lieu of actual construction of improvements prior to approval of final plat—Bond or security to assure successful operation of improvements. Local regulations shall provide that in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the city, town, or county legislative body may accept a bond, in an amount and with surety and conditions satisfactory to it, or other secure method, pro-

viding for and securing to the municipality the actual construction and installation of such improvements within a period specified by the city, town, or county legislative body and expressed in the bonds. In addition, local regulations may provide for methods of security, including the posting of a bond securing to the municipality the successful operation of improvements for an appropriate period of time up to two years after final approval. The municipality is hereby granted the power to enforce bonds authorized under this section by all appropriate legal and equitable remedies. Such local regulations may provide that the improvements such as structures, sewers, and water systems shall be designed and certified by or under the supervision of a registered civil engineer prior to the acceptance of such improvements. [1974 ex.s. c 134 § 7; 1969 ex.s. c 271 § 13.]

58.17.140 Time limitation for approval or disapproval of plats—Extensions. Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within five years of the date of preliminary plat approval. Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements. [1995 c 68 § 1; 1986 c 233 § 2; 1983 c 121 § 3; 1981 c 293 § 7; 1974 ex.s. c 134 § 8; 1969 ex.s. c 271 § 14.]

Applicability—1986 c 233: See note following RCW 58.17.095.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.150 Recommendations of certain agencies to accompany plats submitted for final approval. Each preliminary plat submitted for final approval of the legislative body shall be accompanied by the following agencies' recommendations for approval or disapproval:

(1) Local health department or other agency furnishing sewage disposal and supplying water as to the adequacy of the proposed means of sewage disposal and water supply;

(2) Local planning agency or commission, charged with the responsibility of reviewing plats and subdivisions, as to compliance with all terms of the preliminary approval of the proposed plat subdivision or dedication;

(3) City, town or county engineer.

Except as provided in RCW 58.17.140, an agency or person issuing a recommendation for subsequent approval under subsections (1) and (3) of this section shall not modify the

terms of its recommendations without the consent of the applicant. [1983 c 121 § 4; 1981 c 293 § 8; 1969 ex.s. c 271 § 15.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.155 Short subdivision adjacent to state highway—Notice to department of transportation. Whenever a city, town, or county receives an application for the approval of a short plat of a short subdivision that is located adjacent to the right of way of a state highway, the responsible administrator shall give written notice of the application, including a legal description of the short subdivision and a location map, to the department of transportation. The department shall, within fourteen days after receiving the notice, submit to the responsible administrator who furnished the notice a statement with any information that the department deems to be relevant about the effect of the proposed short subdivision upon the legal access to the state highway, the traffic carrying capacity of the state highway and the safety of the users of the state highway. [1984 c 47 § 1.]

58.17.160 Requirements for each plat or replat filed for record. Each and every plat, or replat, of any property filed for record shall:

(1) Contain a statement of approval from the city, town or county licensed road engineer or by a licensed engineer acting on behalf of the city, town or county as to the layout of streets, alleys and other rights of way, design of bridges, sewage and water systems, and other structures;

(2) Be accompanied by a complete survey of the section or sections in which the plat or replat is located made to surveying standards adopted by the division of engineering services of the department of natural resources pursuant to RCW 58.24.040.

(3) Be acknowledged by the person filing the plat before the auditor of the county in which the land is located, or any other officer who is authorized by law to take acknowledgment of deeds, and a certificate of said acknowledgment shall be enclosed or annexed to such plat and recorded therewith.

(4) Contain a certification from the proper officer or officers in charge of tax collections that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied or discharged.

No engineer who is connected in any way with the subdividing and platting of the land for which subdivision approval is sought, shall examine and approve such plats on behalf of any city, town or county. [1985 c 99 § 1; 1969 ex.s. c 271 § 16.]

58.17.165 Certificate giving description and statement of owners must accompany final plat—Dedication, certificate requirements if plat contains—Waiver. Every final plat or short plat of a subdivision or short subdivision filed for record must contain a certificate giving a full and correct description of the lands divided as they appear on the plat or short plat, including a statement that the subdivision or short subdivision has been made with the free consent and in accordance with the desires of the owner or owners.

If the plat or short plat is subject to a dedication, the certificate or a separate written instrument shall contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat or short plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the lands subdivided and recorded as part of the final plat.

Every plat and short plat containing a dedication filed for record must be accompanied by a title report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication.

An offer of dedication may include a waiver of right of direct access to any street from any property, and if the dedication is accepted, any such waiver is effective. Such waiver may be required by local authorities as a condition of approval. Roads not dedicated to the public must be clearly marked on the face of the plat. Any dedication, donation or grant as shown on the face of the plat shall be considered to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees for his, her or their use for the purpose intended by the donors or grantors as aforesaid. [1981 c 293 § 9; 1969 ex.s. c 271 § 30.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies. When the legislative body of the city, town or county finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of five years after final plat approval unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision. [1981 c 293 § 10; 1969 ex.s. c 271 § 17.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.180 Review of decision. Any decision approving or disapproving any plat shall be reviewable under chapter 36.70C RCW. [1995 c 347 § 717; 1983 c 121 § 5; 1969 ex.s. c 271 § 18.]

[Title 58 RCW—page 14]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

58.17.190 Approval of plat required before filing—Procedure when unapproved plat filed. The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name of and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove from their files or records the unapproved plat, or dedication of record. [1969 ex.s. c 271 § 19.]

58.17.195 Approval of plat or short plat—Written finding of conformity with applicable land use controls. No plat or short plat may be approved unless the city, town, or county makes a formal written finding of fact that the proposed subdivision or proposed short subdivision is in conformity with any applicable zoning ordinance or other land use controls which may exist. [1981 c 293 § 14.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.200 Injunctive action to restrain subdivision, sale, transfer of land where final plat not filed. Whenever any parcel of land is divided into five or more lots, tracts, or parcels of land and any person, firm or corporation or any agent of any of them sells or transfers, or offers or advertises for sale or transfer, any such lot, tract, or parcel without having a final plat of such subdivision filed for record, the prosecuting attorney shall commence an action to restrain and enjoin further subdivisions or sales, or transfers, or offers of sale or transfer and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person, firm, corporation or agent selling or transferring the property. [1969 ex.s. c 271 § 20.]

58.17.205 Agreements to transfer land conditioned on final plat approval—Authorized. If performance of an offer or agreement to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary plat approval is expressly conditioned on the recording of the final plat containing the lot, tract, or parcel under this chapter, the offer or agreement is not subject to RCW 58.17.200 or 58.17.300 and does not violate any provision of this chapter. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final plat is recorded. [1981 c 293 § 12.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.210 Building, septic tank or other development permits not to be issued for land divided in violation of chapter or regulations—Exceptions—Damages—Rescission by purchaser. No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest

will not be adversely affected thereby. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers' or transferees' property shall comply with provisions of this chapter and each purchaser or transferee may recover his damages from any person, firm, corporation, or agent selling or transferring land in violation of this chapter or local regulations adopted pursuant thereto, including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of this chapter as well as cost of investigation, suit, and reasonable attorneys' fees occasioned thereby. Such purchaser or transferee may as an alternative to conforming his property to these requirements, rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby. [1974 ex.s. c 134 § 10; 1969 ex.s. c 271 § 21.]

58.17.212 Vacation of subdivision—Procedure.

Whenever any person is interested in the vacation of any subdivision or portion thereof, or any area designated or dedicated for public use, that person shall file an application for vacation with the legislative authority of the city, town, or county in which the subdivision is located. The application shall set forth the reasons for vacation and shall contain signatures of all parties having an ownership interest in that portion of the subdivision subject to vacation. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for vacation would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the vacation of the subdivision or portion thereof.

When the vacation application is specifically for a county road or city or town street, the procedures for road vacation or street vacation in chapter 36.87 or 35.79 RCW shall be utilized for the road or street vacation. When the application is for the vacation of the plat together with the roads and/or streets, the procedure for vacation in this section shall be used, but vacations of streets may not be made that are prohibited under *RCW 35.79.030, and vacations of roads may not be made that are prohibited under RCW 36.87.130.

The legislative authority of the city, town, or county shall give notice as provided in RCW 58.17.080 and 58.17.090 and shall conduct a public hearing on the application for a vacation and may approve or deny the application for vacation of the subdivision after determining the public use and interest to be served by the vacation of the subdivision. If any portion of the land contained in the subdivision was dedicated to the public for public use or benefit, such land, if not deeded to the city, town, or county, shall be deeded to the city, town, or county unless the legislative authority shall set forth findings that the public use would not be served in retaining title to those lands.

Title to the vacated property shall vest with the rightful owner as shown in the county records. If the vacated land is land that was dedicated to the public, for public use other than a road or street, and the legislative authority has found that retaining title to the land is not in the public interest, title thereto shall vest with the person or persons owning the prop-

erty on each side thereof, as determined by the legislative authority. When the road or street that is to be vacated was contained wholly within the subdivision and is part of the boundary of the subdivision, title to the vacated road or street shall vest with the owner or owners of property contained within the vacated subdivision.

This section shall not be construed as applying to the vacation of any plat of state-granted tide or shore lands. [1987 c 354 § 3.]

***Reviser's note:** After amendment by 1987 c 228 § 1, RCW 35.79.030 no longer prohibited vacations of streets. Limitations on vacations of streets abutting bodies of water are now found in RCW 35.79.035.

58.17.215 Alteration of subdivision—Procedure.

When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

Upon receipt of an application for alteration, the legislative body shall provide notice of the application to all owners of property within the subdivision, and as provided for in RCW 58.17.080 and 58.17.090. The notice shall either establish a date for a public hearing or provide that a hearing may be requested by a person receiving notice within fourteen days of receipt of the notice.

The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

After approval of the alteration, the legislative body shall order the applicant to produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.

This section shall not be construed as applying to the alteration or replatting of any plat of state-granted tide or shore lands. [1987 c 354 § 4.]

58.17.217 Alteration or vacation of subdivision—Conduct of hearing. Any hearing required by RCW 58.17.212, 58.17.215, or 58.17.060 may be administered by a hearings examiner as provided in RCW 58.17.330. [1987 c 354 § 7.]

58.17.218 Alteration of subdivision—Easements by dedication. The alteration of a subdivision is subject to RCW 64.04.175. [1991 c 132 § 2.]

58.17.220 Violation of court order or injunction—Penalty. Any person who violates any court order or injunction issued pursuant to this chapter shall be subject to a fine of not more than five thousand dollars or imprisonment for not more than ninety days or both. [1969 ex.s. c 271 § 22.]

58.17.225 Easement over public open space—May be exempt from RCW 58.17.215—Hearing—Notice. The granting of an easement for ingress and egress or utilities over public property that is held as open space pursuant to a subdivision or plat, where the open space is already used as a utility right of way or corridor, where other access is not feasible, and where the granting of the easement will not impair public access or authorize construction of physical barriers of any type, may be authorized and exempted from the requirements of RCW 58.17.215 by the county, city, or town legislative authority following a public hearing with notice to the property owners in the affected plat. [1995 c 32 § 1.]

58.17.230 Assurance of discontinuance of violations. In the enforcement of this chapter, the prosecuting attorney may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter from any person engaging in, or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violation occurs. A violation of such assurance shall constitute prima facie proof of a violation of this chapter. [1969 ex.s. c 271 § 23.]

58.17.240 Permanent control monuments. Except for subdivisions excluded under the provisions of RCW 58.17.040, as now or hereafter amended, permanent control monuments shall be established at each and every controlling corner on the boundaries of the parcel of land being subdivided. The local authority shall determine the number and location of permanent control monuments within the plat, if any. [1974 ex.s. c 134 § 11; 1969 ex.s. c 271 § 24.]

58.17.250 Survey of subdivision and preparation of plat. The survey of the proposed subdivision and preparation of the plat shall be made by or under the supervision of a registered land surveyor who shall certify on the plat that it is a true and correct representation of the lands actually surveyed. [1969 ex.s. c 271 § 26.]

58.17.255 Survey discrepancy—Disclosure. Whenever a survey of a proposed subdivision or short subdivision reveals a discrepancy, the discrepancy shall be noted on the face of the final plat or short plat. Any discrepancy shall be disclosed in a title report prepared by a title insurer and issued after the filing of the final plat or short plat. As used in this section, "discrepancy" means: (1) A boundary hiatus; (2) an overlapping boundary; or (3) a physical appurtenance, which indicates encroachment, lines of possession, or conflict of title. [1987 c 354 § 6.]

58.17.260 Joint committee—Members—Recommendations for surveys, monumentation and plat drawings. In order that there be a degree of uniformity of survey monumentation throughout the cities, towns and counties of the state of Washington, there is hereby created a joint committee composed of six members to be appointed as follows: The Washington state association of counties shall appoint two county road engineers; the association of Washington cities shall appoint two city engineers; the land surveyors association of Washington shall appoint one member; and the consulting engineers association of Washington shall appoint one member. The joint committee is directed to cooperate with the department of natural resources to establish recommendations pertaining to requirements of survey, monumentation and plat drawings for subdivisions and dedications throughout the state of Washington. The department of natural resources shall publish such recommendation. [1971 ex.s. c 85 § 9; 1969 ex.s. c 271 § 27.]

58.17.275 Proposals to adopt, amend, or repeal local ordinances—Advance notice. All cities, towns, and counties shall establish procedures to provide reasonable advance notice of proposals to adopt, amend, or repeal local ordinances adopted in accordance with this chapter. These procedures shall include but not be limited to advance notice to individuals or organizations which have submitted requests for notice. Reasonable fees may be charged to defray the costs of providing notice. [1981 c 293 § 13.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.280 Naming and numbering of short subdivisions, subdivisions, streets, lots and blocks. Any city, town or county shall, by ordinance, regulate the procedure whereby short subdivisions, subdivisions, streets, lots and blocks are named and numbered. A lot numbering system and a house address system, however, shall be provided by the municipality for short subdivisions and subdivisions and must be clearly shown on the short plat or final plat at the time of approval. [1993 c 486 § 1; 1969 ex.s. c 271 § 29.]

58.17.290 Copy of plat as evidence. A copy of any plat recorded in the manner provided in this chapter and certified by the county auditor of the county in which the same is recorded to be a true copy of such record and the whole thereof, shall be received in evidence in all the courts of this state, with like effect as the original. [1969 ex.s. c 271 § 31.]

58.17.300 Violations—Penalties. Any person, firm, corporation, or association or any agent of any person, firm, corporation, or association who violates any provision of this chapter or any local regulations adopted pursuant thereto relating to the sale, offer for sale, lease, or transfer of any lot, tract or parcel of land, shall be guilty of a gross misdemeanor and each sale, offer for sale, lease or transfer of each separate lot, tract, or parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto, shall be deemed a separate and distinct offense. [1969 ex.s. c 271 § 32.]

58.17.310 Approval of plat within irrigation district without provision for irrigation prohibited. In addition to any other requirements imposed by the provisions of this chapter, the legislative authority of any city, town, or county shall not approve a short plat or final plat, as defined in RCW 58.17.020, for any subdivision, short subdivision, lot, tract, parcel, or site which lies in whole or in part in an irrigation district organized pursuant to chapter 87.03 RCW unless there has been provided an irrigation water right of way for each parcel of land in such district. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site lies within land within the district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution, bylaw, or rule of general applicability as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county. Rights of way shall be evidenced by the respective plats submitted for final approval to the appropriate legislative authority. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site to be platted is wholly or partially within an irrigation district of two hundred thousand acres or more and has been previously platted by the United States bureau of reclamation as a farm unit in the district, the legislative authority shall not approve for such land a short plat or final plat as defined in RCW 58.17.020 without the approval of the irrigation district and the administrator or manager of the project of the bureau of reclamation, or its successor agency, within which that district lies. Compliance with the requirements of this section together with all other applicable provisions of this chapter shall be a prerequisite, within the expressed purpose of this chapter, to any sale, lease, or development of land in this state. [1990 c 194 § 1; 1986 c 39 § 1; 1985 c 160 § 1; 1973 c 150 § 2.]

58.17.320 Compliance with chapter and local regulations—Enforcement. Whenever land within a subdivision granted final approval is used in a manner or for a purpose which violates any provision of this chapter, any provision of the local subdivision regulations, or any term or condition of plat approval prescribed for the plat by the local government, then the prosecuting attorney, or the attorney general if the prosecuting attorney shall fail to act, may commence an action to restrain and enjoin such use and compel compliance with the provisions of this chapter or the local regulations, or with such terms or conditions. The costs of such action may be taxed against the violator. [1974 ex.s. c 134 § 13.]

58.17.330 Hearing examiner system—Adoption authorized—Procedures—Decisions. (1) As an alternative to those provisions of this chapter requiring a planning commission to hear and issue recommendations for plat approval, the county or city legislative body may adopt a hearing examiner system and shall specify by ordinance the legal effect of the decisions made by the examiner. The legal effect of such decisions shall include one of the following:

- (a) The decision may be given the effect of a recommendation to the legislative body;
- (b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or

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(c) The decision may be given the effect of a final decision of the legislative body.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

(2) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Each final decision of a hearing examiner, unless a longer period is mutually agreed to by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 429; 1994 c 257 § 6; 1977 ex.s. c 213 § 4.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1994 c 257: See note following RCW 36.70A.270.

Severability—1977 ex.s. c 213: See note following RCW 35.63.130.

58.17.900 Validation of existing ordinances and resolutions. All ordinances and resolutions enacted at a time prior to the passage of this chapter by the legislative bodies of cities, towns, and counties and which are in substantial compliance with the provisions of this chapter, shall be construed as valid and may be further amended to include new provisions and standards as are authorized in general law. [1969 ex.s. c 271 § 33.]

58.17.910 Severability—1969 ex.s. c 271. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 271 § 35.]

58.17.920 Effective date and application of 1974 ex.s. c 134. (1) The provisions of *this 1974 amendatory act shall become effective July 1, 1974.

(2) The provisions of *this 1974 amendatory act shall not apply to any plat which has been granted preliminary approval prior to July 1, 1974, but shall apply to any proposed plat granted preliminary approval on or after July 1, 1974. [1974 ex.s. c 134 § 14.]

***Reviser's note:** For codification of "this 1974 amendatory act" [1974 ex.s. c 134], see Codification Tables, Volume 0.

Chapter 58.18 RCW ASSESSOR'S PLATS

Sections

58.18.010 Assessor's plat—Requisites, filing, index, etc.—When official plat.

58.18.010 Assessor's plat—Requisites, filing, index, etc.—When official plat. In any county where an assessor has and maintains an adequate set of maps drawn from surveys at a scale of not less than two hundred feet to the inch, the assessor may with the permission of the county commissioners, file an assessor's plat of the area, which when filed shall become the official plat for all legal purposes, provided:

(1) The plat is filed in the offices of the county auditor and the county assessor, together with a list of the existing

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legal descriptions and a list of the new legal descriptions as assigned by the county assessor;

(2) The recorded plat is drawn in such a manner that a ready reference can be made to the legal description in existence prior to the time of the filing of the assessor's plat and in conformance with existing statutes;

(3) The first year the tax roll and tax statement shall contain the prior legal description and the new legal description as assigned and shown on the assessor's plat with a notation that this legal description shall be used for all purposes;

(4) The county assessor shall maintain an index for reference to the prior and the existing legal descriptions of the parcels contained in the assessor's plats;

(5) Each dedicated plat after June 7, 1961, shall be submitted to the county assessor of the county wherein the plat is located, for the sole purpose of assignment of parcel, tract, block and or lot numbers and the county auditor shall not accept any such plat for filing unless the said plat carries a signed affidavit from the assessor to this effect, and a statement to the effect that the name of the plat shall be number in the county of [1961 c 262 § 1.]

Chapter 58.19 RCW

LAND DEVELOPMENT ACT

Sections

58.19.010	Purpose.
58.19.020	Definitions.
58.19.030	Exemptions from chapter.
58.19.045	Public offering statement—Developer's duties—Purchaser's rights.
58.19.055	Public offering statement—Contents.
58.19.120	Report of changes required—Amendments.
58.19.130	Public offering statement form—Type and style restriction.
58.19.140	Public offering statement—Promotional use, distribution restriction—Holding out that state or employees, etc., approve development prohibited.
58.19.180	Unlawful to sell lots or parcels subject to blanket encumbrance which does not provide purchaser can obtain clear title—Alternatives.
58.19.185	Requiring purchaser to pay additional sum to construct, complete or maintain development.
58.19.190	Advertising—Materially false, misleading, or deceptive statements prohibited.
58.19.265	Violations—Remedies—Attorneys' fees.
58.19.270	Violations deemed unfair practice subject to chapter 19.86 RCW.
58.19.280	Jurisdiction of superior courts.
58.19.300	Hazardous conditions—Notice.
58.19.920	Liberal construction.
58.19.940	Short title.
58.19.950	Severability—1973 1st ex.s. c 12.
58.19.951	Severability—1992 c 191.

Camping resort contracts—Nonapplicability of certain laws to: RCW 19.105.510.

Exemption of timeshares from chapter: RCW 64.36.290.

58.19.010 Purpose. The legislature finds and declares that the sale and offering for sale of land or of interests in associations which provide for the use or occupancy of land touches and affects a great number of the citizens of this state and that full and complete disclosure to prospective purchasers of pertinent information concerning land developments, including any encumbrances or liens attached to the land and the physical characteristics of the development is essential. The legislature further finds and declares that delivery to prospective purchasers of a complete and accurate public offer-

ing statement is necessary in order to adequately protect both the economic and physical welfare of the citizens of this state. It is the purpose of this chapter to provide for the reasonable regulation of the sale and offering for sale of any interest in significant land developments within or without the state of Washington, so that the prospective purchasers of such interests might be provided with full, complete, and accurate information of all pertinent circumstances affecting their purchase. [1992 c 191 § 1; 1973 1st ex.s. c 12 § 1.]

58.19.020 Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Affiliate of a developer" means any person who controls, is controlled by, or is under common control with a developer.

(a) A person controls a developer if the person: (i) Is a general partner, officer, director, or employer of the developer; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the developer; (iii) controls in any manner the election of a majority of the directors of the developer; or (iv) has contributed more than twenty percent of the capital of the developer.

(b) A person is controlled by a developer if the developer: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one of [or] more other persons, or through one or more subsidiaries, owns, controls, holds with the power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Blanket encumbrance" shall mean a trust deed, mortgage, mechanic's lien, or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land to be developed or affecting more than one lot or parcel of developed land, or an agreement affecting more than one such lot or parcel by which the developer holds said development under option, contract, sale, or trust agreement. The term shall not include taxes and assessments levied by a public authority.

(3) "Common promotional plan" means an offering of related developed lands in a common promotional plan of disposition. Elements relevant to whether the related developed lands are being offered as part of a common promotional plan include but are not limited to: Whether purchasers of interests in the offered land will share in the use of common amenities, or other rights or privileges; whether the offered lands are known, designated, or advertised as a common unit or by a common name; whether a common broker or sales personnel, common sales office or facilities, or common promotional methods are utilized; and whether cross-referrals of prospective purchasers between sales operations is utilized.

(4) "Developer" means any owner of a development who offers it for disposition, or the principal agent of an inactive owner.

(5) "Development" or "developed lands" means land which is divided or is proposed to be divided for the purpose of disposition into twenty-six or more lots, parcels, or units (excluding interests in camping resorts regulated under chapter 19.105 RCW and interests in condominiums regulated under chapter 64.34 RCW) or any other land whether contiguous or not, if twenty-six or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

(6) "Disposition" includes any sale, lease, assignment, or exchange of any interest in any real property which is a part of or included within a development, and also includes the offering of property as a prize or gift when a monetary charge or consideration for whatever purpose is required in conjunction therewith, and any other transaction concerning a development if undertaken for gain or profit.

(7) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage, deed of trust, or real estate contract, or a deed in lieu thereof.

(8) "Improvements" include all existing, advertised, and governmentally required facilities such as streets, water, electricity, natural gas, telephone lines, drainage control systems, and sewage disposal systems.

(9) "Offer" includes every inducement, solicitation, or media advertisement which has as a principal aim to encourage a person to acquire an interest in land.

(10) "Owners association" means any profit or nonprofit corporation, unincorporated association, or other organization or legal entity, a membership or other interest in which is appurtenant to or based upon owing an interest in a development.

(11) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(12) "Physical hazard" means a physical condition which poses, or may very likely pose, a material risk of either: Material damage to the development and improvements thereon; or material endangerment to the safety and health of persons using the development and improvements thereon.

(13) "Purchaser" means a person who acquires or attempts to acquire or succeeds to any interest in land.

(14) "Related developed lands" means two or more developments which are owned by the same developer or an affiliate or affiliates of that developer and which are physically located within the same five-mile radius area.

(15) "Residential buildings" shall mean premises that are actually intended or used primarily for residential or recreational purposes by the purchasers. [1992 c 191 § 2; 1979 c 158 § 208; 1973 1st ex.s. c 12 § 2.]

58.19.030 Exemptions from chapter. (1) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to land and offers or dispositions:

(a) By a purchaser of developed lands for his or her own account in a single or isolated transaction;

(b) If fewer than ten separate lots, parcels, units, or interests in developed lands are offered by a person in a period of twelve months;

(c) If each lot offered in the development is five acres or more;

(d) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two years from date of disposition;

(e) To any person who acquires such lot, parcel, unit or interest therein for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease or other disposition of such lots to persons engaged in such business or businesses;

(f) Any lot, parcel, unit or interest if the development is located within an area incorporated prior to January 1, 1974;

(g) Pursuant to court order; or

(h) As cemetery lots or interests.

(2) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to:

(a) Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust of real estate;

(b) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(c) A development as to which the director has waived the provisions of this chapter;

(d) Offers or dispositions of securities currently registered with the department of financial institutions;

(e) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the department of financial institutions. [1994 c 92 § 504; 1979 c 158 § 209; 1973 1st ex.s. c 12 § 3.]

58.19.045 Public offering statement—Developer's duties—Purchaser's rights. (1) A developer shall prepare a public offering statement conforming to the requirements of RCW 58.19.055 unless the development or the transaction is exempt under RCW 58.19.030.

(2) Any agent, attorney, or other person assisting the developer in preparing the public offering statement may rely upon information provided by the developer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The developer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the developer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(3) Unless the development or the transaction is exempt under RCW 58.19.030, a developer shall provide a purchaser of a lot, parcel, unit, or interest with a copy of the public offering statement and all material amendments thereto before conveyance of that lot, parcel, unit, or interest. Unless a purchaser is given the public offering statement more than two days before execution of a contract for the purchase of a lot, parcel, unit, or interest, the purchaser, before conveyance,

shall have the right to cancel the contract within two days after first receiving the public offering statement and, if necessary to have two days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than two days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles. The two-day period shall not include Saturdays, Sundays, or legal holidays.

(4) If a purchaser elects to cancel a contract pursuant to subsection (3) of this section, the purchaser may do so by hand-delivering notice thereof to the developer or by mailing notice thereof by prepaid United States mail to the developer for service of process. If cancellation is by mailing notice, the date of the postmark on the mail shall be the official date of cancellation. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded within thirty days from the date of cancellation.

(5) If a person required to deliver a public offering statement pursuant to subsection (1) of this section fails to provide a purchaser to whom a lot, parcel, unit, or interest is conveyed with that public offering statement and all material amendments thereto as required by subsection (3) of this section, the purchaser is entitled to receive from that person an amount equal to the actual damages suffered by the purchaser as a result of the public offering statement not being delivered. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the lot, parcel, unit, or interest had the undisclosed information been evident to the purchaser before the closing of the purchase.

(6) A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the developer or developer's agent identified in the public offering statement. [1992 c 191 § 4.]

58.19.055 Public offering statement—Contents. (1) A public offering statement shall contain the following information:

- (a) The name, and the address or approximate location, of the development;
- (b) The name and address of the developer;
- (c) The name and address of the management company, if any, for the development;
- (d) The relationship of the management company to the developer, if any;
- (e) The nature of the interest being offered for sale;
- (f) A brief description of the permitted uses and use restrictions pertaining to the development and the purchaser's interest therein;
- (g) The number of existing lots, parcels, units, or interests in the development and either the maximum number that may be added to the development or the fact that such maximum number has not yet been determined;
- (h) A list of the principal common amenities in the development which materially affect the value of the development and those that will or may be added to the development;

(i) The identification of any real property not in the development, the owner of which has access to any of the development, and a description of the terms of such access;

(j) The identification of any real property not in the development to which owners in the development have access and a description of the terms of such access;

(k) The status of construction of improvements in the development, including either the estimated dates of completion if not completed or the fact that such estimated completion dates have not yet been determined; and the estimated costs, if any, to be paid by the purchaser;

(l) The estimated current owners' association expense, if any, for which a purchaser would be liable;

(m) An estimate of any payment with respect to any owners' association expense for which the purchaser would be liable at closing;

(n) The estimated current amount and purpose of any fees not included in any owners' association assessments and charged by the developer or any owners' association for the use of any of the development or improvements thereto;

(o) Any assessments which have been agreed to or are known to the developer and which, if not paid, may constitute a lien against any portion of the development in favor of any governmental agency;

(p) The identification of any parts of the development which any purchaser will have the responsibility for maintaining;

(q) A brief description of any blanket encumbrance which is subject to the provisions of RCW 58.19.180;

(r) A list of any physical hazards known to the developer which particularly affect the development or the immediate vicinity in which the development is located and which are not readily ascertainable by the purchaser;

(s) A brief description of any construction warranties to be provided to the purchaser;

(t) Any building code violation citations received by the developer in connection with the development which have not been corrected;

(u) A statement of any unsatisfied judgments or pending suits against any owners' association involved in the development and a statement of the status of any pending suits material to the development of which the developer has actual knowledge;

(v) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 58.19.045(3), including applicable time frames and procedures;

(w) A list of the documents which the prospective purchaser is entitled to receive from the developer before the rescission period commences;

(x) A notice which states:

"A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the developer or by any person identified in the public offering statement as the declarant's agent";

(y) A notice which states:

"This public offering statement is only a summary of some of the significant aspects of purchasing an interest in

this development and any documents which may govern or affect the development may be complex, may contain other important information, and create binding legal obligations. You should consider seeking assistance of legal counsel"; and

(z) Any other information and cross-references which the developer believes will be helpful in describing the development to the recipients of the public offering statement, all of which may be included or not included at the option of the developer.

(2) The public offering statement shall include copies of each of the following documents: Any declaration of covenants, conditions, restrictions, and reservations affecting the development; any survey, plat, or subdivision map; the articles of incorporation of any owners' association; the bylaws of any owners' association; the rules and regulations, if any, of any owners' association; current or proposed budget for any owners' association; and the balance sheet of any owners' association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not yet been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of an interest in the development, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(v), (x), and (y) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size. [1992 c 191 § 5.]

58.19.120 Report of changes required—Amendments. The developer shall immediately amend the public offering statement to include any material changes affecting the development. No change in the substance of the promotional plan or plan of disposition or completion of the development may be made without first making an appropriate amendment of the public offering statement. A public offering statement is not current unless it incorporates all amendments. [1992 c 191 § 6; 1973 1st ex.s. c 12 § 12.]

58.19.130 Public offering statement form—Type and style restriction. No portion of the public offering statement form may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the director so requires. [1973 1st ex.s. c 12 § 13.]

58.19.140 Public offering statement—Promotional use, distribution restriction—Holding out that state or employees, etc., approve development prohibited. The public offering statement shall not be used for any promotional purposes. It may not be distributed to prospective purchasers before registration of the development and may be distributed afterwards only when it is used in its entirety. No person may advertise or represent that the state of Washington or the director, the department, or any employee thereof approves or recommends the development or disposition thereof. [1973 1st ex.s. c 12 § 14.]

(2004 Ed.)

58.19.180 Unlawful to sell lots or parcels subject to blanket encumbrance which does not provide purchaser can obtain clear title—Alternatives. It shall be unlawful for the developer to make a sale of lots or parcels within a development which is subject to a blanket encumbrance which does not contain, within its terms or by supplementary agreement, a provision which shall unconditionally provide that the purchaser of a lot or parcel encumbered thereby can obtain the legal title, or other interest contracted for, free and clear of the lien of such blanket encumbrance upon compliance with the terms and conditions of the purchase agreement, unless the developer shall elect and comply with one of the following alternative conditions:

(1) The developer shall deposit earnest moneys and all subsequent payments on the obligation in a neutral escrow depository, or real estate trust account regulated under RCW 18.85.310, until such time as all payments on the obligation have been made and clear title is delivered, or any of the following occurs:

(a) A proper release is obtained from such blanket encumbrance;

(b) Either the developer or the purchaser defaults under the sales contract and there is a forfeiture of the interest of the purchaser or there is a determination as to the disposition of such moneys, as the case may be; or

(c) The developer orders a return of such moneys to such purchaser.

(2) The title to the development is held in trust under an agreement of trust until the proper release of such blanket encumbrance is obtained.

(3) The purchaser shall receive title insurance from a licensed title insurance company against such blanket encumbrance. [1992 c 191 § 7; 1973 1st ex.s. c 12 § 18.]

58.19.185 Requiring purchaser to pay additional sum to construct, complete or maintain development. It shall be unlawful for the developer to sell a lot or parcel within a development if the terms of the sale require that the purchaser pay any sum in addition to the purchase price for constructing, completing, or maintaining improvements to the development unless the sums are to be paid directly to:

(1) A governmental agency;

(2) A person who is not affiliated with the developer, in trust, and on terms acceptable to the director; or

(3) An association comprised solely of persons who have purchased lots in the development, or their assignees.

The terms which require the payment of any additional sum shall be set forth in the public offering statement. [1977 ex.s. c 252 § 1.]

58.19.190 Advertising—Materially false, misleading, or deceptive statements prohibited. No person shall publish in this state any advertisement concerning a development subject to the requirements of this chapter which contains any statements that are materially false, misleading, or deceptive. [1992 c 191 § 8; 1973 1st ex.s. c 12 § 19.]

58.19.265 Violations—Remedies—Attorneys' fees. If a developer, or any other person subject to this chapter, fails to comply with any provision of this chapter, any person or class of persons adversely affected by the failure to comply

may seek appropriate relief through an action for damages or an injunctive court order. The court, in an appropriate case, may award attorneys' fees. [1992 c 191 § 9.]

58.19.270 Violations deemed unfair practice subject to chapter 19.86 RCW. (1) The commission by any person of an act or practice prohibited by this chapter is hereby declared to be a matter affecting the public interest for the purpose of applying chapter 19.86 RCW and is not reasonable in relation to the development and preservation of business. A violation of this chapter constitutes an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of the attorney general bringing an action in the name of the state under the consumer protection act, pursuant to RCW 19.86.080.

(2) Evidence concerning violations of this chapter may be referred to the attorney general, who may, in his or her discretion, with or without such a reference, in addition to any other action the attorney general might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter. This chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, and the powers and duties of the attorney general as such powers and duties appear in chapters 9.04 and 19.86 RCW shall apply against all persons subject to this chapter.

(3) Only the attorney general can bring an action under the consumer protection act, chapter 19.86 RCW, pursuant to this section. [1992 c 191 § 10; 1973 1st ex.s. c 12 § 27.]

58.19.280 Jurisdiction of superior courts. Dispositions of an interest in a development are subject to this chapter, and the superior courts of this state have jurisdiction in claims or causes of action arising under this chapter, if:

(1) The interest in a development offered for disposition is located in this state;

(2) The developer maintains an office in this state; or

(3) Any offer or disposition of an interest in a development is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed. [1973 1st ex.s. c 12 § 28.]

58.19.300 Hazardous conditions—Notice. If, before disposition of all or any portion of a development which is covered by this chapter, a condition constituting a physical hazard is discovered on or around the immediate vicinity of the development, the developer or government agency discovering such condition shall notify the purchasers of the affected lands either by transmitting notice through the appropriate county assessor's office or such other steps as might reasonably give actual notice to the purchasers. [1992 c 191 § 11; 1973 1st ex.s. c 12 § 30.]

58.19.920 Liberal construction. The provisions of this chapter shall be construed liberally so as to give effect to the purposes stated in RCW 58.19.010. [1973 1st ex.s. c 12 § 33.]

58.19.940 Short title. This chapter may be cited as the land development act. [1992 c 191 § 12; 1973 1st ex.s. c 12 § 35.]

58.19.950 Severability—1973 1st ex.s. c 12. If any provision of this 1973 act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this 1973 act are severable. [1973 1st ex.s. c 12 § 36.]

58.19.951 Severability—1992 c 191. If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 191 § 14.]

Chapter 58.20 RCW

WASHINGTON COORDINATE SYSTEM

Sections

58.20.110	Definitions.
58.20.120	System designation—Permitted uses.
58.20.130	Plane coordinates adopted—Zones.
58.20.140	Designation of system—Zones.
58.20.150	Designation of coordinates—"N" and "E."
58.20.160	Tract in both zones—Description.
58.20.170	Zones—Technical definitions.
58.20.180	Recording coordinates—Control stations.
58.20.190	Conversion of coordinates—Metric.
58.20.200	Term—Limited use.
58.20.210	United States survey prevails—Conflict.
58.20.220	Real estate transactions—Exemption.
58.20.901	Severability—1989 c 54.

58.20.110 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 58.20.110 through 58.20.220 and 58.20.901:

(1) "Committee" means the interagency federal geodetic control committee or its successor;

(2) "GRS 80" means the geodetic reference system of 1980 as adopted in 1979 by the international union of geodesy and geophysics defined on an equipotential ellipsoid;

(3) "National geodetic survey" means the national ocean service's national geodetic survey of the national oceanic and atmospheric administration, United States department of commerce, or its successor;

(4) "Washington coordinate system of 1927" means the system of plane coordinates in effect under this chapter until July 1, 1990, which is based on the North American datum of 1927 as determined by the national geodetic survey of the United States department of commerce;

(5) "Washington coordinate system of 1983" means the system of plane coordinates under this chapter based on the North American datum of 1983 as determined by the national geodetic survey of the United States department of commerce. [1989 c 54 § 9.]

58.20.120 System designation—Permitted uses. Until July 1, 1990, the Washington coordinate system of 1927, or its successor, the Washington coordinate system of 1983,

may be used in Washington for expressing positions or locations of points on the surface of the earth. On and after that date, the Washington coordinate system of 1983 shall be the designated coordinate system in Washington. The Washington coordinate system of 1927 may be used only for purposes of reference after June 30, 1990. [1989 c 54 § 10.]

58.20.130 Plane coordinates adopted—Zones. The system of plane coordinates which has been established by the national geodetic survey for defining and stating the positions or locations of points on the surface of the earth within the state of Washington is designated as the "Washington coordinate system of 1983."

For the purposes of this system the state is divided into a "north zone" and a "south zone."

The area now included in the following counties shall constitute the north zone: Chelan, Clallam, Douglas, Ferry, Island, Jefferson, King, Kitsap, Lincoln, Okanogan, Pend Oreille, San Juan, Skagit, Snohomish, Spokane, Stevens, Whatcom, and that part of Grant lying north of parallel 47° 30' north latitude.

The area now included in the following counties shall constitute the south zone: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, that part of Grant lying south of parallel 47° 30' north latitude, Grays Harbor, Kittitas, Klickitat, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Walla Walla, Whitman and Yakima. [1989 c 54 § 11.]

58.20.140 Designation of system—Zones. As established for use in the north zone, the Washington coordinate system of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1983, north zone."

As established for use in the south zone, the Washington coordinate system of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1983, south zone." [1989 c 54 § 12.]

58.20.150 Designation of coordinates—"N" and "E." "N" and "E" shall be used in labeling coordinates of a point on the earth's surface and in expressing the position or location of such point relative to the origin of the appropriate zone of this system, expressed in meters and decimals of a meter. These coordinates shall be made to depend upon and conform to the coordinates, on the Washington coordinate system of 1983, of the horizontal control stations of the national geodetic survey within the state of Washington, as those coordinates have been determined, accepted, or adjusted by the survey. [1989 c 54 § 13.]

58.20.160 Tract in both zones—Description. When any tract of land to be defined by a single description extends from one into the other of the coordinate zones under RCW 58.20.130, the positions of all points on its boundaries may be referred to either of the zones, the zone which is used being specifically named in the description. [1989 c 54 § 14.]

(2004 Ed.)

58.20.170 Zones—Technical definitions. For purposes of more precisely defining the Washington coordinate system of 1983, the following definition by the national geodetic survey is adopted:

The Washington coordinate system of 1983, north zone, is a Lambert conformal conic projection of the GRS 80 spheroid, having standard parallels at north latitudes 47° 30' and 48° 44', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 50' west of Greenwich and the parallel 47° 00' north latitude. This origin is given the coordinates: E = 500,000 meters and N = 0 meters.

The Washington coordinate system of 1983, south zone, is a Lambert conformal conic projection of the GRS 80 spheroid, having standard parallels at north latitudes 45° 50' and 47° 20', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 30' west of Greenwich and the parallel 45° 20' north latitude. This origin is given the coordinates: E = 500,000 meters and N = 0 meters. [1989 c 54 § 15.]

58.20.180 Recording coordinates—Control stations. Coordinates based on the Washington coordinate system of 1983, purporting to define the position of a point on a land boundary, may be presented to be recorded in any public land records or deed records if the survey method used for the determination of these coordinates is established in conformity with standards and specifications prescribed by the interagency federal geodetic control committee, or its successor. These surveys shall be connected to monumented control stations that are adjusted to and published in the national network of geodetic control by the national geodetic survey and such connected horizontal control stations shall be described in the land or deed record. Standards and specifications of the committee in force on the date of the survey shall apply. In all instances where reference has been made to such coordinates in land surveys or deeds, the scale and sea level factors shall be stated for the survey lines used in computing ground distances and areas.

The position of the Washington coordinate system of 1983 shall be marked on the ground by horizontal geodetic control stations which have been established in conformity with the survey standards adopted by the committee and whose geodetic positions have been rigorously adjusted on the North American datum of 1983, and whose coordinates have been computed and published on the system defined in RCW 58.20.110 through 58.20.220 and 58.20.901. Any such control station may be used to establish a survey connection with the Washington coordinate system of 1983. [1989 c 54 § 16.]

58.20.190 Conversion of coordinates—Metric. Any conversion of coordinates between the meter and the United States survey foot shall be based upon the length of the meter being equal to exactly 39.37 inches. [1989 c 54 § 17.]

58.20.200 Term—Limited use. The use of the term "Washington coordinate system of 1983" on any map, report of survey, or other document, shall be limited to coordinates

based on the Washington coordinate system of 1983 as defined in this chapter. [1989 c 54 § 18.]

58.20.210 United States survey prevails—Conflict. Whenever coordinates based on the Washington coordinate system of 1983 are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates. [1989 c 54 § 19.]

58.20.220 Real estate transactions—Exemption. Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Washington coordinate system of 1927 or 1983. [1989 c 54 § 20.]

58.20.901 Severability—1989 c 54. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 54 § 21.]

Chapter 58.22 RCW

STATE BASE MAPPING SYSTEM

Sections

58.22.010	Legislative intent.
58.22.020	Establishment and maintenance—Standards.
58.22.030	United States geological survey quadrangle map separates—Acquisition by state agencies.
58.22.040	United States geological survey quadrangle map separates—State depository.
58.22.050	Availability of map separates—Powers and duties of department.

Surveys and maps account established for purposes of chapter 58.22 RCW: RCW 58.24.060.

58.22.010 Legislative intent. It is the intent of the legislature to establish a coordinated system of state base maps to assist all levels of government to more effectively provide the information to meet their responsibilities for resource planning and management.

It is further the legislature's intent to eliminate duplication, to insure compatibility, and to create coordination through a uniform base which all agencies will use.

It is in the interest of all citizens in the state of Washington that a state base mapping system be established to make essential base maps available at cost to all users, both public and private. [1973 1st ex.s. c 159 § 1.]

58.22.020 Establishment and maintenance—Standards. The department of natural resources shall establish and maintain a state base mapping system. The standards for the state base mapping system shall be:

(1) A series of fifteen minute United States geological survey quadrangle map separates at a scale of one to 48,000 (one inch equals 4,000 feet) covering the entire state;

(2) A series of seven and one-half minute United States geological survey quadrangle map separates at a scale of one to 24,000 (one inch equals 2,000 feet) for urban areas; including but not limited to those identified as urban by the state department of transportation for the United States department of transportation.

All features and symbols added to the quadrangle separates shall meet as nearly as is practical national map accuracy standards and specifications as defined by the United States geological survey for their fifteen minute and seven and one-half minute quadrangle map separates.

Each quadrangle shall be revised by the department of natural resources as necessary to reflect current conditions. [1984 c 7 § 367; 1973 1st ex.s. c 159 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

58.22.030 United States geological survey quadrangle map separates—Acquisition by state agencies. Any state agency purchasing or acquiring United States geological survey quadrangle map separates shall do so through the department of natural resources. [1973 1st ex.s. c 159 § 3.]

58.22.040 United States geological survey quadrangle map separates—State depository. The department of natural resources shall be the primary depository of all United States geological survey quadrangle map separates for state agencies: PROVIDED, That any state agency may maintain duplicate copies. [1973 1st ex.s. c 159 § 4.]

58.22.050 Availability of map separates—Powers and duties of department. (1) All United States geological survey quadrangle map separates shall be available at cost to all state agencies, local agencies, the federal government, and any private individual or company through duplication and purchase.

The department shall coordinate all requests for the use of United States geological survey quadrangle map separates and shall provide advice on how to best use the system.

(2) The department shall maintain a catalogue showing all United States geological survey quadrangle map separates available. The department shall also catalogue information describing additional separates or products created by users. Copies of maps made for any state or local agency shall be available to any other state or local agency. [1973 1st ex.s. c 159 § 5.]

Chapter 58.24 RCW

STATE AGENCY FOR SURVEYS AND MAPS—FEES

Sections

58.24.010	Declaration of necessity.
58.24.020	Official agency designated—Advisory board.
58.24.030	Official agency designated—Powers—Cooperate and advise—Purposes.
58.24.040	Official agency designated—Powers—Standards, maps, records, report, temporary removal of boundary marks or monuments.
58.24.050	Employees—Licensed engineers or surveyors.
58.24.060	Surveys and maps account—Purposes.

58.24.070 Fees for filing and recording surveys, plats, or maps—Deposit and use of fees.

Cemetery property—Surveys and maps, plats, etc.: Chapter 68.24 RCW.

Counties—Land surveys, record of surveys: RCW 36.32.370, 36.32.380.

Geological survey: Chapter 43.27A RCW.

Irrigation districts—Map of district: RCW 87.03.775.

Public lands—Maps and plats—Record and index—Public inspection: RCW 79.02.210.

Reclamation districts—Surveys, etc.: Chapter 89.30 RCW.

Regulation of public ground waters—Designating or modifying boundaries of areas—Notice of hearing—Findings—Order: RCW 90.44.130.

Restoration of United States survey markers: RCW 47.36.010.

State highways and toll bridges

copy of map, plans, etc.—Fee: RCW 47.28.060.

maps, plans, etc.—Filing: RCW 47.28.040.

58.24.010 Declaration of necessity. It is the responsibility of the state to provide a means for the identification and preservation of survey points for the description of common land boundaries in the interest of the people of the state. There is a necessity for the adoption and maintenance of a system of permanent reference as to boundary monuments. The department of natural resources shall be the recognized agency for the establishment of this system. [1987 c 466 § 4; 1982 c 165 § 1; 1951 c 224 § 2.]

Severability—1951 c 224: "If any provision of this act shall be declared invalid, such invalidity shall not affect any other portion of this act which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable." [1951 c 224 § 7.]

58.24.020 Official agency designated—Advisory board. The department of natural resources is designated as the official agency for surveys and maps. The commissioner of public lands shall appoint an advisory board of five members, the majority of whom shall be registered professional engineers or land surveyors, who shall serve at the pleasure of the commissioner. Members of the board shall serve without salary but are to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while actively engaged in the discharge of their duties. [1987 c 466 § 5; 1982 c 165 § 2; 1975-'76 2nd ex.s. c 34 § 152; 1951 c 224 § 3.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Severability—1951 c 224: See note following RCW 58.24.010.

Department of natural resources to exercise powers and duties of commissioner of public lands: RCW 43.30.411.

58.24.030 Official agency designated—Powers—Cooperate and advise—Purposes. The commissioner of public lands, the department of natural resources, and the advisory board are authorized to cooperate and advise with various departments and subdivisions of the state, counties, municipalities, and registered engineers or land surveyors of the state for the following purposes:

(1) The recovery of section corners or other land boundary marks;

(2) The monumentation of accepted section corners, and other boundary and reference marks; said monumentation shall be adequately connected to adjusted United States coast and geodetic survey triangulation stations and the coordinates of the monuments computed to conform with the Washington

coordinate system in accordance with the provisions of chapter 58.20 RCW, as derived from chapter 168, Laws of 1945;

(3) For facilitation and encouragement of the use of the Washington state coordinate system; and

(4) For promotion of the use of the level net as established by the United States coast and geodetic survey. [1987 c 466 § 6; 1982 c 165 § 3; 1951 c 224 § 4.]

Severability—1951 c 224: See note following RCW 58.24.010.

58.24.040 Official agency designated—Powers—Standards, maps, records, report, temporary removal of boundary marks or monuments. The agency designated by RCW 58.24.020 is further authorized to:

(1) Set up standards of accuracy and methods of procedure;

(2) Compile and publish maps and records from surveys performed under the provisions of this chapter, and to maintain suitable indexes of surveys to prevent duplication of effort and to cooperate with all agencies of local, state, and federal government to this end;

(3) Compile and maintain records of all surveys performed under the provisions of this chapter, and assemble and maintain records of all reliable survey monuments and bench marks within the state;

(4) Collect and preserve information obtained from surveys locating and establishing land monuments and land boundaries;

(5) Supervise the sale and distribution of cadastral and geodetic survey data, and such related survey maps and publications as may come into the possession of the department of natural resources. Revenue derived from the sale thereof shall be deposited in the surveys and maps account in the general fund;

(6) Supervise the sale and distribution of maps, map data, photographs, and such publications as may come into the possession of the department of natural resources.

(7) Submit, as part of the biennial report of the commissioner of public lands, a report of the accomplishments of the agency;

(8) Permit the temporary removal or destruction of any section corner or any other land boundary mark or monument by any person, corporation, association, department, or subdivision of the state, county, or municipality as may be necessary or desirable to accommodate construction, mining, and other development of any land: **PROVIDED**, That such section corner or other land boundary mark or monument shall be referenced to the Washington Coordinate System by a registered professional engineer or land surveyor prior to such removal or destruction, and shall be replaced or a suitable reference monument established by a registered professional engineer or land surveyor within a reasonable time after completion of such construction, mining, or other development: **AND PROVIDED FURTHER**, That the department of natural resources shall adopt and promulgate reasonable rules and regulations under which the agency shall authorize such temporary removal or destruction and require the replacement of such section corner or other land boundary marks or monuments. [1987 c 466 § 7; 1982 c 165 § 4; 1969 ex.s. c 271 § 25; 1951 c 224 § 6.]

Severability—1969 ex.s. c 271: See RCW 58.17.910.

Severability—1951 c 224: See note following RCW 58.24.010.

58.24.050 Employees—Licensed engineers or surveyors. All employees who are in responsible charge of work under the provisions of this chapter shall be licensed professional engineers or land surveyors. [1982 c 165 § 5; 1951 c 224 § 5.]

Severability—1951 c 224: See note following RCW 58.24.010.

58.24.060 Surveys and maps account—Purposes. There is created in the state treasury the surveys and maps account which shall be a separate account consisting of funds received or collected under chapters 58.22 and 58.24 RCW, moneys appropriated to it by law. This account shall be used exclusively by the department of natural resources for carrying out the purposes and provisions of chapters 58.22 and 58.24 RCW. Appropriations from the account shall be expended for no other purposes. [1991 sp.s. c 13 § 14; 1987 c 466 § 8; 1985 c 57 § 65; 1983 c 272 § 1; 1982 c 165 § 6.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

58.24.070 Fees for filing and recording surveys, plats, or maps—Deposit and use of fees. A fee set by the board of natural resources shall be charged by each county auditor, in addition to any other fees required by law, as a condition precedent to the filing and recording of any surveys, subdivision plats, short plats, and condominium surveys, plats, or maps. Such funds shall be forwarded monthly to the state treasurer to be deposited in the surveys and maps account in the general fund. The fees shall be verified in the same manner as other fees collected by the county auditor. Fees collected under this section shall be expended by the department only for the activities prescribed in this chapter. [1987 c 466 § 9; 1983 c 272 § 2; 1982 c 165 § 7.]

Condominium surveys and maps: RCW 64.32.100.

Plats and subdivisions: Chapter 58.17 RCW.

Chapter 58.28 RCW

TOWNSITES ON UNITED STATES LAND—ACQUISITION OF LAND

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INCORPORATED TOWNS ON UNITED STATES LAND

58.28.010 Councils' duties when townsites on United States land. It is the duty of the city or town council of any city or town in this state situate upon public lands of the United States or lands, the legal and equitable title to which is in the United States of America, to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes and proceedings, at a regular meeting, to authorize and direct the mayor and clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this chapter and the intentions of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, including section sixteen of an act of congress entitled "An act to repeal timber culture laws and for other purposes," approved March 3, 1891, and to make proof, when required,

of the facts necessary to establish the claim of such inhabitants to the lands so granted by said acts of congress, and file in the proper United States land office a proper application in writing describing the tracts of land on which such city or town is situate, and make proof and payment for such tracts of land in the manner required by law. [1909 c 231 § 1; RRS § 11485. Prior: 1888 c 124 pp 216-220.]

58.28.020 Councils' duties when townsites on United States land—Survey and plat. Said council must cause a survey to be made by some competent person, of the lands which the inhabitants of said city or town may be entitled to claim under the said act of congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes and alleys, public squares, churches, school lots, cemeteries, commons and levees as the same exist and have been heretofore dedicated in any manner to public use, and by measurement the precise boundaries and area of each, and every lot or parcel of land and premises claimed by any person, corporations or associations within said city or townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor or occupants and claimants, and in case of any disputed claim as to lots, lands, premises or boundaries the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely. [1909 c 231 § 2; RRS § 11486. Prior: 1888 c 124 pp 216-220.]

58.28.030 Councils' duties when townsites on United States land—Plats—Filing. A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein the city or town is situated, one must be deposited in the proper United States land office, and one with the city or town clerk. These plats shall be considered public records, and each must be accompanied with a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file a copy of said field notes in his office. The said surveyor must number the blocks as divided by the roads, highways and streets opened and generally used, and for which a public necessity exists at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats. Said survey and plat thereof shall conform as near as may be to the existing rights, interests and claims of the occupants thereof, but no lot in the central or business portion of such city or town shall exceed in area four thousand, two hundred square feet, and no suburban lot in such city or town shall exceed two acres in area. [1909 c 231 § 3; RRS § 11487. Prior: 1888 c 124 pp 216-220.]

(2004 Ed.)

58.28.040 Councils' duties when townsites on United States land—Survey, notice of—Bids for—Franchises continued. Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage and at the least expense to the holders, claimants and occupants thereof; and the council is hereby authorized and directed to receive bids for such surveying, and to let the same by contract to the lowest competent bidder: PROVIDED, That the possessors, owners and claimants of water works, electric light, telegraph, telephone, pipe or power lines, sewers and like or similar property located in such roads, streets, alleys and other public places in such cities and towns shall be maintained and protected in the same, as the same shall exist at the time of the entry in the United States land office of the land embracing such city or town, and the right to continue to use such property for the purposes for which said property was intended, is hereby acknowledged and confirmed. [1909 c 231 § 4; RRS § 11488. Prior: 1888 c 124 pp 216-220.]

58.28.050 Contents of plat. Such plat must show as follows:

- (1) All streets, alleys, avenues, roads and highways, and the width thereof.
- (2) All parks, squares and all other grounds reserved for public uses, with the boundaries and dimensions thereof.
- (3) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.
- (4) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.
- (5) The location of all stone or iron monuments set to establish street lines.
- (6) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.
- (7) The location of all section corners, quarter section or meander corners of sections within the limits of said plat.
- (8) In case no such section or quarter section or meander corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot. [1909 c 231 § 5; RRS § 11489. Prior: 1888 c 124 pp 216-220.]

58.28.060 Monuments—Location, placement requirements. Such surveyor must mark all corners of blocks or lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be at least six inches by six inches by six inches, and be

placed in the ground to the depth of one foot. [1909 c 231 § 6; RRS § 11490. Prior: 1888 c 124 pp 216-220.]

58.28.070 Monuments—Markings—Surveyor's certificate on plat. If a stone is used as a monument, it must have a cross cut in the top at the point of intersection of the center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this chapter, stating the date of survey, and verify the same by his oath. [1909 c 231 § 7; RRS § 11491. Prior: 1888 c 124 pp 216-220.]

58.28.080 Plats filed—Auditor's fee. All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats and the field notes accompanying the same shall be the sum of ten dollars. [1909 c 231 § 8; RRS § 11492. Prior: 1888 c 124 pp 216-220.]

58.28.090 Assessments. Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half acre in area shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must be received by the clerk and be paid by him into the city or town treasury. [1909 c 231 § 9; RRS § 11493. Prior: 1888 c 124 pp 216-220.]

58.28.100 Notice of possession filed—Assessment and fee—Certificate—Council record. Every person, company, corporation or association claimant of any city or town

lot or parcel of land within the limits of such city or townsite, must present to the council, by filing the same with the clerk thereof, within three months after the patent (or certified copy thereof) from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person or by duly authorized agent, attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons, to the best of his knowledge and belief, and stating who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said city or townsite as will fully exhibit the particular lot or parcel of land so claimed, and every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall certify to be due for the assessment mentioned in RCW 58.28.090, together with the further sum of four dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this chapter, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lands claimed. [1909 c 231 § 10; RRS § 11494. Prior: 1888 c 124 pp 216-220.]

58.28.110 Deficiency assessment—When payable. If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such city or town, and declare the same upon the basis set down in RCW 58.28.090, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinafter [hereinbefore] mentioned, or at the time when the deed of conveyance hereinbefore [hereinafter] provided for, is issued. [1909 c 231 § 11; RRS § 11495. Prior: 1888 c 124 pp 216-220.]

58.28.120 Deed to claimants—Actions contesting title, limitations on. At the expiration of six months after the time of filing of such patent, or a certified copy thereof in the office of the county auditor, if there has been no adverse claim filed in the meantime, the council must execute and deliver to such claimant, his or her, its or their heirs, executors, administrators, grantees, successors or assigns a good and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by the mayor or other presiding officer of the council, and attested by the corporate seal of such city or town. No conveyance of any such lands made as in this chapter pro-

vided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands and their right to the legal title thereto against such grantee, his, her, its or their heirs, successors or assigns, to which they may deem themselves entitled either in law or equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their legal representatives or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situate; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon the possessory claim or title to real estate, when such action is barred by law at the time of the passage of this chapter. [1909 c 231 § 12; RRS § 11496. Prior: 1888 c 124 pp 216-220.]

58.28.130 Entries on mineral lands—Rights of claimants. Townsite entries may be made by incorporated towns or cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: PROVIDED, That no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant. [1909 c 231 § 13; RRS § 11497. Prior: 1888 c 124 pp 216-220.]

58.28.140 Conflicting claims—Procedure. In all cases of adverse claims or disputes arising out of conflicting claims to lands or concerning boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed or denied in accordance with the facts; but in all other cases of adverse claims, the party out of possession shall commence his action in a court of competent jurisdiction within six months after the time of filing of the patent from the United States (or a certified copy thereof), in the office of the county auditor. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any deed to the land in dispute until the final decision in such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of

such premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant to establish that he, she or it was an occupant of the ground in controversy within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office, or is the successor in interest of such occupant. [1909 c 231 § 14; RRS § 11498. Prior: 1888 c 124 pp 216-220.]

Proof of right—Costs upon failure of both conflicting parties: RCW 58.28.360.

58.28.150 Notice of filing patent—Abandonment of claim. The said council must give public notice by advertising for four weeks in a newspaper published in said city or town, or, if there be no newspaper published in said city or town, then by publication in some newspaper having general circulation in such city or town, and not less than five written or printed notices must be posted in public places within the limits of such city or townsite; such notice must state that patent for said townsite (or certified copy thereof) has been filed in the county auditor's office. If any person, company, association or any other claimant of lands in such city or town fails, neglects or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this chapter, within three months after filing of such patent, or a certified copy thereof, in the office of the county auditor, shall be deemed to have abandoned the same and to have forfeited all right, title and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots shall be sold as unoccupied lands, and the proceeds thereof placed in the special fund in this chapter mentioned. [1909 c 231 § 15; RRS § 11499. Prior: 1888 c 124 pp 216-220.]

58.28.160 Sale of unoccupied lots—Notice—Minimum price. All lots in such city or townsite which were unoccupied at the time of the entry of said townsite in the United States land office shall be sold by the corporate authorities of such city or town, or under their direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale or sales shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted for at least thirty days prior to the date of said sale, and by publishing a like notice for four consecutive weeks prior to such sale in a newspaper published in such city or town, or, if no such newspaper be published in such city or town, then in some newspaper having general circulation in such city or town, and deeds shall be given therefor to the several purchasers: PROVIDED, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment

provided in RCW 58.28.090, and all moneys arising from such sale, after deducting the costs and expenses of such sale or sales, shall be placed in the treasury of such city or town. [1909 c 231 § 16; RRS § 11500. Prior: 1888 c 124 pp 216-220.]

58.28.170 Lands for school and municipal purposes—Funds. All school lots or parcels of land, reserved or occupied for school purposes, must be conveyed to the school district in which such city or town is situated, without cost or charge of any kind whatever. All lots or parcels of land reserved or occupied for municipal purposes must be conveyed to such city or town without cost or charge of any kind whatever. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter are a charge against the city or town on behalf of which the work was done, and such expenses necessarily incurred, either before or after the incorporation thereof, shall be paid out of the treasury of such city or town upon the order of the council thereof; and all moneys paid for lands or to defray the expenses of carrying into effect the provisions of this chapter shall be paid into the city or town treasury by the officer or officers receiving the same, and shall constitute a special fund, from which shall be paid all expenses, and the surplus, if any there be, shall be expended under the direction of the city or town council for public improvements in such city or town. [1909 c 231 § 17; RRS § 11501. Prior: 1888 c 124 pp 216-220.]

58.28.180 Effect of informalities—Certificate or deed as prima facie evidence. No mere informality, failure or omission on the part of any of the persons or officers named in this chapter invalidates the acts of such person or officer; but every certificate or deed granted to any person pursuant to the provisions of this chapter is prima facie evidence that all preliminary proceedings in relation thereto have been correctly taken and performed, and that the recitals therein are true and correct. [1909 c 231 § 18; RRS § 11502. Prior: 1888 c 124 pp 216-220.]

58.28.190 Corporate authorities to act promptly. Such corporate authorities shall promptly execute and perform all duties imposed upon them by the provisions of this chapter. [1909 c 231 § 19; RRS § 11503. Prior: 1888 c 124 pp 216-220.]

58.28.200 Proof requisite to delivery of deed. No deed to any lot or parcel of land in such townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, successors in interest or assigns of such occupant of any lot, as such, may receive such deed. [1909 c 231 § 20; RRS § 11504. Prior: 1888 c 124 pp 216-220.]

58.28.201 Title to vacated lots by occupancy and improvements. See RCW 58.28.510.

58.28.202 Controversies, by whom settled—Review. See RCW 58.28.520.

58.28.203 Platted lands declared dedicated to public use. See RCW 58.28.440.

58.28.204 Appeals—Procedure. See RCW 58.28.490.

UNINCORPORATED TOWNS ON UNITED STATES LAND

58.28.210 Unincorporated towns on United States land—Superior court judge to file claim. It is the duty of the judge of the superior court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situate upon lands the legal and equitable title to which is in the United States of America, or situate upon public lands of the United States within the county wherein such superior court is held, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and valid regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect the intentions of this chapter, and the intention of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, and to file in the proper United States land office a proper application in writing, describing the tracts of land on which such unincorporated town is situated, and all lands entitled to be embraced in such government townsite entry, and make proof and payment for such tracts of land in the manner required by law. [1909 c 231 § 21; RRS § 11505. Prior: 1888 c 124 pp 216-220.]

58.28.220 Petition to superior court judge—Contents—Procedure. The judge of the superior court of any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any such unincorporated town, whose names appear upon the assessment roll for the year preceding such application in the county wherein such unincorporated town is situated—which petition shall set forth the existence, name and locality of such town, whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands an accurate description according to the government survey of the legal subdivisions sought to be entered as a government townsite must be stated; the estimated number of its inhabitants; the approximate number of separate lots or parcels of land within such townsite, and the amount of land to which they are entitled under such acts of congress—must estimate the cost of entering such land, and of the survey, platting and recording of the same, and must endorse such estimate upon such petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said judge may cause an enumeration of the inhabitants of such town to be made by some competent person, exhibiting therein the names of all persons residing in said proposed townsite and

the names of occupants of lots, lands, or premises within such townsite, alphabetically arranged, verified by his oath, and cause such enumeration to be presented to such judge. [1909 c 231 § 22; RRS § 11506. Prior: 1888 c 124 pp 216-220.]

58.28.230 Survey and plat—Boundaries—Monuments. Such judge must thereupon cause a survey to be made by some competent person, of the lands which the inhabitants of said town may be entitled to claim under said acts of congress, located according to the legal subdivisions of the sections according to the government survey thereof, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated, in any manner to public use, and by measurement the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor, occupant or claimant; and in case of any disputed claim as to lots, lands, premises or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely; said surveyor shall survey, lay out and plat all of said lands, whether occupied or not, into lots, blocks, streets and alleys. [1909 c 231 § 23; RRS § 11507. Prior: 1888 c 124 pp 216-220.]

58.28.240 Plats—Filing. The plat thereof must be made in triplicate on a scale of not less than eighty feet to an inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein such unincorporated town is situated, one must be deposited in the proper United States land office, and one with such judge. These plats shall constitute public records, and must each be accompanied by a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file such copy of said field notes in his office. The said surveyor must number and survey the blocks as divided by the roads, and streets opened and generally used and for which a public necessity exists, at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said unincorporated town as herein provided, which said numbers must be a sufficient description of any parcel of land represented on said plats. Said survey and plat thereof shall conform as nearly as may be to the existing rights, interest, and claims of the occupants thereof, but no lot in the center or business portion of said unincorporated town shall exceed in area four thousand two hundred feet, and no suburban lot in such unincorporated town shall exceed two acres in area. [1909 c 231 § 24; RRS § 11508. Prior: 1888 c 124 pp 216-220.]

58.28.250 Survey, notice of—Bids for—Franchises continued. Before proceeding to make such survey, at least

ten days' notice thereof must be given, by posting within the limits of such townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in said town, if one there be. The survey of said townsite must be made to the best advantage and at the least expense to the holders, claimants, possessors and occupants thereof. The said judge is hereby authorized and directed to receive bids for such surveying, platting and furnishing copies of the field notes, and to let the same by contract to the lowest competent bidder: PROVIDED, That the possessors, owners, or claimants of water works, electric light, telegraph, telephone, pipe or power lines, sewers, irrigating ditches, drainage ditches, and like or similar property located in such townsites or in the roads, streets, alleys or highways therein or in other public places in such townsite, shall be maintained and protected in the same as the same shall exist at the time of the entry in the United States land office of the land embraced in such government townsite, and the right to continue to use such property, for the purposes for which said property was intended, is hereby acknowledged and confirmed. [1909 c 231 § 25; RRS § 11509. Prior: 1888 c 124 pp 216-220.]

58.28.260 Contents of plat. Such plat must show as follows:

- (1) All streets, alleys, avenues, roads and highways, and the width thereof.
- (2) All parks, squares and all other ground reserved for public uses, with the boundaries and dimensions thereof.
- (3) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.
- (4) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.
- (5) The location of all stone or iron monuments set to establish street lines.
- (6) The exterior boundaries of the piece of land so plated, giving such boundaries by true courses and distances.
- (7) The location of all section corners, or legal subdivision corners of sections within the limits of said plat.
- (8) In case no such section or subdivision corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot. [1909 c 231 § 26; RRS § 11510. Prior: 1888 c 124 pp 216-220.]

58.28.270 Monuments—Location, placement requirements. Such surveyor must mark all corners of blocks or lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be at least six inches by six inches by six inches, and be

placed in the ground to the depth of one foot. [1909 c 231 § 27; RRS § 11511. Prior: 1888 c 124 pp 216-220.]

58.28.280 Monuments—Markings—Surveyor's certificate on plat. If a stone is used as a monument it must have a cross cut in the top at the point of intersection of center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this chapter, stating the date of survey, and verify the same by his oath. [1909 c 231 § 28; RRS § 11512. Prior: 1888 c 124 pp 216-220.]

58.28.290 Plats filed—Auditor's fee. All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats, and the field notes accompanying the same shall be the sum of ten dollars. [1909 c 231 § 29; RRS § 11513. Prior: 1888 c 124 pp 216-220.]

58.28.300 Assessments—Disposition—Employment of attorney authorized. Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and five [fifty] cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes, each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said townsite lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expenses of their location, entry and purchase, and cost and expenses attendant upon the

making of such survey, plats, publishing and recording, including a reasonable attorney's fee for legal services necessarily performed, and the persons or occupants in such townsite procuring said townsite entry to be made, may employ an attorney to assist them in so doing and to assist such judge in the execution of his trust, and he shall be allowed by such judge out of said fund a reasonable compensation for his services. [1909 c 231 § 30; RRS § 11514. Prior: 1888 c 124 pp 216-200.]

58.28.310 Notice of possession filed—Assessment and fee—Certificate—Judge's record. Every person, company, corporation, or association, claimant of any town lot or parcel of land, within the limits of such townsite, must present to such judge within three months after the patent (or a certified copy thereof), from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person, or by duly authorized agent or attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons or claimants, to the best of his knowledge and belief, and in which must be stated who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said townsite as will fully exhibit the particular lots or parcels of land so claimed; and every such claimant, at the time of presenting and filing such affidavit with said judge, must pay to such judge such sum of money as said judge shall certify to be due for the assessment mentioned in RCW 58.28.300, together with the further sum of four dollars, to be appropriated to the payment of cost and expenses incurred in carrying out the provisions of this chapter, and the said judge must thereupon give to such claimant a certificate, signed by him and attested by the seal of the superior court, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. Such judge must procure a bound book for each unincorporated government townsite in his county wherein he must make proper entries of the substantial matters contained in such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of the lot or lands claimed. [1909 c 231 § 31; RRS § 11515. Prior: 1888 c 124 pp 216-220.]

58.28.320 Deficiency assessment—When payable. If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses, prove to be insufficient to cover and defray all the necessary expenses, the said judge must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such government townsite, and declare the same upon the basis set down in RCW 58.28.300; which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for, is issued. [1909 c 231 § 32; RRS § 11516. Prior: 1888 c 124 pp 216-220.]

58.28.330 Deed to claimants—Actions contesting title, limitations on. At the expiration of six months after the time of filing such patent, or certified copy thereof, in the office of the county auditor, if there has been no adverse claim filed in the meantime, said judge must execute and deliver to such claimant or to his, her, its or their heirs, executor, administrator, grantee, successor or assigns a good and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by such judge as trustee, and attested by the seal of the superior court. No conveyance of any such lands made as in this chapter provided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands, and their right to the legal title thereto, against such grantee, his, her, its or their heirs, executors, administrators, successors or assigns, to which they may deem themselves entitled, either in law or in equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their heirs, executors, administrators, successors or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situated; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the taking effect of this chapter. [1909 c 231 § 33; RRS § 11517. Prior: 1888 c 124 pp 216-220.]

58.28.340 Entries on mineral lands—Rights of claimants. Townsite entries may be made by such judge on mineral lands of the United States, but no title shall be acquired by such judge to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing laws. When mineral veins are possessed within the limits of an unincorporated town, and such possession is recognized by local authority, or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such townsite to such judge, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: PROVIDED, That no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant. [1909 c 231 § 34; RRS § 11518. Prior: 1888 c 124 pp 216-220.]

58.28.350 Conflicting claims—Procedure. In all cases of adverse claims or disputes arising out of conflicting claims to land or concerning boundary lines, the adverse claimants may submit the decision thereof to said judge by an agreement in writing specifying particularly the subject matter in dispute and may agree that his decision shall be final. The said judge must hear the proofs, and shall execute a deed or deny the execution of a deed in accordance with the facts; but

in all other cases of adverse claims the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the patent (or a certified copy thereof) from the United States, in the office of the county auditor. In case such action be commenced within the time herein limited, the plaintiff must serve notice of lis pendens upon such judge, who must thereupon stay all proceedings in the matter of granting or executing any deed to the land in dispute until the final decision in such suit; upon presentation of a certified copy of the final judgment in such action, such judge must execute and deliver a deed of the premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. [1909 c 231 § 35; RRS § 11519. Prior: 1888 c 124 pp 216-220.]

58.28.360 Proof of right—Costs upon failure of both conflicting parties. If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant or claimants to establish that he, she, it or they, was or were, an occupant of the ground in controversy within the meaning of said acts of congress at the time of the entry of said townsite in the United States land office, or is or are the successor, or successors in interest of such occupant. [1909 c 231 § 36; RRS § 11520. Prior: 1888 c 124 pp 216-220.]

Conflicting claims—Procedure: RCW 58.28.140.

58.28.370 Notice of filing patent. Said judge must promptly give public notice by advertising for four weeks in any newspaper published in such town, or if there be no newspaper published in such town, then by publication in some newspaper having general circulation in such town, and not less than five written or printed notices must be posted in public places within the limits of such townsite; such notice must state that the patent for said townsite (or a certified copy thereof) has been filed in the county auditor's office. [1909 c 231 § 37; RRS § 11521. Prior: 1888 c 124 pp 216-220.]

58.28.380 Abandonment of claim. If any person, company, association, or any other claimant of lands in such townsite fails, neglects or refuses to make application to said judge for a deed of conveyance to said land so claimed, and pay the sums of money specified in this chapter, within three months after the filing of such patent, or a certified copy thereof, in the office of the county auditor, shall be deemed to have abandoned the claim to such land and to have forfeited all right, title, claim and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots may be sold by such trustee as unoccupied lands, and the proceeds thereof placed in the fund heretofore mentioned in this chapter. [1909 c 231 § 38; RRS § 11522. Prior: 1888 c 124 pp 216-220.]

58.28.390 Sale of unoccupied lots—Notice—Minimum price. All lots in such townsite which were unoccupied within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office shall be sold by such judge or under his direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale, or sales, shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted at least thirty days prior to the date of any such sale, and by publishing a like notice for four consecutive weeks prior to any such sale in a newspaper published in such town, or if no newspaper be published in such town, then in some newspaper having general circulation in such town. And deed shall be given therefor to the several purchasers: PROVIDED, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided for in RCW 58.28.300, and all moneys arising from such sale or sales after deducting the cost and expenses of such sale or sales shall be placed in the fund hereinbefore mentioned. [1909 c 231 § 39; RRS § 11523. Prior: 1888 c 124 pp 216-220.]

58.28.400 Lands for school and public purposes—Expenses as charge against fund. All school lots or parcels of land reserved or occupied for school purposes, must be conveyed to the school district in which such town is situated without cost or charge of any kind whatever. All lots or parcels of land reserved or occupied for public purposes must be set apart and dedicated to such public purposes without cost or charge of any kind whatever. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter or said acts of congress are a charge against the fund herein provided for. [1909 c 231 § 40; RRS § 11524. Prior: 1888 c 124 pp 216-220.]

58.28.410 Disposition of excess money—Special fund. Any sum of money remaining in said fund after defraying all necessary expenses of location, entry, surveying, platting, advertising, filing and recording, reimbursement of moneys loaned or advanced and paying the cost and expenses herein authorized and provided for must be deposited in the county treasury by such judge to the credit of a special fund of each particular town, and kept separate by the county treasurer to be paid out by him only upon the written order of such judge in payment for making public improvements, or for public purposes, in such town. [1909 c 231 § 41; RRS § 11525. Prior: 1888 c 124 pp 216-220.]

58.28.420 Effect of informalities—Certificate or deed as prima facie evidence. No mere informality, failure, or omission on the part of any persons or officers named in this chapter invalidates the acts of such person or officers; but every certificate or deed granted to any person pursuant to the provisions of this chapter is prima facie evidence that all preliminary proceedings in relation thereto have been taken and performed and that the recitals therein are true and correct. [1909 c 231 § 42; RRS § 11526. Prior: 1888 c 124 pp 216-220.]

58.28.430 Proof requisite to delivery of deed. No deed to any lot in such unincorporated town or unincorporated government townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath, showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, executors, administrators, successors in interest or assigns of such occupant of any lot, as such, may receive such deed. [1909 c 231 § 43; RRS § 11527. Prior: 1888 c 124 pp 216-220.]

58.28.440 Platted lands declared dedicated to public use. All streets, roads, lanes and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked and platted, on the map of any townsite, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county auditor, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becomes incorporated, the same becomes the property of such town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city. [1909 c 231 § 44; RRS § 11528. Prior: 1888 c 124 pp 216-220.]

58.28.450 Clerk's duties when judge trustee. All clerical work under this chapter where a judge of the superior court is trustee must be performed by the clerk of the superior court. [1909 c 231 § 45; RRS § 11529. Prior: 1888 c 124 pp 216-220.]

58.28.460 Accounting and depositing money—Promptness. Such judge when fulfilling the duties imposed upon him by said acts of congress, and by this chapter, must keep a correct account of all moneys received and paid out by him. He must deposit all surplus money with the treasurer of the proper county, and he must promptly settle up all the affairs relating to his trust pertaining to such town. [1909 c 231 § 46; RRS § 11530. Prior: 1888 c 124 pp 216-220.]

58.28.470 Records filed with county clerk. Whenever the affairs pertaining to such trust shall be finally settled and disposed of by such judge, he shall deposit all books and papers relating thereto in the office of the county clerk of the proper county to be thereafter kept in the custody of such county clerk as public records, and the county clerk's fee, for the use of his county therefor, shall be the sum of ten dollars. [1909 c 231 § 47; RRS § 11531. Prior: 1888 c 124 pp 216-220.]

58.28.480 Judge, a trustee for purposes herein. Every such judge when fulfilling the duties imposed upon him by said acts of congress, and by this chapter, shall be deemed and held to be acting as a trustee for the purposes of fulfilling the purposes of said acts and not as a superior court, and such judge shall be deemed to be disqualified to sit as judge of such superior court in any action or proceeding wherein is

involved the execution of such trust or rights involved therein. [1909 c 231 § 48; RRS § 11532. Prior: 1888 c 124 pp 216-220.]

58.28.490 Appellate review—Procedure. Appellate review of the judgment or orders of the superior court in all cases arising under this chapter or said acts of congress may be sought as in other civil cases. [1988 c 202 § 54; 1971 c 81 § 127; 1909 c 231 § 49; RRS § 11533. Prior: 1888 c 124 pp 216-220.]

Severability—1988 c 202: See note following RCW 2.24.050.

58.28.500 Succession of trust. The successors in office of such superior court judge shall be his successors as trustee of such trust. [1909 c 231 § 51; RRS § 11534. Prior: 1888 c 124 pp 216-220.]

58.28.510 Title to vacated lots by occupancy and improvements. The judge of the superior court of any county is hereby declared to be the successor as trustee of any territorial probate judge in such county who was trustee under any such acts of congress, and may as such succeeding trustee perform any unperformed duties of his predecessor in office as such trustee, agreeably to the provisions of this chapter as nearly as may be. And when entry was made by any such probate judge under any of said acts of congress and subsequent to such entry, the city or town situated upon such townsite entry has been incorporated according to law, and the corporate authorities thereof have or have attempted to vacate any common, plaza, public square, public park or the like, in such government townsite, and where thereafter, any person, or corporation, has placed permanent improvements on such land so vacated or attempted to be vacated, exceeding in value the sum of five thousand dollars, with the knowledge, consent, or acquiescence of the corporate authorities of such city or town and with the general consent and approval of the inhabitants of said city or town and such improvements have been made for more than five years and such person or corporation making such improvements has been in the open, notorious and peaceable possession of such lands and premises for a period of more than five years, such superior court judge, as trustee, of such government townsite, and successor as trustee to such judge of probate, trustee of such government townsite, shall have the power and authority to make and deliver to such person or corporation, or to his or its heirs, executors, administrators, successors or assigns, a deed for such lands and premises, conveying a fee simple title to such lands and premises upon such terms and for such price as he shall deem just and reasonable under all the facts and surrounding circumstances of the case, and the consideration paid for such deed, one dollar or more, shall be placed in the city or town treasury of such city or town, in the general fund. [1909 c 231 § 52; RRS § 11535. Prior: 1888 c 124 pp 216-220.]

58.28.520 Controversies, by whom settled—Review. Except as hereinbefore specially provided, the city or town council in incorporated cities and towns, and the judge of the superior court, as trustee, in cases of unincorporated government townsites, are hereby expressly given power and juris-

diction to hear and determine all questions arising under this chapter and under said acts of congress and the right to ascertain who were the occupants of lots in such government townsites at the time of the entry thereof in the United States land office, and to determine from sworn testimony who are and who are not entitled to deeds of conveyance to specific lots in such government townsite, subject to review by courts of competent jurisdiction. [1909 c 231 § 53; RRS § 11536. Prior: 1888 c 124 pp 216-220.]

Title 59

LANDLORD AND TENANT

Chapters

- 59.04** Tenancies.
- 59.08** Default in rent of forty dollars or less.
- 59.12** Forcible entry and forcible and unlawful detainer.
- 59.16** Unlawful entry and detainer.
- 59.18** Residential Landlord-Tenant Act.
- 59.20** Manufactured/Mobile Home Landlord-Tenant Act.
- 59.21** Mobile home relocation assistance.
- 59.22** Office of mobile home affairs—Resident-owned mobile home parks.
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- 59.24** Rental security deposit guarantee program.
- 59.28** Federally assisted housing.

Acknowledgments: Chapter 64.08 RCW.
Action to recover real property, jury trial: RCW 4.40.060.
Adverse possession: Chapter 7.28 RCW.
Boundaries and plats: Title 58 RCW.
County property, sales, leases, etc.: Chapter 36.34 RCW.
Ejectment and quieting title: Chapter 7.28 RCW.
Executions, sale of short term leasehold absolute: RCW 6.21.080.
Gambling on leased premises, action to recover: RCW 4.24.080 and 4.24.090.
Housing authorities law: Chapter 35.82 RCW.
Landlord's lien
for rent: Chapter 60.72 RCW.
on farm crops: Chapter 60.11 RCW.
Mining leases: Chapter 79.14 RCW.
Mortgages and trust receipts: Title 61 RCW.
Nuisances: Chapter 7.48 RCW.
Oil and gas leases: Chapter 79.14 RCW.
Private seals abolished: RCW 64.04.090.
Probate
generally: Title 11 RCW.
performance of decedent's contracts: Chapter 11.60 RCW.
Property insurance, insurable interest: RCW 48.18.040.
Public lands: Title 79 RCW.
Real property and conveyances: Title 64 RCW.
Recording: Chapter 65.08 RCW.
Registration of land titles: Chapter 65.12 RCW.
Statute of frauds: Chapter 19.36 RCW.
Taxation, property: Title 84 RCW.
Title insurers: Chapter 48.29 RCW.
Waste and trespass: Chapter 64.12 RCW.

Chapter 59.04 RCW TENANCIES

Sections

- 59.04.010 Tenancies from year to year abolished except under written contract.
- 59.04.020 Tenancy from month to month—Termination.

(2004 Ed.)

- 59.04.030 Tenancy for specified time—Termination.
- 59.04.040 Ten day notice to pay rent or quit premises.
- 59.04.050 Tenancy by sufferance—Termination.
- 59.04.900 Chapter inapplicable to rental agreements under landlord-tenant act.

59.04.010 Tenancies from year to year abolished except under written contract. Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals. [Code 1881 § 2053; 1867 p 101 § 1; RRS § 10619.]

59.04.020 Tenancy from month to month—Termination. When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of thirty days or more, preceding the end of any of said months or periods, given by either party to the other. [Code 1881 § 2054; 1867 p 101 § 2; RRS § 10619. Prior: 1866 p 78 § 1.]

Unlawful detainer, notice requirement: RCW 59.12.030(2).

59.04.030 Tenancy for specified time—Termination. In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time. [Code 1881 § 2055; 1867 p 101 § 3; RRS § 10620.]

59.04.040 Ten day notice to pay rent or quit premises. When a tenant fails to pay rent when the same is due, and the landlord notifies him to pay said rent or quit the premises within ten days, unless the rent is paid within said ten days, the tenancy shall be forfeited at the end of said ten days. [Code 1881 § 2056; 1867 p 101 § 4; no RRS.]

59.04.050 Tenancy by sufferance—Termination. Whenever any person obtains possession of premises without the consent of the owner or other person having the right to give said possession, he shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he occupied the premises, and shall forthwith on demand surrender his said possession to the owner or person who had the right of possession before said entry, and all his right to possession of said premises shall terminate immediately upon said demand. [Code 1881 § 2057; 1867 p 101 § 5; RRS § 10621.]

59.04.900 Chapter inapplicable to rental agreements under landlord-tenant act. This chapter does not apply to

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any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 45.]

Chapter 59.08 RCW

DEFAULT IN RENT OF FORTY DOLLARS OR LESS

Sections

59.08.010	Summons and complaint as notice—Acceptance of rent after default.
59.08.020	Venue.
59.08.030	Complaint.
59.08.040	Order for hearing—Notice.
59.08.050	Continuance.
59.08.060	Hearing—Writ of restitution.
59.08.070	Recall of writ—Bond.
59.08.080	Complaint as notice to quit.
59.08.090	Sheriff's fee.
59.08.100	Indemnity bond not required—Liability for damages.
59.08.900	Chapter inapplicable to rental agreements under landlord-tenant act.

59.08.010 Summons and complaint as notice—Acceptance of rent after default. In cases of default in the payment of rent for real property where the stipulated rent or rental value does not exceed forty dollars per month, no notice to quit or pay rent, other than filing and serving a summons and complaint, as hereinafter provided, shall be required to render the holding of such tenant thereafter unlawful. If the landlord shall, after such default in the payment of rent, accept payment thereof, such acceptance of payment shall operate to reinstate the right of the tenant to possession for the full period fixed by the terms of any agreement relating to the right of possession. [1941 c 188 § 1; Rem. Supp. 1941 § 814-1.]

59.08.020 Venue. The superior court of the county in which the real property or some part thereof is situated shall have jurisdiction of proceedings for the recovery of possession of said real property alleged to be wrongfully detained. [1941 c 188 § 2; Rem. Supp. 1941 § 814-2.]

59.08.030 Complaint. Such proceedings shall be commenced by the filing of a complaint executed under oath by the owner or landlord or his authorized agent. It shall be sufficient to state in such complaint a description of the property with reasonable certainty, that the defendant is in possession thereof and wrongfully holds the same by reason of failure to pay the agreed rental due, or the monthly rental value of the premises. [1941 c 188 § 3; Rem. Supp. 1941 § 814-3.]

59.08.040 Order for hearing—Notice. Upon the filing of such complaint it may be presented to the judge, and by order he shall forthwith fix a place and time for the trial of said cause, not more than ten days after the date of making the order. A copy of the complaint, together with a copy of the summons specifying the time and place for trial, shall be served on the defendant not less than five days prior to the time fixed for hearing in the manner provided for the service of notice to quit in RCW 59.12.040. [1941 c 188 § 4; Rem. Supp. 1941 § 814-4.]

59.08.050 Continuance. No continuance shall be granted for a longer period than two days unless the defen-

dant applying therefor shall give good and sufficient security, to be approved by the court, conditioned upon the payment of rent accrued and to accrue, if judgment be rendered against the defendant. [1941 c 188 § 5; Rem. Supp. 1941 § 814-5.]

59.08.060 Hearing—Writ of restitution. At the time and place fixed for the hearing, the court shall proceed to examine the parties orally to ascertain the merits of the complaint, and if it shall appear that there is no reasonable doubt of the right of the plaintiff to be restored to the possession of said property, the court shall enter an order directing the issuance of a writ of restitution, which shall thereupon be served by the sheriff upon the defendant. After the expiration of three days from date of service, if the defendant has not surrendered possession or filed a bond as hereinafter provided, the writ shall be executed by the sheriff. If it appears to the court that there is reasonable doubt of the right of the plaintiff to be restored to the possession of said property, the court shall enter an order requiring the parties to proceed on the complaint filed in the usual form of action. [1941 c 188 § 6; Rem. Supp. 1941 § 814-6.]

59.08.070 Recall of writ—Bond. If the defendant feels aggrieved at an order of restitution, he may within three days after the entry of the order file a bond to be approved by the court in double the amount of the rent found to be due, plus two hundred dollars, conditioned for the payment and performance of any judgment rendered against him, and the court shall thereupon enter an order for the parties to proceed in the usual form of action, and recall the writ of restitution. [1941 c 188 § 7; Rem. Supp. 1941 § 814-7.]

59.08.080 Complaint as notice to quit. The filing and service of a complaint under this chapter shall be equivalent to the notice required to pay rent or surrender possession under RCW 59.12.030. [1941 c 188 § 8; Rem. Supp. 1941 § 814-8.]

59.08.090 Sheriff's fee. The sheriff's fee shall be the same as in other civil actions. [1961 c 304 § 7; 1941 c 188 § 9; Rem. Supp. 1941 § 814-9.]

County clerk's fees: RCW 36.18.020.

Sheriff's fees: RCW 36.18.040.

59.08.100 Indemnity bond not required—Liability for damages. The plaintiff shall not be required to give bond to the defendant or the sheriff for the issuance or execution of the writ of restitution, and the sheriff shall not be liable for damages to the defendant for the execution of the writ of restitution hereunder, but any such damage to which the defendant may be entitled shall be recoverable against the plaintiff only. [1941 c 188 § 10; Rem. Supp. 1941 § 814-10.]

59.08.900 Chapter inapplicable to rental agreements under landlord-tenant act. This chapter does not apply to any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 46.]

Chapter 59.12 RCW

FORCIBLE ENTRY AND FORCIBLE AND UNLAWFUL DETAINER

Sections

59.12.010 Forcible entry defined.
 59.12.020 Forcible detainer defined.
 59.12.030 Unlawful detainer defined.
 59.12.035 Holding over on agricultural land, effect of.
 59.12.040 Service of notice—Proof of service.
 59.12.050 Jurisdiction of proceedings.
 59.12.060 Parties defendant.
 59.12.070 Complaint—Summons.
 59.12.080 Summons—Contents—Service.
 59.12.090 Writ of restitution—Bond.
 59.12.091 Writ of restitution under landlord-tenant act—RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 inapplicable.
 59.12.100 Service of writ—Bond to stay writ.
 59.12.110 Modification of bond.
 59.12.120 Judgment by default.
 59.12.121 Pleading by defendant.
 59.12.130 Jury—Actions given preference.
 59.12.140 Proof in forcible entry and detainer.
 59.12.150 Amendment to conform to proof.
 59.12.160 Amendments.
 59.12.170 Judgment—Execution.
 59.12.180 Rules of practice.
 59.12.190 Relief against forfeiture.
 59.12.200 Appellate review—Stay bond.
 59.12.210 Effect of stay bond.
 59.12.220 Writ of restitution suspended pending appeal.
 59.12.230 Forcible entry and detainer—Penalty.

Joint tenancies: Chapter 64.28 RCW.

Tenant's violation of duty under landlord-tenant act grounds for unlawful detainer action: RCW 59.18.180.

59.12.010 Forcible entry defined. Every person is guilty of a forcible entry who either—(1) By breaking open windows, doors or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstance of terror, enters upon or into any real property; or—(2) Who, after entering peaceably upon real property, turns out by force, threats or menacing conduct the party in actual possession. [1891 c 96 § 1; RRS § 810. Prior: 1890 p 73 § 1.]

59.12.020 Forcible detainer defined. Every person is guilty of a forcible detainer who either—(1) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or—(2) Who in the nighttime, or during the absence of the occupant of any real property, enters thereon, and who, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to such former occupant. The occupant of real property within the meaning of this subdivision is one who for the five days next preceding such unlawful entry was in the peaceable and undisturbed possession of such real property. [1891 c 96 § 2; RRS § 811. Prior: 1890 p 73 § 2.]

59.12.030 Unlawful detainer defined. A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or

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oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period;

(3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplished with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he or she continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplished with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him or her of three days' notice to quit;

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW; or

(7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW 59.18.130. [1998 c 276 § 6; 1983 c 264 § 1; 1953 c 106 § 1. Prior: 1905 c 86 § 1; 1891 c 96 § 3; 1890 p 73 § 3; RRS § 812.]

Termination of month to month tenancy: RCW 59.04.020, 59.18.200.

Unlawful detainer defined: RCW 59.16.010.

59.12.035 Holding over on agricultural land, effect of. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any

demand or notice to quit by his landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of his landlord or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year. [1891 c 96 § 4; RRS § 813. Formerly RCW 59.04.060.]

59.12.040 Service of notice—Proof of service. Any notice provided for in this chapter shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a subtenant may be made in the same manner: PROVIDED, That in cases where the tenant or unlawful occupant, shall be conducting a hotel, inn, lodging house, boarding house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders or persons renting such rooms shall not be considered as subtenants within the meaning of this chapter, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to recover possession of said premises. Service of any notice provided for in this chapter may be had upon a corporation by delivering a copy thereof to any officer, agent or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent or person can be found upon such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place where said premises are situated. Proof of any service under this section may be made by the affidavit of the person making the same in like manner and with like effect as the proof of service of summons in civil actions. When a copy of notice is sent through the mail, as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail in the county in which the property is situated properly addressed with postage prepaid: PROVIDED, HOWEVER, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. RCW 59.18.375 may also apply to notice given under this chapter. [1983 c 264 § 2; 1911 c 26 § 1; 1905 c 86 § 2; 1891 c 96 § 5; RRS § 814. Prior: 1890 p 75 § 4.]

59.12.050 Jurisdiction of proceedings. The superior court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter. [1891 c 96 § 6; RRS § 815. Prior: 1890 p 75 § 5.]

Venue and jurisdiction, generally: RCW 2.08.010 and chapter 4.12 RCW.

59.12.060 Parties defendant. No person other than the tenant of the premises, and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in any proceeding under this chapter, nor shall any proceeding abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him. In case a person has become a subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter the premises under the tenant, after the commencement of the action hereunder, shall be bound by the judgment the same as if they had been made parties to the action. [1891 c 96 § 7; RRS § 816. Prior: 1890 p 75 § 6.]

59.12.070 Complaint—Summons. The plaintiff in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force or violence, which may have accompanied the said forcible entry or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises, or both; in case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. A summons must be issued as in other cases, returnable at a day designated therein, which shall not be less than six nor more than twelve days from the date of service, except in cases where the publication of summons is necessary, in which case the court or judge thereof may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed. [1927 c 123 § 1; 1891 c 96 § 8; RRS § 817. Prior: 1890 p 75 § 7.]

59.12.080 Summons—Contents—Service. The summons must state the names of the parties to the proceeding, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him. The summons must be directed to the defendant, and in case of summons by publication, be served at least five days before the return day designated therein. The summons must be served and returned in the same manner as summons in other actions is served and returned. [1927 c 123 § 2; 1891 c 96 § 9; RRS § 818. Prior: 1890 p 76 § 8.]

Summons, generally: RCW 4.28.080 through 4.28.110.

59.12.090 Writ of restitution—Bond. The plaintiff at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, may apply to the judge of the court in which the action is pending for a writ of restitution restoring to the plaintiff the property in the complaint described, and the judge shall order a writ of restitution to issue. The writ shall be issued by the clerk of the superior court in which the action is pending, and be returnable in twenty days after its date; but before any writ shall issue prior to judgment the plaintiff shall execute to the defendant and file in court a bond in such sum as the court or judge may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. [1927 c 123 § 3; 1891 c 96 § 10; RRS § 819. Prior: 1890 p 77 § 9.]

59.12.091 Writ of restitution under landlord-tenant act—RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 inapplicable. See RCW 59.18.420.

59.12.100 Service of writ—Bond to stay writ. The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, nor until after the defendant has been served with summons in the action as hereinabove provided, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises. [1927 c 123 § 4; 1905 c 86 § 3; 1891 c 96 § 11; RRS § 820. Prior: 1890 p 77 § 10.]

59.12.110 Modification of bond. The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the court or any judge thereof for an order raising or lowering the amount of any bond in this chapter provided for. Either party may, upon like notice, apply to the court or any judge thereof for an order requiring additional or other surety or sureties upon any such bond. Upon the hearing or any application made under the provisions of this section evidence may be given. The judge after hearing any such

application shall make such an order as shall be just in the premises. The bondsmen may be required to be present at such hearing if so required in the notice thereof, and shall answer under oath all questions that may be asked them touching their qualifications as bondsmen, and in the event the bondsmen shall fail or refuse to appear at such hearing and so answer such questions the bond shall be stricken. In the event the court shall order a new or additional bond to be furnished by defendant, and the same shall not be given within twenty-four hours, the court shall order the sheriff to forthwith execute the writ. In the event the defendant shall file a second or additional bond and it shall also be found insufficient after hearing, as above provided, the right to retain the premises by bond shall be lost and the sheriff shall forthwith put the plaintiff in possession of the premises. [1905 c 86 § 4; 1891 c 96 § 12; RRS § 821. Prior: 1890 p 78 § 11.]

59.12.120 Judgment by default. If on the date appointed in the summons the defendant does not appear or answer, the court shall render judgment in favor of the plaintiff as prayed for in the complaint. [1989 c 342 § 2; 1891 c 96 § 13; RRS § 822. FORMER PART OF SECTION: 1891 c 96 § 14 now codified as RCW 59.12.121.]

Severability—Effective date—1989 c 342: See RCW 59.18.910 and 59.18.911.

59.12.121 Pleading by defendant. On or before the day fixed for his appearance the defendant may appear and answer or demur. [1891 c 96 § 14; RRS § 823. Formerly RCW 59.12.120, part.]

59.12.130 Jury—Actions given preference. Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending; and in all cases actions under this chapter shall take precedence of all other civil actions. [1891 c 96 § 15; RRS § 824. Prior: 1890 p 79 § 15.]

59.12.140 Proof in forcible entry and detainer. On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to a forcible entry complained of, that he was peaceably in the actual possession at the time of the forcible entry; or, in addition to a forcible detainer complained of, that he was entitled to the possession at the time of the forcible detainer. [1891 c 96 § 16; RRS § 825. Prior: 1890 p 79 § 16.]

59.12.150 Amendment to conform to proof. When upon the trial of any proceeding under this chapter it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, in respect of the premises described in the complaint, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made without any imposition of terms. No continuance shall be permitted on account of such amendment unless the defendant shows to the satisfac-

faction of the court good cause therefor. [1891 c 96 § 17; RRS § 826. Prior: 1890 p 79 § 17.]

59.12.160 Amendments. Amendments may be allowed by the court at any time before final judgment, upon such terms as to the court may appear just, in the same cases and manner and to the same extent as in civil actions. [1891 c 96 § 19; RRS § 828. Prior: 1890 p 80 § 20.]

59.12.170 Judgment—Execution. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his estate; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. [1891 c 96 § 18; RRS § 827. Prior: 1890 p 80 § 18.]

59.12.180 Rules of practice. Except as otherwise provided in this chapter, the provisions of the laws of this state with reference to practice in civil actions are applicable to, and constitute the rules of practice in the proceedings mentioned in this chapter; and the provisions of such laws relative to new trials and appeals, except so far as they are inconsistent with the provisions of this chapter, shall be held to apply to the proceedings mentioned in this chapter. [1891 c 96 § 20; RRS § 829. Prior: 1890 p 80 § 21.]

59.12.190 Relief against forfeiture. The court may relieve a tenant against a forfeiture of a lease and restore him to his former estate, as in other cases provided by law, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the court, as provided in this chapter. The application may be made by a ten-

ant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions of covenants stipulated, so far as the same is practicable, be first made. [1891 c 96 § 21; RRS § 830. Prior: 1890 p 80 § 22.]

59.12.200 Appellate review—Stay bond. A party aggrieved by the judgment may seek appellate review of the judgment as in other civil actions: PROVIDED, That if the defendant appealing desires a stay of proceedings pending review, the defendant shall execute and file a bond, with two or more sufficient sureties to be approved by the judge, conditioned to abide the order of the court, and to pay all rents and other damages justly accruing to the plaintiff during the pendency of the proceeding. [1988 c 202 § 55; 1971 c 81 § 128; 1891 c 96 § 22; RRS § 831. Prior: 1890 p 80 § 23.]

Severability—1988 c 202: See note following RCW 2.24.050.

59.12.210 Effect of stay bond. When the defendant shall appeal, and shall file a bond as provided in RCW 59.12.200, all further proceedings in the case shall be stayed until the determination of said appeal and the same has been remanded to the superior court for further proceedings therein. [1891 c 96 § 23; RRS § 832. Prior: 1890 p 80 § 24.]

59.12.220 Writ of restitution suspended pending appeal. If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution the said officer shall forthwith cease all further proceedings by virtue of such writ; and if such writ has been completely executed the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined. [1891 c 96 § 24; RRS § 833. Prior: 1890 p 81 § 25.]

59.12.230 Forcible entry and detainer—Penalty. Every person who shall unlawfully use, or encourage or assist another in unlawfully using, any force or violence in entering upon or detaining any lands or other possessions of another; and every person who, having removed or been removed therefrom pursuant to the order or direction of any court, tribunal or officer, shall afterwards return to settle or reside unlawfully upon, or take possession of, such lands or possessions, shall be guilty of a misdemeanor. [1909 c 249 § 306; RRS § 2558. Prior: Code 1881 § 858; 1873 p 195 § 66; 1854 p 86 § 60.]

Chapter 59.16 RCW

UNLAWFUL ENTRY AND DETAINER

Sections

- 59.16.010 Unlawful detainer defined.
- 59.16.020 Pleadings, requirements.
- 59.16.030 Issues—Trial.
- 59.16.040 Parties defendant—Trial of separate issues.

59.16.010 Unlawful detainer defined. That any person who shall, without the permission of the owner and without having any color of title thereto, enter upon the lands of another, and shall refuse to remove therefrom after three days' notice, shall be deemed guilty of unlawful detainer and may be removed from such lands. [1891 c 115 § 1; RRS § 834.]

Unlawful detainer defined: RCW 59.12.030.

59.16.020 Pleadings, requirements. The complaint in all cases under the provisions of this chapter shall be upon oath, and then [there] shall be embodied therein or amended thereto an abstract of the plaintiff's title, and the defendant shall, in his answer, state whether he makes any claim of title to the lands described in the complaint, and if he makes no claim to the legal title but does claim a right to the possession of such lands, he shall state upon what grounds he claims a right to such possession. [1891 c 115 § 2; RRS § 835.]

59.16.030 Issues—Trial. It shall not be necessary for the plaintiff, in proceedings under this chapter, to allege or prove that the said lands were, at any time, actually occupied prior to the defendant's entry thereupon, but it shall be sufficient to allege that he is the legal owner and entitled to the immediate possession thereof: PROVIDED, That if the defendant shall, by his answer, deny such ownership and shall state facts showing that he has a lawful claim to the possession thereof, the cause shall thereupon be entered for trial upon the docket of the court in all respects as if the action were brought under the provisions of *chapter XLVI of the code of eighteen hundred and eighty-one. [1891 c 115 § 3; RRS § 836.]

***Reviser's note:** "chapter XLVI of the code of eighteen hundred and eighty-one" is codified as RCW 7.28.010, 7.28.110 through 7.28.150, and 7.28.190 through 7.28.270.

59.16.040 Parties defendant—Trial of separate issues. All persons in actual possession of any portion of the several subdivisions of any section of land, according to the government surveys thereof, may be made defendants in one action: PROVIDED, That they may, in their discretion, make separate answers to the complaint, and if separate issues are joined thereupon, the same shall nevertheless be tried as one action, but the verdict, if tried by jury, shall find separately upon the issues so joined, and judgment shall be rendered according thereto. [1891 c 115 § 4; RRS § 837.]

Chapter 59.18 RCW

RESIDENTIAL LANDLORD-TENANT ACT

Sections

- 59.18.010 Short title.
- 59.18.020 Rights and remedies—Obligation of good faith imposed.

- 59.18.030 Definitions.
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- 59.18.910 Severability—1989 c 342.
- 59.18.911 Effective date—1989 c 342.

Reviser's note: This chapter was revised pursuant to *Washington Ass'n. of Apartment Ass'ns., Inc. vs. Evans*, 88 Wn. 2d 563 (1977), which declared invalid the fourteen item and section vetoes to 1973 Engrossed Substitute Senate Bill No. 2226 (1973 1st ex.s. c 207).

Smoke detection devices in dwelling units required: RCW 48.48.140.

59.18.010 Short title. RCW 59.18.010 through 59.18.420 and 59.18.900 shall be known and may be cited as the "Residential Landlord-Tenant Act of 1973", and shall constitute a new chapter in Title 59 RCW. [1973 1st ex.s. c 207 § 1.]

59.18.020 Rights and remedies—Obligation of good faith imposed. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [1973 1st ex.s. c 207 § 2.]

59.18.030 Definitions. As used in this chapter:

(1) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.

(2) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.

(3) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more

persons having a joint or common interest, or any other legal or commercial entity.

(4) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

(5) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

(6) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

(7) A "single family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

(8) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(9) "Reasonable attorney's fees", where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

(10) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(11) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose. [1998 c 276 § 1; 1973 1st ex.s. c 207 § 3.]

59.18.040 Living arrangements exempted from chapter. The following living arrangements are not intended to be governed by the provisions of this chapter, unless established primarily to avoid its application, in which event the provisions of this chapter shall control:

(1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, religious, educational, recreational, or similar services, including but not limited to correctional facilities, licensed nursing homes, monasteries and convents, and hospitals;

(2) Occupancy under a bona fide earnest money agreement to purchase or contract of sale of the dwelling unit or the property of which it is a part, where the tenant is, or stands in the place of, the purchaser;

(3) Residence in a hotel, motel, or other transient lodging whose operation is defined in RCW 19.48.010;

(4) Rental agreements entered into pursuant to the provisions of chapter 47.12 RCW where occupancy is by an owner-condemnee and where such agreement does not violate the public policy of this state of ensuring decent, safe, and sanitary housing and is so certified by the consumer protection division of the attorney general's office;

(5) Rental agreements for the use of any single family residence which are incidental to leases or rentals entered into in connection with a lease of land to be used primarily for agricultural purposes;

(6) Rental agreements providing housing for seasonal agricultural employees while provided in conjunction with such employment;

(7) Rental agreements with the state of Washington, department of natural resources, on public lands governed by Title 79 RCW;

(8) Occupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises. [1989 c 342 § 3; 1973 1st ex.s. c 207 § 4.]

59.18.050 Jurisdiction of district and superior courts.

The district or superior courts of this state may exercise jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter within the respective jurisdictions of the district or superior courts as provided in Article IV, section 6 of the Constitution of the state of Washington. [1973 1st ex.s. c 207 § 5.]

59.18.055 Notice—Alternative procedure—Court's jurisdiction limited—Application to chapter 59.20 RCW.

(1) When the plaintiff, after the exercise of due diligence, is unable to personally serve the summons on the defendant, the court may authorize the alternative means of service described herein. Upon filing of an affidavit from the person or persons attempting service describing those attempts, and the filing of an affidavit from the plaintiff, plaintiff's agent, or plaintiff's attorney stating the belief that the defendant cannot be found, the court may enter an order authorizing service of the summons as follows:

(a) The summons and complaint shall be posted in a conspicuous place on the premises unlawfully held, not less than nine days from the return date stated in the summons; and

(b) Copies of the summons and complaint shall be deposited in the mail, postage prepaid, by both regular mail and certified mail directed to the defendant's or defendants' last known address not less than nine days from the return date stated in the summons.

When service on the defendant or defendants is accomplished by this alternative procedure, the court's jurisdiction is limited to restoring possession of the premises to the plaintiff and no money judgment may be entered against the defendant or defendants until such time as jurisdiction over the defendant or defendants is obtained.

(2) This section shall apply to this chapter and chapter 59.20 RCW. [1997 c 86 § 1; 1989 c 342 § 14.]

59.18.060 Landlord—Duties. The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weather-tight condition;

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11)(a) Provide a written notice to all tenants disclosing fire safety and protection information. The landlord or his or her authorized agent must provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in RCW 48.48.140. The notice shall inform the tenant of the tenant's responsibility to maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of RCW 48.48.140(3). The notice must be signed by the landlord or the landlord's authorized agent and tenant with copies provided to both parties. Further, except with respect to a single-family residence, the written notice must also disclose the following:

(i) Whether the smoke detection device is hard-wired or battery operated;

(ii) Whether the building has a fire sprinkler system;

(iii) Whether the building has a fire alarm system;

(iv) Whether the building has a smoking policy, and what that policy is;

(v) Whether the building has an emergency notification plan for the occupants and, if so, provide a copy to the occupants;

(vi) Whether the building has an emergency relocation plan for the occupants and, if so, provide a copy to the occupants; and

(vii) Whether the building has an emergency evacuation plan for the occupants and, if so, provide a copy to the occupants.

(b) The information required under this subsection may be provided to a tenant in a multifamily residential building either as a written notice or as a checklist that discloses whether the building has fire safety and protection devices and systems. The checklist shall include a diagram showing the emergency evacuation routes for the occupants.

(c) The written notice or checklist must be provided to new tenants at the time the lease or rental agreement is signed, and must be provided to current tenants as soon as possible, but not later than January 1, 2004; and

(12) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent;

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section. [2002 c 259 § 1; 1991 c 154 § 2; 1973 1st ex.s. c 207 § 6.]

59.18.063 Landlord—Provide written receipt upon request. A landlord shall provide, upon the request of a tenant, a written receipt for any payments made by the tenant. [1997 c 84 § 1.]

59.18.070 Landlord—Failure to perform duties—Notice from tenant—Contents—Time limits for landlord's remedial action. If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.18.060 or by the rental agreement, the tenant may, in addition to pursuit of remedies otherwise provided him by law, deliver written notice to the person designated in *RCW 59.18.060(11), or to the person who collects the rent, which notice shall specify the premises involved, the name of the owner, if known, and the nature of the defective condition. The landlord shall commence remedial action after receipt of

such notice by the tenant as soon as possible but not later than the following time periods, except where circumstances are beyond the landlord's control:

(1) Not more than twenty-four hours, where the defective condition deprives the tenant of hot or cold water, heat, or electricity, or is imminently hazardous to life;

(2) Not more than seventy-two hours, where the defective condition deprives the tenant of the use of a refrigerator, range and oven, or a major plumbing fixture supplied by the landlord; and

(3) Not more than ten days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed promptly. If completion is delayed due to circumstances beyond the landlord's control, including the unavailability of financing, the landlord shall remedy the defective condition as soon as possible. [1989 c 342 § 4; 1973 1st ex.s. c 207 § 7.]

***Reviser's note:** RCW 59.18.060 was amended by 1991 c 154 § 2 changing subsection (11) to subsection (12).

59.18.075 Seizure of illegal drugs—Notification of landlord. (1) Any law enforcement agency which seizes a legend drug pursuant to a violation of chapter 69.41 RCW, a controlled substance pursuant to a violation of chapter 69.50 RCW, or an imitation controlled substance pursuant to a violation of chapter 69.52 RCW, shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure of the illegal drugs or substances.

(2) Any law enforcement agency which arrests a tenant for threatening another tenant with a firearm or other deadly weapon, or for some other unlawful use of a firearm or other deadly weapon on the rental premises, or for physically assaulting another person on the rental premises, shall make a reasonable attempt to discover the identity of the landlord and notify the landlord about the arrest in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency. [1992 c 38 § 4; 1988 c 150 § 11.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.080 Payment of rent condition to exercising remedies—Exceptions. The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded him under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing. [1973 1st ex.s. c 207 § 8.]

59.18.085 Rental of condemned or unlawful dwelling—Tenant's remedies. (1) If a governmental agency

responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling is condemned or unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord shall not enter into a rental agreement for the dwelling unit until the conditions are corrected.

(2) If a landlord knowingly violates subsection (1) of this section, the tenant shall recover either three months' periodic rent or up to treble the actual damages sustained as a result of the violation, whichever is greater, costs of suit, or arbitration and reasonable attorneys' fees. If the tenant elects to terminate the tenancy as a result of the conditions leading to the posting, or if the appropriate governmental agency requires that the tenant vacate the premises, the tenant also shall recover:

- (a) The entire amount of any deposit prepaid by the tenant; and
- (b) All prepaid rent. [1989 c 342 § 13.]

59.18.090 Landlord's failure to remedy defective condition—Tenant's choice of actions. If, after receipt of written notice, and expiration of the applicable period of time, as provided in RCW 59.18.070, the landlord fails to remedy the defective condition within a reasonable time the tenant may:

(1) Terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement, in which case he shall be discharged from payment of rent for any period following the quitting date, and shall be entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280;

(2) Bring an action in an appropriate court, or at arbitration if so agreed, for any remedy provided under this chapter or otherwise provided by law; or

(3) Pursue other remedies available under this chapter. [1973 1st ex.s. c 207 § 9.]

59.18.100 Landlord's failure to carry out duties—Repairs effected by tenant—Procedure—Deduction of cost from rent—Limitations. (1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.18.060, and notice of the defect is given to the landlord pursuant to RCW 59.18.070, the tenant may submit to the landlord or his designated agent by certified mail or in person a good faith estimate by the tenant of the cost to perform the repairs necessary to correct the defective condition if the repair is to be done by licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, the cost if the repair is to be done by responsible persons capable of performing such repairs. Such estimate may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.18.070: PROVIDED, That the remedy provided in this section shall not be available for a landlord's failure to carry out the duties in *RCW 59.18.060 (9), and (11): PROVIDED FURTHER, That if the tenant utilizes this section for repairs pursuant to RCW 59.18.060(6), the tenant shall promptly provide the

landlord with a key to any new or replaced locks. The amount the tenant may deduct from the rent may vary from the estimate, but cannot exceed the one-month limit as described in subsection (2) of this section.

(2) If the landlord fails to commence remedial action of the defective condition within the applicable time period after receipt of notice and the estimate from the tenant, the tenant may contract with a licensed or registered person, or with a responsible person capable of performing the repair if no license or registration is required, to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or his designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's unit per repair: PROVIDED, That when the landlord must commence to remedy the defective condition within ten days as provided in RCW 59.18.070(3), the tenant cannot contract for repairs for ten days after notice or five days after the landlord receives the estimate, whichever is later: PROVIDED FURTHER, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing two month's rental of the tenant's unit.

(3) If the landlord fails to carry out the duties imposed by RCW 59.18.060 within the applicable time period, and if the cost of repair does not exceed one-half month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, and if the tenant has given notice under RCW 59.18.070, although no estimate shall be necessary under this subsection, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent: PROVIDED, That repairs under this subsection are limited to defects within the leased premises: PROVIDED FURTHER, That the cost per repair shall not exceed one-half month's rent of the unit and that the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one month's rent of the unit.

(4) The provisions of this section shall not:

- (a) Create a relationship of employer and employee between landlord and tenant; or
- (b) Create liability under the workers' compensation act; or
- (c) Constitute the tenant as an agent of the landlord for the purposes of **RCW 60.04.010 and 60.04.040.

(5) Any repair work performed under the provisions of this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or regulation. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs himself in return for cash payment or a reasonable reduction in rent, the agreement thereof to be agreed upon between the parties, and such agreement does not alter the landlord's obligations under this chapter. [1989 c 342 § 5; 1987 c 185 § 35; 1973 1st ex.s. c 207 § 10.]

Reviser's note: *(1) RCW 59.18.060 was amended by 1991 c 154 § 2 changing subsection (11) to subsection (12).

***(2) RCW 60.04.010 and 60.04.040 were repealed by 1991 c 281 § 31, effective April 1, 1992.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

59.18.110 Failure of landlord to carry out duties—Determination by court or arbitrator—Judgment against landlord for diminished rental value and repair costs—Enforcement of judgment—Reduction in rent under certain conditions. (1) If a court or an arbitrator determines that:

(a) A landlord has failed to carry out a duty or duties imposed by RCW 59.18.060; and

(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord in accordance with RCW 59.18.070 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the premises due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to RCW 59.18.100 for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to make or contract to make further corrective repairs: PROVIDED, That the court specifies a time period in which the landlord may make such repairs before the tenant may commence or contract for such repairs: PROVIDED FURTHER, That such repairs shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any one calendar year.

(2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the premises until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise. [1973 1st ex.s. c 207 § 11.]

59.18.115 Substandard and dangerous conditions—Notice to landlord—Government certification—Escrow account. (1) The legislature finds that some tenants live in residences that are substandard and dangerous to their health and safety and that the repair and deduct remedies of RCW 59.18.100 may not be adequate to remedy substandard and dangerous conditions. Therefore, an extraordinary remedy is necessary if the conditions substantially endanger or impair the health and safety of the tenant.

(2)(a) If a landlord fails to fulfill any substantial obligation imposed by RCW 59.18.060 that substantially endangers or impairs the health or safety of a tenant, including (i) structural members that are of insufficient size or strength to carry imposed loads with safety, (ii) exposure of the occupants to the weather, (iii) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (iv) lack of water, including hot water, (v) heating or ventilation systems that are not functional or are hazardous, (vi) defective, hazardous, or missing electrical wiring or electrical service,

(vii) defective or inadequate exits that increase the risk of injury to occupants, and (viii) conditions that increase the risk of fire, the tenant shall give notice in writing to the landlord, specifying the conditions, acts, omissions, or violations. Such notice shall be sent to the landlord or to the person or place where rent is normally paid.

(b) If after receipt of the notice described in (a) of this subsection the landlord fails to remedy the condition or conditions within a reasonable amount of time under RCW 59.18.070, the tenant may request that the local government provide for an inspection of the premises with regard to the specific condition or conditions that exist as provided in (a) of this subsection. The local government shall have the appropriate government official, or may designate a public or disinterested private person or company capable of conducting the inspection and making the certification, conduct an inspection of the specific condition or conditions listed by the tenant, and shall not inspect nor be liable for any other condition or conditions of the premises. The purpose of this inspection is to verify, to the best of the inspector's ability, whether the tenant's listed condition or conditions exist and substantially endanger the tenant's health or safety under (a) of this subsection; the inspection is for the purposes of this private civil remedy, and therefore shall not be related to any other governmental function such as enforcement of any code, ordinance, or state law.

(c) The local government or its designee, after receiving the request from the tenant to conduct an inspection under this section, shall conduct the inspection and make any certification within a reasonable amount of time not more than five days from the date of receipt of the request. The local government or its designee may enter the premises at any reasonable time to do the inspection, provided that he or she first shall display proper credentials and request entry. The local government or its designee shall whenever practicable, taking into consideration the imminence of any threat to the tenant's health or safety, give the landlord at least twenty-four hours notice of the date and time of inspection and provide the landlord with an opportunity to be present at the time of the inspection. The landlord shall have no power or authority to prohibit entry for the inspection.

(d) The local government or its designee shall certify whether the condition or the conditions specified by the tenant do exist and do make the premises substantially unfit for human habitation or can be a substantial risk to the health and safety of the tenant as described in (a) of this subsection. The certification shall be provided to the tenant, and a copy shall be included by the tenant with the notice sent to the landlord under subsection (3) of this section. The certification may be appealed to the local board of appeals, but the appeal shall not delay or preclude the tenant from proceeding with the escrow under this section.

(e) The tenant shall not be entitled to deposit rent in escrow pursuant to this section unless the tenant first makes a good faith determination that he or she is unable to repair the conditions described in the certification issued pursuant to subsection (2)(d) of this section through use of the repair remedies authorized by RCW 59.18.100.

(f) If the local government or its designee certifies that the condition or conditions specified by the tenant exist, the tenant shall then either pay the periodic rent due to the land-

lord or deposit all periodic rent then called for in the rental agreement and all rent thereafter called for in the rental agreement into an escrow account maintained by a person authorized by law to set up and maintain escrow accounts, including escrow companies under chapter 18.44 RCW, financial institutions, or attorneys, or with the clerk of the court of the district or superior court where the property is located. These depositories are hereinafter referred to as "escrow." The tenant shall notify the landlord in writing of the deposit by mailing the notice postage prepaid by first class mail or by delivering the notice to the landlord promptly but not more than twenty-four hours after the deposit.

(g) This section, when elected as a remedy by the tenant by sending the notice under subsection (3) of this section, shall be the exclusive remedy available to the tenant regarding defects described in the certification under subsection (2)(d) of this section: PROVIDED, That the tenant may simultaneously commence or pursue an action in an appropriate court, or at arbitration if so agreed, to determine past, present, or future diminution in rental value of the premises due to any defective conditions.

(3) The notice to the landlord of the rent escrow under this section shall be a sworn statement by the tenant in substantially the following form:

NOTICE TO LANDLORD OF RENT ESCROW

Name of tenant:
Name of landlord:
Name and address of escrow:
Date of deposit of rent into escrow:
Amount of rent deposited into escrow:
The following condition has been certified by a local building official to substantially endanger, impair, or affect the health or safety of a tenant:
That written notice of the conditions needing repair was provided to the landlord on . . . , and . . . days have elapsed and the repairs have not been made.

.....
(Sworn Signature)

(4) The escrow shall place all rent deposited in a separate rent escrow account in the name of the escrow in a bank or savings and loan association domiciled in this state. The escrow shall keep in a separate docket an account of each deposit, with the name and address of the tenant, and the name and address of the landlord and of the agent, if any.

(5)(a) A landlord who receives notice that the rent due has been deposited with an escrow pursuant to subsection (2) of this section may:

(i) Apply to the escrow for release of the funds after the local government certifies that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly repaired. The escrow shall release the funds to the landlord less any escrow costs for which the tenant is entitled to reimbursement pursuant to this section, immediately upon written receipt of the local government certification that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly completed.

(ii) File an action with the court and apply to the court for release of the rent on the grounds that the tenant did not comply with the notice requirement of subsection (2) or (3) of this

section. Proceedings under this subsection shall be governed by the time, service, and filing requirements of RCW 59.18.370 regarding show cause hearings.

(iii) File an action with the court and apply to the court for release of the rent on the grounds that there was no violation of any obligation imposed upon the landlord or that the condition has been remedied.

(iv) This action may be filed in any court having jurisdiction, including small claims court. If the tenant has vacated the premises or if the landlord has failed to commence an action with the court for release of the funds within sixty days after rent is deposited in escrow, the tenant may file an action to determine how and when any rent deposited in escrow shall be released or disbursed. The landlord shall not commence an unlawful detainer action for nonpayment of rent by serving or filing a summons and complaint if the tenant initially pays the rent called for in the rental agreement that is due into escrow as provided for under this section on or before the date rent is due or on or before the expiration of a three-day notice to pay rent or vacate and continues to pay the rent into escrow as the rent becomes due or prior to the expiration of a three-day notice to pay rent or vacate; provided that the landlord shall not be barred from commencing an unlawful detainer action for nonpayment of rent if the amount of rent that is paid into escrow is less than the amount of rent agreed upon in the rental agreement between the parties.

(b) The tenant shall be named as a party to any action filed by the landlord under this section, and shall have the right to file an answer and counterclaim, although any counterclaim shall be dismissed without prejudice if the court or arbitrator determines that the tenant failed to follow the notice requirements contained in this section. Any counterclaim can only claim diminished rental value related to conditions specified by the tenant in the notice required under subsection (3) of this section. This limitation on the tenant's right to counterclaim shall not affect the tenant's right to bring his or her own separate action. A trial shall be held within sixty days of the date of filing of the landlord's or tenant's complaint.

(c) The tenant shall be entitled to reimbursement for any escrow costs or fees incurred for setting up or maintaining an escrow account pursuant to this section, unless the tenant did not comply with the notice requirements of subsection (2) or (3) of this section. Any escrow fees that are incurred for which the tenant is entitled to reimbursement shall be deducted from the rent deposited in escrow and remitted to the tenant at such time as any rent is released to the landlord. The prevailing party in any court action or arbitration brought under this section may also be awarded its costs and reasonable attorneys' fees.

(d) If a court determines a diminished rental value of the premises, the tenant may pay the rent due based on the diminished value of the premises into escrow until the landlord makes the necessary repairs.

(6)(a) If a landlord brings an action for the release of rent deposited, the court may, upon application of the landlord, release part of the rent on deposit for payment of the debt service on the premises, the insurance premiums for the premises, utility services, and repairs to the rental unit.

(b) In determining whether to release rent for the payments described in (a) of this subsection, the court shall consider the amount of rent the landlord receives from other rental units in the buildings of which the residential premises are a part, the cost of operating those units, and the costs which may be required to remedy the condition contained in the notice. The court shall also consider whether the expenses are due or have already been paid, whether the landlord has other financial resources, or whether the landlord or tenant will suffer irreparable damage. The court may request the landlord to provide additional security, such as a bond, prior to authorizing release of any of the funds in escrow. [1989 c 342 § 16.]

59.18.120 Defective condition—Unfeasible to remedy defect—Termination of tenancy. If a court or arbitrator determines a defective condition as described in RCW 59.18.060 to be so substantial that it is unfeasible for the landlord to remedy the defect within the time allotted by RCW 59.18.070, and that the tenant should not remain in the dwelling unit in its defective condition, the court or arbitrator may authorize the termination of the tenancy: PROVIDED, That the court or arbitrator shall set a reasonable time for the tenant to vacate the premises. [1973 1st ex.s. c 207 § 12.]

59.18.130 Duties of tenant. Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he or she occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his or her dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his or her family, invitee, licensee, or any person acting under his or her control to do so. Violations may be prosecuted under chapter 9A.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW;

(7) Maintain the smoke detection device in accordance with the manufacturer's recommendations, including the

replacement of batteries where required for the proper operation of the smoke detection device, as required in RCW 48.48.140(3);

(8) Not engage in any activity at the rental premises that is:

(a) Imminently hazardous to the physical safety of other persons on the premises; and

(b)(i) Entails physical assaults upon another person which result in an arrest; or

(ii) Entails the unlawful use of a firearm or other deadly weapon as defined in RCW 9A.04.110 which results in an arrest, including threatening another tenant or the landlord with a firearm or other deadly weapon under RCW 59.18.352. Nothing in this subsection (8) shall authorize the termination of tenancy and eviction of the victim of a physical assault or the victim of the use or threatened use of a firearm or other deadly weapon;

(9) Not engage in any gang-related activity at the premises, as defined in RCW 59.18.030, or allow another to engage in such activity at the premises, that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences. In determining whether a tenant is engaged in gang-related activity, a court should consider the totality of the circumstances, including factors such as whether there have been a significant number of complaints to the landlord about the tenant's activities at the property, damages done by the tenant to the property, including the property of other tenants or neighbors, harassment or threats made by the tenant to other tenants or neighbors that have been reported to law enforcement agencies, any police incident reports involving the tenant, and the tenant's criminal history; and

(10) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his or her obligations under this chapter: PROVIDED, That the tenant shall not be charged for normal cleaning if he or she has paid a nonrefundable cleaning fee. [1998 c 276 § 2; 1992 c 38 § 2; 1991 c 154 § 3; 1988 c 150 § 2; 1983 c 264 § 3; 1973 1st ex.s. c 207 § 13.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

Legislative findings—1988 c 150: "The legislature finds that the illegal use, sale, and manufacture of drugs and other drug-related activities is a statewide problem. Innocent persons, especially children, who come into contact with illegal drug-related activity within their own neighborhoods are seriously and adversely affected. Rental property is damaged and devalued by drug activities. The legislature further finds that a rapid and efficient response is necessary to: (1) Lessen the occurrence of drug-related enterprises; (2) reduce the drug use and trafficking problems within this state; and (3) reduce the damage caused to persons and property by drug activity. The legislature finds that it is beneficial to rental property owners and to the public to permit landlords to quickly and efficiently evict persons who engage in drug-related activities at rented premises." [1988 c 150 § 1.]

Severability—1988 c 150: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 150 § 15.]

59.18.140 Reasonable obligations or restrictions—Tenant's duty to conform. The tenant shall conform to all

reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agreement, rent, or otherwise, concerning the use, occupation, and maintenance of his dwelling unit, appurtenances thereto, and the property of which the dwelling unit is a part if such obligations and restrictions are not in violation of any of the terms of this chapter and are not otherwise contrary to law, and if such obligations and restrictions are brought to the attention of the tenant at the time of his initial occupancy of the dwelling unit and thus become part of the rental agreement. Except for termination of tenancy, after thirty days written notice to each affected tenant, a new rule of tenancy including a change in the amount of rent may become effective upon completion of the term of the rental agreement or sooner upon mutual consent. [1989 c 342 § 6; 1973 1st ex.s. c 207 § 14.]

59.18.150 Landlord's right of entry—Purposes—Searches by fire officials—Conditions. (1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) Upon written notice of intent to seek a search warrant, when a tenant or landlord denies a fire official the right to search a dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the dwelling unit sought to be searched that criminal fire code violations exist in the dwelling unit, a court of competent jurisdiction shall issue a warrant allowing a search of the dwelling unit.

Upon written notice of intent to seek a search warrant, when a landlord denies a fire official the right to search the common areas of the rental building other than the dwelling unit, a fire official may immediately seek a search warrant and, upon a showing of probable cause specific to the common area sought to be searched that a criminal fire code violation exists in those areas, a court of competent jurisdiction shall issue a warrant allowing a search of the common areas in which the violation is alleged.

The superior court and courts of limited jurisdiction organized under Titles 3, 35, and 35A RCW have jurisdiction to issue such search warrants. Evidence obtained pursuant to any such search may be used in a civil or administrative enforcement action.

(3) As used in this section:

(a) "Common areas" means a common area or those areas that contain electrical, plumbing, and mechanical equipment and facilities used for the operation of the rental building.

(b) "Fire official" means any fire official authorized to enforce the state or local fire code.

(4) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

(5) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his or her intent to enter and shall enter only at reasonable times. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling

unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.

(6) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

(7) A landlord or tenant who continues to violate the rights of the tenant or landlord with respect to the duties imposed on the other as set forth in this section after being served with one written notification alleging in good faith violations of this section listing the date and time of the violation shall be liable for up to one hundred dollars for each violation after receipt of the notice. The prevailing landlord or tenant may recover costs of the suit or arbitration under this section, and may also recover reasonable attorneys' fees.

(8) Nothing in this section is intended to abrogate or modify in any way any common law right or privilege. [2002 c 263 § 1. Prior: 1989 c 342 § 7; 1989 c 12 § 18; 1973 1st ex.s. c 207 § 15.]

59.18.160 Landlord's remedies if tenant fails to remedy defective condition. If, after receipt of written notice, as provided in RCW 59.18.170, the tenant fails to remedy the defective condition within a reasonable time, the landlord may:

(1) Bring an action in an appropriate court, or at arbitration if so agreed for any remedy provided under this chapter or otherwise provided by law; or

(2) Pursue other remedies available under this chapter. [1973 1st ex.s. c 207 § 16.]

59.18.170 Landlord to give notice if tenant fails to carry out duties. If at any time during the tenancy the tenant fails to carry out the duties required by RCW 59.18.130 or 59.18.140, the landlord may, in addition to pursuit of remedies otherwise provided by law, give written notice to the tenant of said failure, which notice shall specify the nature of the failure. [1973 1st ex.s. c 207 § 17.]

59.18.180 Tenant's failure to comply with statutory duties—Landlord to give tenant written notice of non-compliance—Landlord's remedies. (1) If the tenant fails to comply with any portion of RCW 59.18.130 or 59.18.140, and such noncompliance can substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident that can be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance, or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. Any substantial noncompliance by the tenant of RCW 59.18.130 or 59.18.140 shall constitute a ground for com-

mencing an action in unlawful detainer in accordance with the provisions of chapter 59.12 RCW, and a landlord may commence such action at any time after written notice pursuant to such chapter. The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter 59.12 RCW that the tenant is in substantial compliance with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: PROVIDED, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorney's fees.

(2) If drug-related activity is alleged to be a basis for termination of tenancy under RCW 59.18.130(6), 59.12.030(5), or 59.20.140(5), the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action.

(3) If activity on the premises that creates an imminent hazard to the physical safety of other persons on the premises as defined in RCW 59.18.130(8) is alleged to be the basis for termination of the tenancy, and the tenant is arrested as a result of this activity, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action against the tenant who was arrested for this activity.

(4) If gang-related activity, as prohibited under RCW 59.18.130(9), is alleged to be the basis for termination of the tenancy, then the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action in accordance with chapter 59.12 RCW, and a landlord may commence such an action at any time after written notice under chapter 59.12 RCW.

(5) A landlord may not be held liable in any cause of action for bringing an unlawful detainer action against a tenant for drug-related activity, for creating an imminent hazard to the physical safety of others, or for engaging in gang-related activity that renders people in at least two or more dwelling units or residences insecure in life or the use of property or that injures or endangers the safety or health of people in at least two or more dwelling units or residences under this section, if the unlawful detainer action was brought in good faith. Nothing in this section shall affect a landlord's liability under RCW 59.18.380 to pay all damages sustained by the tenant should the writ of restitution be wrongfully sued out. [1998 c 276 § 3; 1992 c 38 § 3; 1988 c 150 § 7; 1973 1st ex.s. c 207 § 18.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.190 Notice to tenant to remedy nonconformance. Whenever the landlord learns of a breach of RCW 59.18.130 or has accepted performance by the tenant which is at variance with the terms of the rental agreement or rules enforceable after the commencement of the tenancy, he may immediately give notice to the tenant to remedy the nonconformance. Said notice shall expire after sixty days unless the

landlord pursues any remedy under this chapter. [1973 1st ex.s. c 207 § 19.]

59.18.200 Tenancy from month to month or for rental period—Termination—Armed Forces exception—Exclusion of children or conversion to condominium—Notice. (1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of the months or periods of tenancy, given by either party to the other.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependant, may terminate a rental agreement with less than twenty days' notice if the tenant receives reassignment or deployment orders that do not allow a twenty-day notice.

(2) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership or plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ninety days before termination of the tenancy to effectuate such change in policy. Such ninety-day notice shall be in lieu of the notice required by subsection (1) of this section. However, if after giving the ninety-day notice the change in policy is delayed, the notice requirements of subsection (1) of this section shall apply unless waived by the tenant. [2003 c 7 § 1; 1979 ex.s. c 70 § 1; 1973 1st ex.s. c 207 § 20.]

Effective date—2003 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 24, 2003]." [2003 c 7 § 4.]

Unlawful detainer, notice requirement: RCW 59.12.030(2).

59.18.210 Tenancies from year to year except under written contract. Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals. [1973 1st ex.s. c 207 § 21.]

59.18.220 Termination of tenancy for a specified time—Armed forces exception. (1) In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time.

(2) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a tenancy for a specified time if the tenant receives reassignment or deployment orders. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt. [2003 c 7 § 2; 1973 1st ex.s. c 207 § 22.]

Effective date—2003 c 7: See note following RCW 59.18.200.

59.18.230 Waiver of chapter provisions prohibited—Provisions prohibited from rental agreement—Distress

for rent abolished—Detention of personal property for rent—Remedies. (1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorney's fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific written consent of the tenant to such incident of taking or detention, and who, after written demand by the tenant for the return of his personal property, refuses to return the same promptly shall be liable to the tenant for the value of the property retained, actual damages, and if the refusal is intentional, may also be liable for damages of up to one hundred dollars per day but not to exceed one thousand dollars, for each day or part of a day that the tenant is deprived of his property. The prevailing party may recover his costs of suit and a reasonable attorney's fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property. [1989 c 342 § 8; 1983 c 264 § 4; 1973 1st ex.s. c 207 § 23.]

59.18.240 Reprisals or retaliatory actions by landlord—Prohibited. So long as the tenant is in compliance with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

(1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation

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governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant; or

(2) Assertions or enforcement by the tenant of his rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

(a) Eviction of the tenant;

(b) Increasing the rent required of the tenant;

(c) Reduction of services to the tenant; and

(d) Increasing the obligations of the tenant. [1983 c 264 § 9; 1973 1st ex.s. c 207 § 24.]

59.18.250 Reprisals or retaliatory actions by landlord—Presumptions—Rebuttal—Costs. Initiation by the landlord of any action listed in RCW 59.18.240 within ninety days after a good faith and lawful act by the tenant as enumerated in RCW 59.18.240, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: PROVIDED, That if at the time the landlord gives notice of termination of tenancy pursuant to chapter 59.12 RCW the tenant is in arrears in rent or in breach of any other lease or rental obligation, there is a rebuttable presumption affecting the burden of proof that the landlord's action is neither a reprisal nor retaliatory action against the tenant: PROVIDED FURTHER, That if the court finds that the tenant made a complaint or report to a governmental authority within ninety days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: PROVIDED FURTHER, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter: PROVIDED FURTHER, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his claim he shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee: PROVIDED FURTHER, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them. [1983 c 264 § 10; 1973 1st ex.s. c 207 § 25.]

59.18.253 Deposit to secure occupancy by tenant—Landlord's duties—Violation. (1) It shall be unlawful for a landlord to require a fee from a prospective tenant for the

privilege of being placed on a waiting list to be considered as a tenant for a dwelling unit.

(2) A landlord who charges a prospective tenant a fee or deposit to secure that the prospective tenant will move into a dwelling unit, after the dwelling unit has been offered to the prospective tenant, must provide the prospective tenant with a receipt for the fee or deposit, together with a written statement of the conditions, if any, under which the fee or deposit is refundable. If the prospective tenant does occupy the dwelling unit, then the landlord must credit the amount of the fee or deposit to the tenant's first month's rent or to the tenant's security deposit. If the prospective tenant does not occupy the dwelling unit, then the landlord may keep up to the full amount of any fee or deposit that was paid by the prospective tenant to secure the tenancy, so long as it is in accordance with the written statement of conditions furnished to the prospective tenant at the time the fee or deposit was charged. A fee charged to secure a tenancy under this subsection does not include any cost charged by a landlord to use a tenant screening service or obtain background information on a prospective tenant.

(3) In any action brought for a violation of this section a landlord may be liable for the amount of the fee or deposit charged. In addition, any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed one hundred dollars. The prevailing party may also recover court costs and a reasonable attorneys' fee. [1991 c 194 § 2.]

Findings—1991 c 194: "The legislature finds that tenant application fees often have the effect of excluding low-income people from applying for housing because many low-income people cannot afford these fees in addition to the rent and other deposits which may be required. The legislature further finds that application fees are frequently not returned to unsuccessful applicants for housing, which creates a hardship on low-income people. The legislature therefore finds and declares that it is the policy of the state that certain tenant application fees should be prohibited and guidelines should be established for the imposition of other tenant application fees.

The legislature also finds that it is important to both landlords and tenants that consumer information concerning prospective tenants is accurate. Many tenants are unaware of their rights under federal fair credit reporting laws to dispute information that may be inaccurate. The legislature therefore finds and declares that it is the policy of the state for prospective tenants to be informed of their rights to dispute information they feel is inaccurate in order to help prevent denials of housing based upon incorrect information." [1991 c 194 § 1.]

59.18.257 Screening of tenants—Costs—Notice to tenant—Violation. (1) If a landlord uses a tenant screening service, then the landlord may only charge for the costs incurred for using the tenant screening service under this section. If a landlord conducts his or her own screening of tenants, then the landlord may charge his or her actual costs in obtaining the background information, but the amount may not exceed the customary costs charged by a screening service in the general area. The landlord's actual costs include costs incurred for long distance phone calls and for time spent calling landlords, employers, and financial institutions.

(2) A landlord may not charge a prospective tenant for the cost of obtaining background information under this section unless the landlord first notifies the prospective tenant in writing of what a tenant screening entails, the prospective tenant's rights to dispute the accuracy of information provided by the tenant screening service or provided by the entities listed on the tenant application who will be contacted for

information concerning the tenant, and the name and address of the tenant screening service used by the landlord.

(3) Nothing in this section requires a landlord to disclose information to a prospective tenant that was obtained from a tenant screening service or from entities listed on the tenant application which is not required under the federal fair credit reporting act, 15 U.S.C. Sec. 1681 et seq.

(4) Any landlord who violates this section may be liable to the prospective tenant for an amount not to exceed one hundred dollars. The prevailing party may also recover court costs and reasonable attorneys' fees. [1991 c 194 § 3.]

Findings—1991 c 194: See note following RCW 59.18.253.

59.18.260 Moneys paid as deposit or security for performance by tenant—Written rental agreement to specify terms and conditions for retention by landlord—Written checklist required. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a lease or rental agreement, the lease or rental agreement shall be in writing and shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the lease or rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the premises for which the tenant is responsible, the rental agreement shall be in writing and shall so specify. No deposit may be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings, including, but not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances, is provided by the landlord to the tenant at the commencement of the tenancy. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement. No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises. [1983 c 264 § 6; 1973 1st ex.s. c 207 § 26.]

59.18.270 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims. All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a financial institution as defined by RCW 30.22.041 or licensed escrow agent located in Washington. Unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address, and location of the new depository. The ten-

ant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled. [2004 c 136 § 1; 1975 1st ex.s. c 233 § 1; 1973 1st ex.s. c 207 § 27.]

59.18.280 Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention—Remedies for landlord's failure to make refund. Within fourteen days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW 59.18.310, within fourteen days after the landlord learns of the abandonment, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises. The landlord complies with this section if the required statement or payment, or both, are deposited in the United States mail properly addressed with first class postage prepaid within the fourteen days.

The notice shall be delivered to the tenant personally or by mail to his last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he shall be liable to the tenant for the full amount of the deposit. The landlord is also barred in any action brought by the tenant to recover the deposit from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the fourteen days or that the tenant abandoned the premises as defined in RCW 59.18.310. The court may in its discretion award up to two times the amount of the deposit for the intentional refusal of the landlord to give the statement or refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorney's fee.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorney's fees. [1989 c 342 § 9; 1983 c 264 § 7; 1973 1st ex.s. c 207 § 28.]

59.18.285 Nonrefundable fees not to be designated as deposit—Written rental agreement required. No moneys paid to the landlord which are nonrefundable may be designated as a deposit or as part of any deposit. If any moneys are paid to the landlord as a nonrefundable fee, the rental agreement shall be in writing and shall clearly specify that the fee is nonrefundable. [1983 c 264 § 5.]

59.18.290 Removal or exclusion of tenant from premises—Holding over or excluding landlord from premises after termination date. (1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant

so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.

(2) It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him, and the prevailing party may recover his costs of suit or arbitration and reasonable attorney's fees. [1973 1st ex.s. c 207 § 29.]

59.18.300 Termination of tenant's utility services—Tenant causing loss of landlord provided utility services. It shall be unlawful for a landlord to intentionally cause termination of any of his tenant's utility services, including water, heat, electricity, or gas, except for an interruption of utility services for a reasonable time in order to make necessary repairs. Any landlord who violates this section may be liable to such tenant for his actual damages sustained by him, and up to one hundred dollars for each day or part thereof the tenant is thereby deprived of any utility service, and the prevailing party may recover his costs of suit or arbitration and a reasonable attorney's fee. It shall be unlawful for a tenant to intentionally cause the loss of utility services provided by the landlord, including water, heat, electricity or gas, excepting as resulting from the normal occupancy of the premises. [1973 1st ex.s. c 207 § 30.]

59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies—Sale of tenant's property by landlord. If the tenant defaults in the payment of rent and reasonably indicates by words or actions the intention not to resume tenancy, the tenant shall be liable for the following for such abandonment: PROVIDED, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

- (a) The entire rent due for the remainder of the term; or
- (b) All rent accrued during the period reasonably necessary to rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in re-renting the premises together with statutory court costs and reasonable attorney's fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in any reasonably secure place. A landlord

shall make reasonable efforts to provide the tenant with a notice containing the name and address of the landlord and the place where the property is stored and informing the tenant that a sale or disposition of the property shall take place pursuant to this section, and the date of the sale or disposal, and further informing the tenant of the right under RCW 59.18.230 to have the property returned prior to its sale or disposal. The landlord's efforts at notice under this subsection shall be satisfied by the mailing by first class mail, postage prepaid, of such notice to the tenant's last known address and to any other address provided in writing by the tenant or actually known to the landlord where the tenant might receive the notice. The landlord shall return the property to the tenant after the tenant has paid the actual or reasonable drayage and storage costs whichever is less if the tenant makes a written request for the return of the property before the landlord has sold or disposed of the property. After forty-five days from the date the notice of such sale or disposal is mailed or personally delivered to the tenant, the landlord may sell or dispose of such property, including personal papers, family pictures, and keepsakes. The landlord may apply any income derived therefrom against moneys due the landlord, including actual or reasonable costs whichever is less of drayage and storage of the property. If the property has a cumulative value of fifty dollars or less, the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes, after seven days from the date the notice of sale or disposal is mailed or personally delivered to the tenant: PROVIDED, That the landlord shall make reasonable efforts, as defined in this section, to notify the tenant. Any excess income derived from the sale of such property under this section shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord, including any interest paid on the income. [1991 c 220 § 1; 1989 c 342 § 10; 1983 c 264 § 8; 1973 1st ex.s. c 207 § 31.]

59.18.312 Writ of restitution—Storage and sale of tenant's property—Use of proceeds from sale. (1) A landlord may, upon the execution of a writ of restitution by the sheriff, enter and take possession of any property of the tenant found on the premises and store the property in any reasonably secure place. If, however, the tenant or the tenant's representative objects to the storage of the property, the property shall be deposited upon the nearest public property and may not be moved and stored by the landlord. If the tenant is not present at the time the writ of restitution is executed, it shall be presumed that the tenant does not object to the storage of the property as provided in this section. RCW 59.18.310 shall apply to the moving and storage of a tenant's property when the premises are abandoned by the tenant.

(2) Property moved and stored under this section shall be returned to the tenant after the tenant has paid the actual or reasonable drayage and storage costs, whichever is less, or until it is sold or disposed of by the landlord in accordance with subsection (3) of this section.

(3) Prior to the sale or disposal of property stored pursuant to this section with a cumulative value of over fifty dol-

lars, the landlord shall notify the tenant of the pending sale or disposal. After forty-five days from the date the notice of the sale or disposal is mailed or personally delivered to the tenant, the landlord may sell or dispose of the property, including personal papers, family pictures, and keepsakes.

If the property that is being stored has a cumulative value of fifty dollars or less, then the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes. Prior to the sale or disposal of property stored pursuant to this section with a cumulative value of fifty dollars or less, the landlord shall notify the tenant of the pending sale or disposal. The notice shall either be mailed or personally delivered to the tenant. After seven days from the date the notice is mailed or delivered to the tenant, the landlord may sell or dispose of the property.

The landlord may apply any income derived from the sale of the tenant's property against moneys due the landlord for drayage and storage of the property. The amount of sale proceeds that the landlord may apply towards such costs may not exceed the actual or reasonable costs for drayage and storage of the property, whichever is less. Any excess income derived from the sale of such property shall be held by the landlord for the benefit of the tenant for a period of one year from the date of the sale. If no claim is made or action commenced by the tenant for the recovery of the excess income prior to the expiration of that period of time, then the balance shall be treated as abandoned property and deposited by the landlord with the department of revenue pursuant to chapter 63.29 RCW.

(4) Nothing in this section shall be construed as creating a right of distress for rent.

(5) When serving a tenant with a writ of restitution pursuant to RCW 59.12.100 and 59.18.410, the sheriff shall provide written notice to the tenant that: (a) Upon execution of the writ, the landlord may store the tenant's property; (b) if the property is stored, it may not be returned to the tenant unless the tenant pays the actual or reasonable costs of drayage and storage, whichever is less; (c) if the tenant objects to storage of the property, it will not be stored but will be placed on the nearest public property; and (d) if the tenant is not present at the time of the execution of the writ, it shall be presumed the tenant does not object to storage of the property. [1992 c 38 § 8.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

59.18.315 Mediation of disputes by independent third party. The landlord and tenant may agree in writing to submit any dispute arising under the provisions of this chapter or under the terms, conditions, or performance of the rental agreement, to mediation by an independent third party. The parties may agree to submit any dispute to mediation before exercising their right to arbitration under RCW 59.18.320. [1983 c 264 § 11.]

59.18.320 Arbitration—Authorized—Exceptions—Notice—Procedure. (1) The landlord and tenant may agree, in writing, except as provided in RCW 59.18.230(2)(e), to submit to arbitration, in conformity with the provisions of

this section, any controversy arising under the provisions of this chapter, except the following:

(a) Controversies regarding the existence of defects covered in subsections (1) and (2) of RCW 59.18.070: **PROVIDED**, That this exception shall apply only before the implementation of any remedy by the tenant;

(b) Any situation where court action has been started by either landlord or tenant to enforce rights under this chapter; when the court action substantially affects the controversy, including but not limited to:

(i) Court action pursuant to subsections (2) and (3) of RCW 59.18.090 and subsections (1) and (2) of RCW 59.18.160; and

(ii) Any unlawful detainer action filed by the landlord pursuant to chapter 59.12 RCW.

(2) The party initiating arbitration under subsection (1) of this section shall give reasonable notice to the other party or parties.

(3) Except as otherwise provided in this section, the arbitration process shall be administered by any arbitrator agreed upon by the parties at the time the dispute arises: **PROVIDED**, That the procedures shall comply with the requirements of chapter 7.04 RCW (relating to arbitration) and of this chapter. [1973 1st ex.s. c 207 § 32.]

59.18.330 Arbitration—Application—Hearings—Decisions. (1) Unless otherwise mutually agreed to, in the event a controversy arises under RCW 59.18.320 the landlord or tenant, or both, shall complete an application for arbitration and deliver it to the selected arbitrator.

(2) The arbitrator so designated shall schedule a hearing to be held no later than ten days following receipt of notice of the controversy, except as provided in RCW 59.18.350.

(3) The arbitrator shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties, who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings may be taken. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator shall have the power to administer oaths, to issue subpoenas, to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the arbitrator material to a just determination of the issues in dispute. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the arbitrator may invoke the jurisdiction of any superior court, and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof.

(4) Within five days after conclusion of the hearing, the arbitrator shall make a written decision upon the issues presented, a copy of which shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The determination of the dispute made by the arbitrator shall be final and binding upon both parties.

(5) If a defective condition exists which affects more than one dwelling unit in a similar manner, the arbitrator may

consolidate the issues of fact common to those dwelling units in a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed according to the provisions of chapter 7.04 RCW. [1973 1st ex.s. c 207 § 33.]

59.18.340 Arbitration—Fee. The administrative fee for this arbitration procedure shall be established by agreement of the parties and the arbitrator and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties: **PROVIDED**, That upon either party signing an affidavit to the effect that he is unable to pay his share of the fee, that portion of the fee may be waived or deferred. [1983 c 264 § 12; 1973 1st ex.s. c 207 § 34.]

59.18.350 Arbitration—Completion of arbitration after giving notice. When a party gives notice pursuant to subsection (2) of RCW 59.18.320, he must, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice pursuant to RCW 59.18.320: **PROVIDED**, That in no event shall the arbitrator have less than ten days to complete the arbitration process. [1973 1st ex.s. c 207 § 35.]

59.18.352 Threatening behavior by tenant—Termination of agreement—Written notice—Financial obligations. If a tenant notifies the landlord that he or she, or another tenant who shares that particular dwelling unit has been threatened by another tenant, and:

(1) The threat was made with a firearm or other deadly weapon as defined in RCW 9A.04.110; and

(2) The tenant who made the threat is arrested as a result of the threatening behavior; and

(3) The landlord fails to file an unlawful detainer action against the tenant who threatened another tenant within seven calendar days after receiving notice of the arrest from a law enforcement agency;

then the tenant who was threatened may terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement.

A tenant who terminates a rental agreement under this section is discharged from payment of rent for any period following the quitting date, and is entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280.

Nothing in this section shall be construed to require a landlord to terminate a rental agreement or file an unlawful detainer action. [1992 c 38 § 5.]

Intent—1992 c 38: "The legislature recognizes that tenants have a number of duties under the residential landlord tenant act. These duties include the duty to pay rent and give sufficient notice before terminating the tenancy, the duty to pay drayage and storage costs under certain circumstances, and the duty to not create a nuisance or common waste. The legislature finds that tenants are sometimes threatened by other tenants with firearms or other deadly weapons. Some landlords refuse to evict those tenants who threaten the well-being of other tenants even after an arrest has been made for the threatening behavior. The legislature also finds that some tenants who hold protective orders are still subjected to threats and acts of domestic violence. These tenants with protective orders must sometimes

move quickly so that the person being restrained does not know where they reside. Tenants who move out of dwelling units because they fear for their safety often forfeit their damage deposit and last month's rent because they did not provide the requisite notice to terminate the tenancy. Some tenants remain in unsafe situations because they cannot afford to lose the money held as a deposit by the landlord. There is no current mechanism that authorizes the suspension of the tenant's duty to give the requisite notice before terminating a tenancy if they are endangered by others. There also is no current mechanism that imposes a duty on the tenant to pay drayage and storage costs when the landlord stores his or her property after an eviction. It is the intent of the legislature to provide a mechanism for tenants who are threatened to terminate their tenancies without suffering undue economic loss, to provide additional mechanisms to allow landlords to evict tenants who endanger others, and to establish a mechanism for tenants to pay drayage and storage costs under certain circumstances when the landlord stores the tenant's property after an eviction." [1992 c 38 § 1.]

Effective date—1992 c 38: "This act shall take effect June 1, 1992." [1992 c 38 § 11.]

59.18.354 Threatening behavior by landlord—Termination of agreement—Financial obligations. If a tenant is threatened by the landlord with a firearm or other deadly weapon as defined in RCW 9A.04.110, and the threat leads to an arrest of the landlord, then the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement. The tenant is discharged from payment of rent for any period following the quitting date, and is entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280. [1992 c 38 § 6.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

59.18.360 Exemptions. A landlord and tenant may agree, in writing, to exempt themselves from the provisions of RCW 59.18.060, 59.18.100, 59.18.110, 59.18.120, 59.18.130, and 59.18.190 if the following conditions have been met:

- (1) The agreement may not appear in a standard form lease or rental agreement;
- (2) There is no substantial inequality in the bargaining position of the two parties;
- (3) The exemption does not violate the public policy of this state in favor of the ensuring safe, and sanitary housing; and
- (4) Either the local county prosecutor's office or the consumer protection division of the attorney general's office or the attorney for the tenant has approved in writing the application for exemption as complying with subsections (1) through (3) of this section. [1973 1st ex.s. c 207 § 36.]

59.18.365 Unlawful detainer action—Summons—Form. The summons for unlawful detainer actions for tenancies covered by this chapter shall be substantially in the following form. In unlawful detainer actions based on nonpayment of rent, the summons may contain the provisions authorized by RCW 59.18.375.

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR COUNTY

Plaintiff,	}	NO.
vs.		EVICTON SUMMONS
Defendant.		(Residential)

THIS IS NOTICE OF A LAWSUIT TO EVICT YOU.
PLEASE READ IT CAREFULLY.
THE DEADLINE FOR YOUR WRITTEN
RESPONSE IS:

5:00 p.m., on

TO: (Name)
. (Address)

This is notice of a lawsuit to evict you from the property which you are renting. Your landlord is asking the court to terminate your tenancy, direct the sheriff to remove you and your belongings from the property, enter a money judgment against you for unpaid rent and/or damages for your use of the property, and for court costs and attorneys' fees.

If you want to defend yourself in this lawsuit, you must respond to the eviction complaint in writing on or before the deadline stated above. You must respond in writing even if no case number has been assigned by the court yet.

You can respond to the complaint in writing by delivering a copy of a notice of appearance or answer to your landlord's attorney (or your landlord if there is no attorney) to be received no later than the deadline stated above.

The notice of appearance or answer must include the name of this case (plaintiff(s) and defendant(s)), your name, the street address where further legal papers may be sent, your telephone number (if any), and your signature.

If there is a number on the upper right side of the eviction summons and complaint, you must also file your original notice of appearance or answer with the court clerk by the deadline for your written response.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing the summons. Within fourteen days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

You may also be instructed in a separate order to appear for a court hearing on your eviction. If you receive an order to show cause you must personally appear at the hearing on the date indicated in the order to show cause in addition to delivering and filing your notice of appearance or answer by the deadline stated above.

IF YOU DO NOT RESPOND TO THE COMPLAINT IN WRITING BY THE DEADLINE STATED ABOVE YOU WILL LOSE BY DEFAULT. YOUR LANDLORD MAY PROCEED WITH THE LAWSUIT, EVEN IF YOU HAVE MOVED OUT OF THE PROPERTY.

The notice of appearance or answer must be delivered to:

.....
Name
.....
Address
.....
Telephone Number

[1989 c 342 § 15.]

59.18.370 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Application—Order—Hearing. The plaintiff, at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, upon filing the complaint, may apply to the superior court in which the action is pending for an order directing the defendant to appear and show cause, if any he has, why a writ of restitution should not issue restoring to the plaintiff possession of the property in the complaint described, and the judge shall by order fix a time and place for a hearing of said motion, which shall not be less than six nor more than twelve days from the date of service of said order upon defendant. A copy of said order, together with a copy of the summons and complaint if not previously served upon the defendant, shall be served upon the defendant. Said order shall notify the defendant that if he fails to appear and show cause at the time and place specified by the order the court may order the sheriff to restore possession of the property to the plaintiff and may grant such other relief as may be prayed for in the complaint and provided by this chapter. [1973 1st ex.s. c 207 § 38.]

59.18.375 Forcible entry or detainer or unlawful detainer actions—Payment of rent into court registry—Writ of restitution—Notice. (1) The remedies provided by this section are in addition to other remedies provided by this chapter.

(2) In an action of forcible entry, detainer, or unlawful detainer, commenced under this chapter which is based upon nonpayment of rent as provided in RCW 59.12.030(3), the defendant shall pay into the court registry the amount alleged due in the complaint and continue to pay into the court registry the monthly rent as it becomes due under the terms of the rental agreement while the action is pending. If the defendant submits to the court a written statement signed and sworn under penalty of perjury denying that the rent alleged due in the complaint is owing based upon a legal or equitable defense or set-off arising out of the tenancy, such payment shall not be required.

(3) A defendant must comply with subsection (2) of this section within seven days after completed service of a filed summons and complaint or, in the case of service of an unfiled summons and complaint, seven days after delivering written notice to the defendant, in the manner provided in RCW 59.12.040, advising the defendant of the date of filing, the cause number for the action, and the date by which the defendant must comply with this section to avoid the immediate issuance of a writ of restitution. Failure of the defendant to comply with this section shall be grounds for the immediate issuance of a writ of restitution without bond directing the sheriff to deliver possession of the premises to the plaintiff. Issuance of a writ of restitution under this section shall not

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affect the defendant's right to a hearing to contest the amount of rent alleged to be due.

(4) The defendant shall send written notice that the rent has been paid into the court registry or send a copy of the sworn statement referred to in subsection (2) of this section to the address of the person whose name is signed on the unlawful detainer summons.

(5) Before applying to the court for a writ of restitution under this section, the plaintiff must check with the clerk of the court to determine if the defendant has complied with subsection (2) of this section.

(6) If the plaintiff intends to use the procedures in this section, the summons must contain notice to the defendant of the payment requirements of this section and be substantially in the following form:

NOTICE

This unlawful detainer action is based upon nonpayment of rent in an amount alleged to be \$. . . . The plaintiff is entitled to an order from the court directing the sheriff to evict you without a hearing unless you pay into the court registry the amount of delinquent rent alleged to be due in the complaint and continue paying into the court registry the monthly rent as it becomes due while this lawsuit is pending. If you deny that you owe the rent claimed to be due and you do not want to be evicted immediately without a hearing, you must file with the clerk of the court a written statement signed and sworn under penalty of perjury setting forth why you do not owe the amount claimed in the complaint to be due. The sworn statement must be filed IN ADDITION TO your written answer to the complaint.

Payment or the sworn statement must be submitted to the clerk of the superior court within seven days after you have been served with this summons or, if the summons has not yet been filed, within seven days after service of written notice that the lawsuit has been filed.

This complaint:

- () is filed with the superior court;
- () is not filed. The plaintiff must notify you in writing when it is filed.

IMPORTANT

If you intend to contest this action, you must also file a written answer as indicated above on this summons.

[1983 c 264 § 13.]

59.18.380 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer—Order—Stay—Bond. At the time and place fixed for the hearing of plaintiff's motion for a writ of restitution, the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy. If the answer is oral the substance thereof shall be endorsed on the complaint by the court. The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a

writ of restitution, returnable ten days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof, and the court may grant such other relief as may be prayed for in the plaintiff's complaint and provided for in this chapter, then the court shall enter an order denying any relief sought by the plaintiff for which the court has determined that the plaintiff has no right as a matter of law: PROVIDED, That within three days after the service of the writ of restitution the defendant, or person in possession of the property, may, in any action for the recovery of possession of the property for failure to pay rent, stay the execution of the writ pending final judgment by paying into court or to the plaintiff, as the court directs, all rent found to be due and all the costs of the action, and in addition by paying, on a monthly basis pending final judgment, an amount equal to the monthly rent called for by the lease or rental agreement at the time the complaint was filed: PROVIDED FURTHER, That before any writ shall issue prior to final judgment the plaintiff shall execute to the defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner.

If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer. If it appears to the court that there is a substantial issue of material fact as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff's complaint and provided for in this chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer, the court shall grant or deny so much of plaintiff's other relief sought and so much of defendant's defenses or set-off claimed, as may be proper. [1973 1st ex.s. c 207 § 39.]

59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant's bond. (1) The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his or her agent, or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of the court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the

defendant occupying or keeping possession of the premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this chapter, and also all the costs of the action. The plaintiff, his or her agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon the bond before the bond shall be approved by the clerk. After the issuance of a writ of restitution, acceptance of a payment by the landlord or plaintiff that only partially satisfies the judgment will not invalidate the writ unless pursuant to a written agreement executed by both parties. The eviction will not be postponed or stopped unless a copy of that written agreement is provided to the sheriff. It is the responsibility of the tenant or defendant to ensure a copy of the agreement is provided to the sheriff. Upon receipt of the agreement the sheriff will cease action unless ordered to do otherwise by the court. The writ of restitution and the notice that accompanies the writ of restitution required under RCW 59.18.312 shall conspicuously state in bold face type, all capitals, not less than twelve points information about partial payments as set forth in subsection (2) of this section. If the writ of restitution has been based upon a finding by the court that the tenant, subtenant, sublessee, or a person residing at the rental premises has engaged in drug-related activity or has allowed any other person to engage in drug-related activity at those premises with his or her knowledge or approval, neither the tenant, the defendant, nor a person in possession of the premises shall be entitled to post a bond in order to retain possession of the premises. The writ may be served by the sheriff, in the event he or she shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of the writ in a conspicuous place upon the premises: PROVIDED, That the sheriff shall not require any bond for the service or execution of the writ. The sheriff shall be immune from all civil liability for serving and enforcing writs of restitution unless the sheriff is grossly negligent in carrying out his or her duty.

(2) The notice accompanying a writ of restitution required under RCW 59.18.312 shall be substantially similar to the following:

IMPORTANT NOTICE - PARTIAL PAYMENTS

YOUR LANDLORD'S ACCEPTANCE OF A PARTIAL PAYMENT FROM YOU AFTER SERVICE OF THIS WRIT OF RESTITUTION WILL NOT AUTOMATICALLY POSTPONE OR STOP YOUR EVICTION. IF YOU HAVE A WRITTEN AGREEMENT WITH YOUR LANDLORD THAT THE EVICTION WILL BE POSTPONED OR STOPPED, IT IS YOUR RESPONSIBILITY TO PROVIDE A COPY OF THE AGREEMENT TO THE SHERIFF. THE SHERIFF WILL NOT CEASE ACTION UNLESS YOU PROVIDE A COPY OF THE AGREEMENT. AT THE DIRECTION OF THE COURT THE SHERIFF MAY TAKE FURTHER ACTION.

[1997 c 255 § 1; 1989 c 342 § 11; 1988 c 150 § 3; 1973 1st ex.s. c 207 § 40.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.400 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer of defendant. On or before the day fixed for his appearance the defendant may appear and answer. The defendant in his answer may assert any legal or equitable defense or set-off arising out of the tenancy. If the complaint alleges that the tenancy should be terminated because the defendant tenant, subtenant, sublessee, or resident engaged in drug-related activity, or allowed any other person to engage in drug-related activity at the rental premises with his or her knowledge or consent, no set-off shall be allowed as a defense to the complaint. [1988 c 150 § 4; 1973 1st ex.s. c 207 § 41.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.410 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Judgment—Execution. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for the amount of damages thus assessed and for the rent, if any, found due, and the court may award statutory costs and reasonable attorney's fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his tenancy; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. [1973 1st ex.s. c 207 § 42.]

59.18.415 Applicability to certain single family dwelling leases. The provisions of this chapter shall not apply to any lease of a single family dwelling for a period of a year or more or to any lease of a single family dwelling containing a bona fide option to purchase by the tenant: PRO-

(2004 Ed.)

VIDED, That an attorney for the tenant must approve on the face of the agreement any lease exempted from the provisions of this chapter as provided for in this section. [1989 c 342 § 12; 1973 1st ex.s. c 207 § 43.]

59.18.420 RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 inapplicable. The provisions of RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 shall not apply to any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 44.]

59.18.430 Applicability to prior, existing or future leases. RCW 59.18.010 through 59.18.360 and 59.18.900 shall not apply to any lease entered into prior to July 16, 1973. All provisions of this chapter shall apply to any lease or periodic tenancy entered into on or subsequent to July 16, 1973. [1973 1st ex.s. c 207 § 47.]

59.18.440 Relocation assistance for low-income tenants—Certain cities, towns, counties, municipal corporations authorized to require. (1) Any city, town, county, or municipal corporation that is required to develop a comprehensive plan under RCW 36.70A.040(1) is authorized to require, after reasonable notice to the public and a public hearing, property owners to provide their portion of reasonable relocation assistance to low-income tenants upon the demolition, substantial rehabilitation whether due to code enforcement or any other reason, or change of use of residential property, or upon the removal of use restrictions in an assisted-housing development. No city, town, county, or municipal corporation may require property owners to provide relocation assistance to low-income tenants, as defined in this chapter, upon the demolition, substantial rehabilitation, upon the change of use of residential property, or upon the removal of use restrictions in an assisted-housing development, except as expressly authorized herein or when authorized or required by state or federal law. As used in this section, "assisted housing development" means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(2) As used in this section, "low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

The department of community, trade, and economic development shall adopt rules defining county median income in accordance with the definitions promulgated by the federal department of housing and urban development.

(3) A requirement that property owners provide relocation assistance shall include the amounts of such assistance to be provided to low-income tenants. In determining such amounts, the jurisdiction imposing the requirement shall evaluate, and receive public testimony on, what relocation expenses displaced tenants would reasonably incur in that jurisdiction including:

(a) Actual physical moving costs and expenses;

(b) Advance payments required for moving into a new residence such as the cost of first and last month's rent and security and damage deposits;

(c) Utility connection fees and deposits; and

(d) Anticipated additional rent and utility costs in the residence for one year after relocation.

(4)(a) Relocation assistance provided to low-income tenants under this section shall not exceed two thousand dollars for each dwelling unit displaced by actions of the property owner under subsection (1) of this section. A city, town, county, or municipal corporation may make future annual adjustments to the maximum amount of relocation assistance required under this subsection in order to reflect any changes in the housing component of the consumer price index as published by the United States department of labor, bureau of labor statistics.

(b) The property owner's portion of any relocation assistance provided to low-income tenants under this section shall not exceed one-half of the required relocation assistance under (a) of this subsection in cash or services.

(c) The portion of relocation assistance not covered by the property owner under (b) of this subsection shall be paid by the city, town, county, or municipal corporation authorized to require relocation assistance under subsection (1) of this section. The relocation assistance may be paid from proceeds collected from the excise tax imposed under RCW 82.46.010.

(5) A city, town, county, or municipal corporation requiring the provision of relocation assistance under this section shall adopt policies, procedures, or regulations to implement such requirement. Such policies, procedures, or regulations shall include provisions for administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation, and shall require a decision within thirty days of a request for a hearing by either a tenant or property owner.

Judicial review of an administrative hearing decision relating to relocation assistance may be had by filing a petition, within ten days of the decision, in the superior court in the county where the residential property is located. Judicial review shall be confined to the record of the administrative hearing and the court may reverse the decision only if the administrative findings, inferences, conclusions, or decision is:

(a) In violation of constitutional provisions;

(b) In excess of the authority or jurisdiction of the administrative hearing officer;

(c) Made upon unlawful procedure or otherwise is contrary to law; or

(d) Arbitrary and capricious.

(6) Any city, town, county, or municipal corporation may require relocation assistance, under the terms of this section, for otherwise eligible tenants whose living arrangements are exempted from the provisions of this chapter under RCW 59.18.040(3) and if the living arrangement is considered to be a rental or lease not defined as a retail sale under RCW 82.04.050.

(7)(a) Persons who move from a dwelling unit prior to the application by the owner of the dwelling unit for any governmental permit necessary for the demolition, substantial

rehabilitation, or change of use of residential property or prior to any notification or filing required for condominium conversion shall not be entitled to the assistance authorized by this section.

(b) Persons who move into a dwelling unit after the application for any necessary governmental permit or after any required condominium conversion notification or filing shall not be entitled to the assistance authorized by this section if such persons receive written notice from the property owner prior to taking possession of the dwelling unit that specifically describes the activity or condition that may result in their temporary or permanent displacement and advises them of their ineligibility for relocation assistance. [1997 c 452 § 17; 1995 c 399 § 151; 1990 1st ex.s. c 17 § 49.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

59.18.450 Relocation assistance for low-income tenants—Payments not considered income—Eligibility for other assistance not affected. Relocation assistance payments received by tenants under *RCW 59.18.440 shall not be considered as income or otherwise affect the eligibility for or amount of assistance paid under any government benefit program. [1990 1st ex.s. c 17 § 50.]

***Reviser's note:** The reference in 1990 1st ex.s. c 17 § 50 to "section 50 of this act" is apparently erroneous and has been translated to RCW 59.18.440, which was 1990 1st ex.s. c 17 § 49.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

59.18.500 Gang-related activity—Legislative findings, declarations, and intent. The legislature finds and declares that the ability to feel safe and secure in one's own home and in one's own community is of primary importance. The legislature recognizes that certain gang-related activity can affect the safety of a considerable number of people in the rental premises and dwelling units. Therefore, such activity, although it may be occurring within an individual's home or the surrounding areas of an individual's home, becomes the community's concern.

The legislature intends that the remedy provided in RCW 59.18.510 be used solely to protect the health and safety of the community. The remedy is not a means for private citizens to bring malicious or unfounded actions against fellow tenants or residential neighbors for personal reasons. In determining whether the tenant's activity is the type prohibited under RCW 59.18.130(9), the court should consider the totality of the circumstances, including factors such as whether there have been numerous complaints to the landlord, damage to property, police or incident reports, reports of disturbance, and arrests. An absence of any or all of these factors does not necessarily mean gang activity is not occurring. In determining whether the tenant is engaging in gang-related activity, the court should consider the purpose and intent of RCW 59.18.510. The legislature intends to give people in the community a tool that will help them restore the health and vibrance of their community. [1998 c 276 § 4.]

59.18.510 Gang-related activity—Notice and demand the landlord commence unlawful detainer action—Petition to court—Attorneys' fees. (1)(a) Any person whose life, safety, health, or use of property is being injured or endangered by a tenant's gang-related activity, who has legal standing and resides, works in, or owns property in the same multifamily building, apartment complex, or within a one-block radius may serve the landlord with a ten-day notice and demand that the landlord commence an unlawful detainer action against the tenant. The notice and demand must set forth, in reasonable detail, facts and circumstances that lead the person to believe gang-related activity is occurring. The notice and demand shall be served by delivering a copy personally to the landlord or the landlord's agent. If the person is unable to personally serve the landlord after exercising due diligence, the person may deposit the notice and demand in the mail, postage prepaid, to the landlord's or the landlord's agent's last known address.

(b) A copy of the notice and demand must also be served upon the tenant engaging in the gang-related activity by delivering a copy personally to the tenant. However, if the person is prevented from personally serving the tenant due to threats or violence, or if personal service is not reasonable under the circumstances, the person may deposit the notice and demand in the mail, postage prepaid, to the tenant's address, or leave a copy of the notice and demand in a conspicuous location at the tenant's residence.

(2)(a) Within ten days from the time the notice and demand is served, the landlord has a duty to take reasonable steps to investigate the tenant's alleged noncompliance with RCW 59.18.130(9). The landlord must notify the person who brought the notice and demand that an investigation is occurring. The landlord has ten days from the time he or she notifies the person in which to conduct a reasonable investigation.

(b) If, after reasonable investigation, the landlord finds that the tenant is not in compliance with RCW 59.18.130(9), the landlord may proceed directly to an unlawful detainer action or take reasonable steps to ensure the tenant discontinues the prohibited activity and complies with RCW 59.18.130(9). The landlord shall notify the person who served the notice and demand of whatever action the landlord takes.

(c) If, after reasonable investigation, the landlord finds that the tenant is in compliance with RCW 59.18.130(9), the landlord shall notify the person who served the notice and demand of the landlord's findings.

(3) The person who served the notice and demand may petition the appropriate court to have the tenancy terminated and the tenant removed from the premises if: (a) Within ten days of service of the notice and demand, the tenant fails to discontinue the gang-related activity and the landlord fails to conduct a reasonable investigation; or (b) the landlord notifies the person that the landlord conducted a reasonable investigation and found that the tenant was not engaged in gang-related activity as prohibited under RCW 59.18.130(9); or (c) the landlord took reasonable steps to have the tenant comply with RCW 59.18.130(9), but the tenant has failed to comply within a reasonable time.

(4) If the court finds that the tenant was not in compliance with RCW 59.18.130(9), the court shall enter an order

terminating the tenancy and requiring the tenant to vacate the premises. The court shall not issue the order terminating the tenancy unless it has found that the allegations of gang-related activity are corroborated by a source other than the person who has petitioned the court.

(5) The prevailing party shall recover reasonable attorneys' fees and costs. The court may impose sanctions, in addition to attorneys' fees, on a person who has brought an action under this chapter against the same tenant on more than one occasion, if the court finds the petition was brought with the intent to harass. However, the court must order the landlord to pay costs and reasonable attorneys' fees to the person petitioning for termination of the tenancy if the court finds that the landlord failed to comply with the duty to investigate, regardless of which party prevails. [1998 c 276 § 5.]

59.18.550 Drug and alcohol free housing—Program of recovery—Terms—Application of chapter. (1) For the purpose of this section, "drug and alcohol free housing" requires a rental agreement and means a dwelling in which:

(a) Each of the dwelling units on the premises is occupied or held for occupancy by at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery;

(b) The landlord is a nonprofit corporation incorporated under Title 24 RCW, a corporation for profit incorporated under Title 23B RCW, or a housing authority created under chapter 35.82 RCW, and is providing federally assisted housing as defined in chapter 59.28 RCW;

(c) The landlord provides:

(i) A drug and alcohol free environment, covering all tenants, employees, staff, agents of the landlord, and guests;

(ii) An employee who monitors the tenants for compliance with the requirements of (d) of this subsection;

(iii) Individual and group support for recovery; and

(iv) Access to a specified program of recovery; and

(d) The rental agreement is in writing and includes the following provisions:

(i) The tenant may not use, possess, or share alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription, either on or off the premises;

(ii) The tenant may not allow the tenant's guests to use, possess, or share alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription, on the premises;

(iii) The tenant must participate in a program of recovery, which specific program is described in the rental agreement;

(iv) On at least a quarterly basis the tenant must provide written verification from the tenant's program of recovery that the tenant is participating in the program of recovery and the tenant has not used alcohol or illegal drugs;

(v) The landlord has the right to require the tenant to take a urine analysis test regarding drug or alcohol usage, at the landlord's discretion and expense; and

(vi) The landlord has the right to terminate the tenant's tenancy by delivering a three-day notice to terminate with one day to comply, if a tenant living in drug and alcohol free housing uses, possesses, or shares alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription.

(2) For the purpose of this section, "program of recovery" means a verifiable program of counseling and rehabilitation treatment services, including a written plan, to assist recovering alcoholics or drug addicts to recover from their addiction to alcohol or illegal drugs while living in drug and alcohol free housing. A "program of recovery" includes Alcoholics Anonymous, Narcotics Anonymous, and similar programs.

(3) If a tenant living for less than two years in drug and alcohol free housing uses, possesses, or shares alcohol, illegal drugs, controlled substances, or prescription drugs without a medical prescription, the landlord may deliver a written notice to the tenant terminating the tenancy for cause as provided in this subsection. The notice must specify the acts constituting the drug or alcohol violation and must state that the rental agreement terminates in not less than three days after delivery of the notice, at a specified date and time. The notice must also state that the tenant can cure the drug or alcohol violation by a change in conduct or otherwise within one day after delivery of the notice. If the tenant cures the violation within the one-day period, the rental agreement does not terminate. If the tenant does not cure the violation within the one-day period, the rental agreement terminates as provided in the notice. If substantially the same act that constituted a prior drug or alcohol violation of which notice was given reoccurs within six months, the landlord may terminate the rental agreement upon at least three days' written notice specifying the violation and the date and time of termination of the rental agreement. The tenant does not have a right to cure this subsequent violation.

(4) Notwithstanding subsections (1), (2), and (3) of this section, federally assisted housing that is occupied on other than a transient basis by persons who are required to abstain from possession or use of alcohol or drugs as a condition of occupancy and who pay for the use of the housing on a periodic basis, without regard to whether the payment is characterized as rent, program fees, or other fees, costs, or charges, are covered by this chapter unless the living arrangement is exempt under RCW 59.18.040. [2003 c 382 § 1.]

59.18.570 Victim protection—Definitions. The definitions in this section apply throughout this section and RCW 59.18.575 through 59.18.585 unless the context clearly requires otherwise.

(1) "Domestic violence" has the same meaning as set forth in RCW 26.50.010.

(2) "Sexual assault" has the same meaning as set forth in RCW 70.125.030.

(3) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

(4) "Qualified third party" means any of the following people acting in their official capacity:

(a) Law enforcement officers;

(b) Persons subject to the provisions of chapter 18.120 RCW;

(c) Employees of a court of the state;

(d) Licensed mental health professionals or other licensed counselors;

(e) Employees of crime victim/witness programs as defined in RCW 7.69.020 who are trained advocates for the program; and

(f) Members of the clergy as defined in RCW 26.44.020.

(5) "Household member" means a child or adult residing with the tenant other than the perpetrator of domestic violence, stalking, or sexual assault.

(6) "Tenant screening service provider" means any non-governmental agency that provides, for a fee, background information on prospective tenants to landlords.

(7) "Credit reporting agency" has the same meaning as set forth in RCW 19.182.010(5). [2004 c 17 § 2.]

Findings—Intent—2004 c 17: "The legislature finds and declares that:

(1) Domestic violence, sexual assault, and stalking are widespread societal problems that have devastating effects for individual victims, their children, and their communities. Victims of violence may be forced to remain in unsafe situations because they are bound by residential lease agreements. The legislature finds that the inability of victims to terminate their rental agreements hinders or prevents victims from being able to safely flee domestic violence, sexual assault, or stalking. The legislature further finds that victims of these crimes who do not have access to safe housing are more likely to remain in or return to abusive or dangerous situations. Also, the legislature finds that victims of these crimes are further victimized when they are unable to obtain or retain rental housing due to their history as a victim of these crimes. The legislature further finds that evidence that a prospective tenant has been a victim of domestic violence, sexual assault, or stalking is not relevant to the decision whether to rent to that prospective tenant.

(2) By this act, the legislature intends to increase safety for victims of domestic violence, sexual assault, and stalking by removing barriers to safety and offering protection against discrimination." [2004 c 17 § 1.]

Effective date—2004 c 17: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2004]." [2004 c 17 § 7.]

59.18.575 Victim protection—Notice to landlord—Termination of rental agreement—Procedures. (1)(a) If a tenant notifies the landlord in writing that he or she or a household member was a victim of an act that constitutes a crime of domestic violence, sexual assault, or stalking, and either (a)(i) or (ii) of this subsection applies, then subsection (2) of this section applies:

(i) The tenant or the household member has a valid order for protection under one or more of the following: Chapter 26.50 or 26.26 RCW or RCW 9A.46.040, 9A.46.050, 10.14.080, 10.99.040 (2) or (3), or 26.09.050; or

(ii) The tenant or the household member has reported the domestic violence, sexual assault, or stalking to a qualified third party acting in his or her official capacity and the qualified third party has provided the tenant or the household member a written record of the report signed by the qualified third party.

(b) When a copy of a valid order for protection or a written record of a report signed by a qualified third party, as required under (a) of this subsection, is made available to the landlord, the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement or under chapter 59.12 RCW. However, the request to terminate the rental agreement must occur within ninety days of the reported act, event, or circumstance that gave rise to the protective order or report to a qualified third party. A record of the report to a qualified third party that is provided to the tenant or household member shall consist of a document signed and dated by the qualified third party stating: (i) That the tenant or the household member notified him or her that he or she was a victim of an act or acts that constitute a crime of domestic violence, sexual assault, or stalking;

(ii) the time and date the act or acts occurred; (iii) the location where the act or acts occurred; (iv) a brief description of the act or acts of domestic violence, sexual assault, or stalking; and (v) that the tenant or household member informed him or her of the name of the alleged perpetrator of the act or acts. The record of the report provided to the tenant or household member shall not include the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, or stalking. The qualified third party shall keep a copy of the record of the report and shall note on the retained copy the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, or stalking. The record of the report to a qualified third party may be accomplished by completion of a form provided by the qualified third party, in substantially the following form:

[Name of organization, agency, clinic, professional service provider]

I and/or my (household member) am/is a victim of

. . . domestic violence as defined by RCW 26.50.010.

. . . sexual assault as defined by RCW 70.125.030.

. . . stalking as defined by RCW 9A.46.110.

Briefly describe the incident of domestic violence, sexual assault, or stalking:

The incident(s) that I rely on in support of this declaration occurred on the following date(s) and time(s): and at the following location(s).

The incident(s) that I rely on in support of this declaration were committed by the following person(s):

I state under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Dated at (city) . ., Washington, this . . . day of, 20. . .

Signature of Tenant or Household Member

I verify that I have provided to the person whose signature appears above the statutes cited in RCW 59.18.575 and that the individual was a victim of an act that constitutes a crime of domestic violence, sexual assault, or stalking, and that the individual informed me of the name of the alleged perpetrator of the act.

Dated this . . . day of, 20. . .

Signature of authorized officer/employee of (Organization, agency, clinic, professional service provider)

(2) A tenant who terminates a rental agreement under this section is discharged from the payment of rent for any period following the last day of the month of the quitting

date. The tenant shall remain liable for the rent for the month in which he or she terminated the rental agreement unless the termination is in accordance with RCW 59.18.200(1). Notwithstanding lease provisions that allow for forfeiture of a deposit for early termination, a tenant who terminates under this section is entitled to the return of the full deposit, subject to RCW 59.18.020 and 59.18.280. Other tenants who are parties to the rental agreement, except household members who are the victims of sexual assault, stalking, or domestic violence, are not released from their obligations under the rental agreement or other obligations under this chapter.

(3) The provision of verification of a report under subsection (1)(b) of this section does not waive the confidential or privileged nature of the communication between a victim of domestic violence, sexual assault, or stalking with a qualified third party pursuant to RCW 5.60.060, 70.123.075, or 70.125.065. No record or evidence obtained from such disclosure may be used in any civil, administrative, or criminal proceeding against the victim unless a written waiver of applicable evidentiary privilege is obtained, except that the verification itself, and no other privileged information, under subsection (1)(b) of this section may be used in civil proceedings brought under this section. [2004 c 17 § 3.]

Findings—Intent—Effective date—2004 c 17: See notes following RCW 59.18.570.

59.18.580 Victim protection—Limitation on landlord's rental decisions. (1) A landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant's or applicant's or a household member's status as a victim of domestic violence, sexual assault, or stalking, or based on the tenant or applicant having terminated a rental agreement under RCW 59.18.575.

(2) A landlord who refuses to enter into a rental agreement in violation of this section may be liable to the tenant or applicant in a civil action for damages sustained by the tenant or applicant. The prevailing party may also recover court costs and reasonable attorneys' fees.

(3) It is a defense to an unlawful detainer action under chapter 59.12 RCW that the action to remove the tenant and recover possession of the premises is in violation of subsection (1) of this section.

(4) This section does not prohibit adverse housing decisions based upon other lawful factors within the landlord's knowledge. [2004 c 17 § 4.]

Findings—Intent—Effective date—2004 c 17: See notes following RCW 59.18.570.

59.18.585 Victim protection—Possession of dwelling unit—Exclusion of others—New lock or key. (1) A tenant who has obtained a court order from a court of competent jurisdiction granting him or her possession of a dwelling unit to the exclusion of one or more cotenants may request that a lock be replaced or configured for a new key at the tenant's expense. The landlord shall, if provided a copy of the order, comply with the request and shall not provide copies of the new keys to the tenant restrained or excluded by the court's order. This section does not release a cotenant, other than a household member who is the victim of domestic violence, sexual assault, or stalking, from liability or obligations under the rental agreement.

(2) A landlord who replaces a lock or configures for a new key of a residential housing unit in accordance with subsection (1) of this section shall be held harmless from liability for any damages that result directly from the lock change. [2004 c 17 § 5.]

Findings—Intent—Effective date—2004 c 17: See notes following RCW 59.18.570.

59.18.900 Severability—1973 1st ex.s. c 207. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act, or its application to other persons or circumstances, is not affected. [1973 1st ex.s. c 207 § 37.]

59.18.910 Severability—1989 c 342. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 342 § 18.]

59.18.911 Effective date—1989 c 342. This act shall take effect on August 1, 1989, and shall apply to landlord-tenant relationships existing on or entered into after the effective date of this act. [1989 c 342 § 19.]

Chapter 59.20 RCW

MANUFACTURED/MOBILE HOME LANDLORD-TENANT ACT

(Formerly: Mobile Home Landlord-Tenant Act)

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59.20.901	Effective date—1999 c 359.

Office of mobile home affairs: Chapter 59.22 RCW.

Smoke detection devices required in dwelling units: RCW 48.48.140.

59.20.010 Short title. This chapter shall be known and may be cited as the "Manufactured/Mobile Home Landlord-Tenant Act". [1999 c 359 § 1; 1977 ex.s. c 279 § 1.]

59.20.020 Rights and remedies—Obligation of good faith required. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [1977 ex.s. c 279 § 2.]

59.20.030 Definitions. For purposes of this chapter:

(1) "Abandoned" as it relates to a mobile home, manufactured home, or park model owned by a tenant in a mobile home park, mobile home park cooperative, or mobile home park subdivision or tenancy in a mobile home lot means the tenant has defaulted in rent and by absence and by words or actions reasonably indicates the intention not to continue tenancy;

(2) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;

(3) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

(4) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the United States department of housing and urban development manufactured home construction and safety act;

(5) "Mobile home lot" means a portion of a mobile home park or manufactured housing community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclu-

sive use as a primary residence by the occupants of that mobile home, manufactured home, or park model;

(6) "Mobile home park" or "manufactured housing community" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(7) "Mobile home park cooperative" or "manufactured housing cooperative" means real property consisting of common areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members;

(8) "Mobile home park subdivision" or "manufactured housing subdivision" means real property, whether it is called a subdivision, condominium, or planned unit development, consisting of common areas and two or more lots held for placement of mobile homes, manufactured homes, or park models in which there is private ownership of the individual lots and common, undivided ownership of the common areas by owners of the individual lots;

(9) "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence;

(10) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

(11) "Tenant" means any person, except a transient, who rents a mobile home lot;

(12) "Transient" means a person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence;

(13) "Occupant" means any person, including a live-in care provider, other than a tenant, who occupies a mobile home, manufactured home, or park model and mobile home lot. [2003 c 127 § 1; 1999 c 359 § 2; 1998 c 118 § 1; 1993 c 66 § 15; 1981 c 304 § 4; 1980 c 152 § 3; 1979 ex.s. c 186 § 1; 1977 ex.s. c 279 § 3.]

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 186 § 30.]

59.20.040 Chapter applies to rental agreements regarding mobile home lots, cooperatives, or subdivisions—Applicability of and construction with provisions of chapters 59.12 and 59.18 RCW. This chapter shall regulate and determine legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home park subdivision, where the ten-

ant has no ownership interest in the property or in the association which owns the property, whose uses are referred to as a part of the rent structure paid by the tenant. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. Chapter 59.12 RCW shall be applicable only in implementation of the provisions of this chapter and not as an alternative remedy to this chapter which shall be exclusive where applicable: PROVIDED, That the provision of RCW 59.12.090, 59.12.100, and 59.12.170 shall not apply to any rental agreement included under the provisions of this chapter. RCW 59.18.055 and 59.18.370 through 59.18.410 shall be applicable to any action of forcible entry or detainer or unlawful detainer arising from a tenancy under the provisions of this chapter, except when a mobile home, manufactured home, or park model or a tenancy in a mobile home lot is abandoned. Rentals of mobile homes, manufactured homes, or park models themselves are governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW. [1999 c 359 § 3; 1997 c 86 § 2; 1981 c 304 § 5; 1979 ex.s. c 186 § 2; 1977 ex.s. c 279 § 4.]

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.045 Enforceability of rules against a tenant.

Rules are enforceable against a tenant only if:

- (1) Their purpose is to promote the convenience, health, safety, or welfare of the residents, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities made available for the tenants generally;
- (2) They are reasonably related to the purpose for which they are adopted;
- (3) They apply to all tenants in a fair manner;
- (4) They are not for the purpose of evading an obligation of the landlord; and
- (5) They are not retaliatory or discriminatory in nature. [1993 c 66 § 18.]

59.20.050 Written rental agreement for term of one year or more required—Waiver—Exceptions—Application of section.

(1) No landlord may offer a mobile home lot for rent to anyone without offering a written rental agreement for a term of one year or more. No landlord may offer to anyone any rental agreement for a term of one year or more for which the monthly rental is greater, or the terms of payment or other material conditions more burdensome to the tenant, than any month-to-month rental agreement also offered to such tenant or prospective tenant. Anyone who desires to occupy a mobile home lot for other than a term of one year or more may have the option to be on a month-to-month basis but must waive, in writing, the right to such one year or more term: PROVIDED, That annually, at any anniversary date of the tenancy the tenant may require that the landlord provide a written rental agreement for a term of one year. No landlord shall allow a mobile home, manufactured home, or park model to be moved into a mobile home park in this state until a written rental agreement has been signed by and is in the possession of the parties: PROVIDED, That if the landlord allows the tenant to move a mobile home, manufactured home, or park model into a mobile home park without obtaining a written rental agreement for a term of one year or more,

or a written waiver of the right to a one-year term or more, the term of the tenancy shall be deemed to be for one year from the date of occupancy of the mobile home lot;

(2) The requirements of subsection (1) of this section shall not apply if:

(a) The mobile home park or part thereof has been acquired or is under imminent threat of condemnation for a public works project, or

(b) An employer-employee relationship exists between a landlord and tenant;

(3) The provisions of this section shall apply to any tenancy upon expiration of the term of any oral or written rental agreement governing such tenancy. [1999 c 359 § 4; 1981 c 304 § 37; 1980 c 152 § 4; 1979 ex.s. c 186 § 3; 1977 ex.s. c 279 § 5.]

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.060 Rental agreements—Required contents—Prohibited provisions. (1) Any mobile home space tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties, which shall contain:

(a) The terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant;

(b) Reasonable rules for guest parking which shall be clearly stated;

(c) The rules and regulations of the park;

(d) The name and address of the person who is the landlord, and if such person does not reside in the state there shall also be designated by name and address a person who resides in the county where the mobile home park is located who is authorized to act as agent for the purposes of service of notices and process. If no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered the agent;

(e) The name and address of any party who has a secured interest in the mobile home, manufactured home, or park model;

(f) A forwarding address of the tenant or the name and address of a person who would likely know the whereabouts of the tenant in the event of an emergency or an abandonment of the mobile home, manufactured home, or park model;

(g)(i) A covenant by the landlord that, except for acts or events beyond the control of the landlord, the mobile home park will not be converted to a land use that will prevent the space that is the subject of the lease from continuing to be used for its intended use for a period of three years after the beginning of the term of the rental agreement;

(ii) A rental agreement may, in the alternative, contain a statement that the park may be sold or otherwise transferred at any time with the result that subsequent owners may close the mobile home park, or that the landlord may close the park at any time after the required notice. The covenant or statement required by this subsection must appear in print that is larger than the other text of the lease and must be set off by means of a box, blank space, or comparable visual device;

The requirements of this subsection shall apply to tenancies initiated after April 28, 1989.

(h) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement;

(i) A listing of the utilities, services, and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any, to be charged;

(j) A description of the boundaries of a mobile home space sufficient to inform the tenant of the exact location of the tenant's space in relation to other tenants' spaces;

(k) A statement of the current zoning of the land on which the mobile home park is located; and

(l) A statement of the expiration date of any conditional use, temporary use, or other land use permit subject to a fixed expiration date that is necessary for the continued use of the land as a mobile home park.

(2) Any rental agreement executed between the landlord and tenant shall not contain any provision:

(a) Which allows the landlord to charge a fee for guest parking unless a violation of the rules for guest parking occurs: PROVIDED, That a fee may be charged for guest parking which covers an extended period of time as defined in the rental agreement;

(b) Which authorizes the towing or impounding of a vehicle except upon notice to the owner thereof or the tenant whose guest is the owner of the vehicle;

(c) Which allows the landlord to alter the due date for rent payment or increase the rent: (i) During the term of the rental agreement if the term is less than one year, or (ii) more frequently than annually if the term is for one year or more: PROVIDED, That a rental agreement may include an escalation clause for a pro rata share of any increase in the mobile home park's real property taxes or utility assessments or charges, over the base taxes or utility assessments or charges of the year in which the rental agreement took effect, if the clause also provides for a pro rata reduction in rent or other charges in the event of a reduction in real property taxes or utility assessments or charges, below the base year: PROVIDED FURTHER, That a rental agreement for a term exceeding one year may provide for annual increases in rent in specified amounts or by a formula specified in such agreement;

(d) By which the tenant agrees to waive or forego rights or remedies under this chapter;

(e) Allowing the landlord to charge an "entrance fee" or an "exit fee." However, an entrance fee may be charged as part of a continuing care contract as defined in RCW 70.38.025;

(f) Which allows the landlord to charge a fee for guests: PROVIDED, That a landlord may establish rules charging for guests who remain on the premises for more than fifteen days in any sixty-day period;

(g) By which the tenant agrees to waive or forego homestead rights provided by chapter 6.13 RCW. This subsection shall not prohibit such waiver after a default in rent so long as such waiver is in writing signed by the husband and wife or by an unmarried claimant and in consideration of the landlord's agreement not to terminate the tenancy for a period of time specified in the waiver if the landlord would be otherwise entitled to terminate the tenancy under this chapter; or

(h) By which, at the time the rental agreement is entered into, the landlord and tenant agree to the selection of a particular arbitrator. [2002 c 63 § 1; 1999 c 359 § 5. Prior: 1990 c 174 § 1; 1990 c 169 § 1; 1989 c 201 § 9; 1984 c 58 § 1; 1981 c 304 § 18; 1979 ex.s. c 186 § 4; 1977 ex.s. c 279 § 6.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.070 Prohibited acts by landlord. A landlord shall not:

(1) Deny any tenant the right to sell such tenant's mobile home, manufactured home, or park model within a park or require the removal of the mobile home, manufactured home, or park model from the park because of the sale thereof. Requirements for the transfer of the rental agreement are in RCW 59.20.073;

(2) Restrict the tenant's freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior structural improvements on a mobile home space: PROVIDED, That door-to-door solicitation in the mobile home park may be restricted in the rental agreement. Door-to-door solicitation does not include public officials or candidates for public office meeting or distributing information to tenants in accordance with subsection (4) of this section;

(3) Prohibit meetings by tenants of the mobile home park to discuss mobile home living and affairs, including political caucuses or forums for or speeches of public officials or candidates for public office, or meetings of organizations that represent the interest of tenants in the park, held in any of the park community or recreation halls if these halls are open for the use of the tenants, conducted at reasonable times and in an orderly manner on the premises, nor penalize any tenant for participation in such activities;

(4) Prohibit a public official or candidate for public office from meeting with or distributing information to tenants in their individual mobile homes, manufactured homes, or park models, nor penalize any tenant for participating in these meetings or receiving this information;

(5) Evict a tenant, terminate a rental agreement, decline to renew a rental agreement, increase rental or other tenant obligations, decrease services, or modify park rules in retaliation for any of the following actions on the part of a tenant taken in good faith:

(a) Filing a complaint with any state, county, or municipal governmental authority relating to any alleged violation by the landlord of an applicable statute, regulation, or ordinance;

(b) Requesting the landlord to comply with the provision of this chapter or other applicable statute, regulation, or ordinance of the state, county, or municipality;

(c) Filing suit against the landlord for any reason;

(d) Participation or membership in any homeowners association or group;

(6) Charge to any tenant a utility fee in excess of actual utility costs or intentionally cause termination or interruption of any tenant's utility services, including water, heat, electricity, or gas, except when an interruption of a reasonable duration is required to make necessary repairs;

(7) Remove or exclude a tenant from the premises unless this chapter is complied with or the exclusion or removal is under an appropriate court order; or

(8) Prevent the entry or require the removal of a mobile home, manufactured home, or park model for the sole reason that the mobile home has reached a certain age. Nothing in this subsection shall limit a landlords' right to exclude or expel a mobile home, manufactured home, or park model for any other reason, including but not limited to, failure to comply with fire, safety, and other provisions of local ordinances and state laws relating to mobile homes, manufactured homes, and park models, as long as the action conforms to this chapter or any other relevant statutory provision. [2003 c 127 § 2; 1999 c 359 § 6; 1993 c 66 § 16; 1987 c 253 § 1; 1984 c 58 § 2; 1981 c 304 § 19; 1980 c 152 § 5; 1979 ex.s. c 186 § 5; 1977 ex.s. c 279 § 7.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.073 Transfer of rental agreements. (1) Any rental agreement shall be assignable by the tenant to any person to whom he or she sells or transfers title to the mobile home, manufactured home, or park model.

(2) A tenant who sells a mobile home, manufactured home, or park model within a park shall notify the landlord in writing of the date of the intended sale and transfer of the rental agreement at least fifteen days in advance of such intended transfer and shall notify the buyer in writing of the provisions of this section. The tenant shall verify in writing to the landlord payment of all taxes, rent, and reasonable expenses due on the mobile home, manufactured home, or park model and mobile home lot.

(3) The landlord shall notify the selling tenant, in writing, of a refusal to permit transfer of the rental agreement at least seven days in advance of such intended transfer.

(4) The landlord may require the mobile home, manufactured home, or park model to meet applicable fire and safety standards if a state or local agency responsible for the enforcement of fire and safety standards has issued a notice of violation of those standards to the tenant and those violations remain uncorrected. Upon correction of the violation to the satisfaction of the state or local agency responsible for the enforcement of that notice of violation, the landlord's refusal to permit the transfer is deemed withdrawn.

(5) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any new tenant, and any disapproval shall be in writing. Consent to an assignment shall not be unreasonably withheld.

(6) Failure to notify the landlord in writing, as required under subsection (2) of this section; or failure of the new tenant to make a good faith attempt to arrange an interview with the landlord to discuss assignment of the rental agreement; or failure of the current or new tenant to obtain written approval of the landlord for assignment of the rental agreement, shall be grounds for disapproval of such transfer. [2003 c 127 § 3; 1999 c 359 § 7; 1993 c 66 § 17; 1981 c 304 § 20.]

Severability—1981 c 304: See note following RCW 26.16.030.

59.20.074 Rent—Liability of secured party with right to possession. (1) A secured party who has a security interest in a mobile home, manufactured home, or park model that is located within a mobile home park and who has a right to possession of the mobile home, manufactured home, or park model under *RCW 62A.9-503, shall be liable to the landlord from the date the secured party receives written notice by certified mail, return receipt requested, for rent for occupancy of the mobile home space under the same terms the tenant was paying prior to repossession, and any other reasonable expenses incurred after the receipt of the notice, until disposition of the mobile home, manufactured home, or park model under *RCW 62A.9-504. The notice of default by a tenant must state the amount of rent and the amount and nature of any reasonable expenses that the secured party is liable for payment to the landlord. The notice must also state that the secured party will be provided a copy of the rental agreement previously signed by the tenant and the landlord upon request.

(2) This section shall not affect the availability of a landlord's lien as provided in chapter 60.72 RCW.

(3) As used in this section, "security interest" shall have the same meaning as this term is defined in RCW 62A.1-201, and "secured party" shall have the same meaning as this term is defined in *RCW 62A.9-105.

(4) For purposes of this section, "reasonable expenses" means any routine maintenance and utility charges for which the tenant is liable under the rental agreement.

(5) Any rent or other reasonable expenses owed by the secured party to the landlord pursuant to this section shall be paid to the landlord prior to the removal of the mobile home, manufactured home, or park model from the mobile home park.

(6) If a secured party who has a secured interest in a mobile home, manufactured home, or park model that is located in a mobile home park becomes liable to the landlord pursuant to this section, then the relationship between the secured party and the landlord shall be governed by the rental agreement previously signed by the tenant and the landlord unless otherwise agreed, except that the term of the rental agreement shall convert to a month-to-month tenancy. No waiver is required to convert the rental agreement to a month-to-month tenancy. Either the landlord or the secured party may terminate the month-to-month tenancy upon giving written notice of thirty days or more. The secured party and the landlord are not required to execute a new rental agreement. Nothing in this section shall be construed to be a waiver of any rights by the tenant. [1999 c 359 § 8; 1990 c 169 § 2; 1985 c 78 § 1.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

59.20.075 Presumption of reprisal or retaliatory action. Initiation by the landlord of any action listed in RCW 59.20.070(5) within one hundred twenty days after a good faith and lawful act by the tenant or within one hundred twenty days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: PRO-

VIDED, That if the court finds that the tenant made a complaint or report to a governmental authority within one hundred twenty days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: PROVIDED FURTHER, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter. [1999 c 359 § 9; 1984 c 58 § 3; 1980 c 152 § 6.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.080 Grounds for termination of tenancy or occupancy—Notice—Mediation. (1) A landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140. The tenant shall be given written notice to cease the rule violation immediately. The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of the tenancy, and that the tenant shall vacate the premises within fifteen days: PROVIDED, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in termination: PROVIDED FURTHER, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes, manufactured homes, or park models or mobile home, manufactured homes, or park model living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes, manufactured homes, or park models or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: PROVIDED, That the landlord shall give the tenants twelve months' notice in advance of the effective date of such change, except that for the period of six months following April 28, 1989, the land-

lord shall give the tenants eighteen months' notice in advance of the proposed effective date of such change;

(f) Engaging in "criminal activity." "Criminal activity" means a criminal act defined by statute or ordinance that threatens the health, safety, or welfare of the tenants. A park owner seeking to evict a tenant or occupant under this subsection need not produce evidence of a criminal conviction, even if the alleged misconduct constitutes a criminal offense. Notice from a law enforcement agency of criminal activity constitutes sufficient grounds, but not the only grounds, for an eviction under this subsection. Notification of the seizure of illegal drugs under RCW 59.20.155 is evidence of criminal activity and is grounds for an eviction under this subsection. The requirement that any tenant or occupant register as a sex offender under RCW 9A.44.130 is grounds for eviction under this subsection. If criminal activity is alleged to be a basis of termination, the park owner may proceed directly to an unlawful detainer action;

(g) The tenant's application for tenancy contained a material misstatement that induced the park owner to approve the tenant as a resident of the park, and the park owner discovers and acts upon the misstatement within one year of the time the resident began paying rent;

(h) If the landlord serves a tenant three fifteen-day notices within a twelve-month period to comply or vacate for failure to comply with the material terms of the rental agreement or park rules. The applicable twelve-month period shall commence on the date of the first violation;

(i) Failure of the tenant to comply with obligations imposed upon tenants by applicable provisions of municipal, county, and state codes, statutes, ordinances, and regulations, including this chapter. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(j) The tenant engages in disorderly or substantially annoying conduct upon the park premises that results in the destruction of the rights of others to the peaceful enjoyment and use of the premises. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days;

(k) The tenant creates a nuisance that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to cease the conduct that constitutes a nuisance immediately. The notice must state that failure to cease the conduct will result in termination of the tenancy and that the tenant shall vacate the premises in five days;

(l) Any other substantial just cause that materially affects the health, safety, and welfare of other park residents. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days; or

(m) Failure to pay rent by the due date provided for in the rental agreement three or more times in a twelve-month period, commencing with the date of the first violation, after service of a five-day notice to comply or vacate.

(2) Within five days of a notice of eviction as required by subsection (1)(a) of this section, the landlord and tenant shall submit any dispute to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section. It is a defense to an eviction under subsection (1)(a) of this section that a landlord did not participate in the mediation process in good faith.

(3) Chapters 59.12 and 59.18 RCW govern the eviction of recreational vehicles, as defined in RCW 59.20.030, from mobile home parks. This chapter governs the eviction of mobile homes, manufactured homes, park models, and recreational vehicles used as a primary residence from a mobile home park. [2003 c 127 § 4; 1999 c 359 § 10; 1998 c 118 § 2; 1993 c 66 § 19; 1989 c 201 § 12; 1988 c 150 § 5; 1984 c 58 § 4; 1981 c 304 § 21; 1979 ex.s. c 186 § 6; 1977 ex.s. c 279 § 8.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.090 Term of rental agreements—Renewal—Nonrenewal—Termination—Armed forces exception—Notices. (1) Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed upon.

(2) A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent.

(3) A tenant shall notify the landlord in writing one month prior to the expiration of a rental agreement of an intention not to renew.

(4)(a) The tenant may terminate the rental agreement upon thirty days written notice whenever a change in the location of the tenant's employment requires a change in his residence, and shall not be liable for rental following such termination unless after due diligence and reasonable effort the landlord is not able to rent the mobile home lot at a fair rental. If the landlord is not able to rent the lot, the tenant shall remain liable for the rental specified in the rental agreement until the lot is rented or the original term ends.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependent, may terminate a rental agreement with less than thirty days notice if the tenant receives reassignment or deployment orders which do not allow greater notice. The tenant shall provide notice of the reassignment or deployment order to the landlord no later than seven days after receipt. [2003 c 7 § 3; 1998 c 118 § 3; 1980 c 152 § 2; 1979 ex.s. c 186 § 7; 1977 ex.s. c 279 § 9.]

Effective date—2003 c 7: See note following RCW 59.18.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.100 Improvements. Improvements, except a natural lawn, purchased and installed by a tenant on a mobile home lot shall remain the property of the tenant even though affixed to or in the ground and may be removed or disposed of by the tenant prior to the termination of the tenancy: PROVIDED, That a tenant shall leave the mobile home lot in substantially the same or better condition than upon taking possession. [1977 ex.s. c 279 § 10.]

59.20.110 Attorney's fees and costs. In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs. [1977 ex.s. c 279 § 11.]

59.20.120 Venue. Venue for any action arising under this chapter shall be in the district or superior court of the county in which the mobile home lot is located. [1977 ex.s. c 279 § 12.]

59.20.130 Duties of landlord. It shall be the duty of the landlord to:

(1) Comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park;

(2) Maintain the common premises and prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water when such condition is not the fault of the tenant;

(3) Keep any shared or common premises reasonably clean, sanitary, and safe from defects to reduce the hazards of fire or accident;

(4) Keep all common premises of the mobile home park, and vacant mobile home lots, not in the possession of tenants, free of weeds or plant growth noxious and detrimental to the health of the tenants and free from potentially injurious or unsightly objects and condition;

(5) Exterminate or make a reasonable effort to exterminate rodents, vermin, or other pests dangerous to the health and safety of the tenant whenever infestation exists on the common premises or whenever infestation occurs in the interior of a mobile home, manufactured home, or park model as a result of infestation existing on the common premises;

(6) Maintain and protect all utilities provided to the mobile home, manufactured home, or park model in good working condition. Maintenance responsibility shall be determined at that point where the normal mobile home, manufactured home, or park model utilities "hook-ups" connect to those provided by the landlord or utility company;

(7) Respect the privacy of the tenants and shall have no right of entry to a mobile home, manufactured home, or park model without the prior written consent of the occupant, except in case of emergency or when the occupant has abandoned the mobile home, manufactured home, or park model. Such consent may be revoked in writing by the occupant at any time. The ownership or management shall have a right of entry upon the land upon which a mobile home, manufactured home, or park model is situated for maintenance of utilities, to insure compliance with applicable codes, statutes, ordinances, administrative rules, and the rental agreement and the rules of the park, and protection of the mobile home

park at any reasonable time or in an emergency, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment. The ownership or management shall make a reasonable effort to notify the tenant of their intention of entry upon the land which a mobile home, manufactured home, or park model is located prior to entry;

(8) Allow tenants freedom of choice in the purchase of goods and services, and not unreasonably restrict access to the mobile home park for such purposes;

(9) Maintain roads within the mobile home park in good condition; and

(10) Notify each tenant within five days after a petition has been filed by the landlord for a change in the zoning of the land where the mobile home park is located and make a description of the change available to the tenant.

A landlord shall not have a duty to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, if the defective condition complained of was caused by the conduct of the tenant, the tenant's family, invitee, or other person acting under the tenant's control, or if a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. [1999 c 359 § 11; 1993 c 66 § 20; 1984 c 58 § 5; 1979 ex.s. c 186 § 8.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

Smoke detection devices required in dwelling units: RCW 48.48.140.

59.20.135 Maintenance of permanent structures—Findings and declarations—Definition. (1) The legislature finds that some mobile home park owners transfer the responsibility for the upkeep of permanent structures within the mobile home park to the park tenants. This transfer sometimes occurs after the permanent structures have been allowed to deteriorate. Many mobile home parks consist entirely of senior citizens who do not have the financial resources or physical capability to make the necessary repairs to these structures once they have fallen into disrepair. The inability of the tenants to maintain permanent structures can lead to significant safety hazards to the tenants as well as to visitors to the mobile home park. The legislature therefore finds and declares that it is in the public interest and necessary for the public health and safety to prohibit mobile home park owners from transferring the duty to maintain permanent structures in mobile home parks to the tenants.

(2) A mobile home park owner is prohibited from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the tenants of the park. A provision within a rental agreement or other document transferring responsibility for the maintenance or care of permanent structures within the mobile home park to the park tenants is void.

(3) A "permanent structure" for purposes of this section includes the clubhouse, carports, storage sheds, or other permanent structure. A permanent structure does not include structures built or affixed by a tenant. A permanent structure includes only those structures that were provided as amenities to the park tenants.

(4) Nothing in this section shall be construed to prohibit a park owner from requiring a tenant to maintain his or her

mobile home, manufactured home, or park model or yard. Nothing in this section shall be construed to prohibit a park owner from transferring responsibility for the maintenance or care of permanent structures within the mobile home park to an organization of park tenants or to an individual park tenant when requested by the tenant organization or individual tenant. [1999 c 359 § 12; 1994 c 30 § 1.]

Effective date—1994 c 30: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1994]." [1994 c 30 § 2.]

59.20.140 Duties of tenant. It shall be the duty of the tenant to pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances and regulations, and in addition the tenant shall:

(1) Keep the mobile home lot which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose of all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant on the tenant's leased premises;

(3) Not intentionally or negligently destroy, deface, damage, impair, or remove any facilities, equipment, furniture, furnishings, fixtures or appliances provided by the landlord, or permit any member of his family, invitee, or licensee, or any person acting under his control to do so;

(4) Not permit a nuisance or common waste; and

(5) Not engage in drug-related activities as defined in RCW 59.20.080. [1988 c 150 § 6; 1979 ex.s. c 186 § 9.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.145 Live-in care provider—Not a tenant—Agreements—Guest fee. A tenant in a mobile home park may share his or her mobile home, manufactured home, or park model with any person over eighteen years of age, if that person is providing live-in home health care or live-in hospice care to the tenant under an approved plan of treatment ordered by the tenant's physician. The live-in care provider is not considered a tenant of the park and shall have no rights of tenancy in the park. Any agreement between the tenant and the live-in care provider does not change the terms and conditions of the rental agreement between the landlord and the tenant. The live-in care provider shall comply with the rules of the mobile home park, the rental agreement, and this chapter. The landlord may not charge a guest fee for the live-in care provider. [1999 c 359 § 13; 1993 c 152 § 1.]

59.20.150 Service of notice on landlord or tenant. (1) Any notice required by this chapter to be given to a tenant shall be served on behalf of the landlord: (a) By delivering a copy personally to the tenant; or (b) if the tenant is absent from the mobile home, manufactured home, or park model by affixing a copy of the notice in a conspicuous place on the

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mobile home, manufactured home, or park model and also sending a copy through the mail addressed to the tenant at the tenant's last known address.

(2) Any notice required by this chapter to be given to the landlord shall be served by the tenant in the same manner as provided for in subsection (1) of this section, or by mail to the landlord at such place as shall be expressly provided in the rental agreement.

(3) The landlord shall state in any notice of eviction required by RCW 59.20.080(1) as now or hereafter amended the specific reason for eviction in a clear and concise manner. [1999 c 359 § 14; 1979 ex.s. c 186 § 10.]

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.155 Seizure of illegal drugs—Notification of landlord. Any law enforcement agency which seizes a legend drug pursuant to a violation of chapter 69.41 RCW, a controlled substance pursuant to a violation of chapter 69.50 RCW, or an imitation controlled substance pursuant to a violation of chapter 69.52 RCW, shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure of the illegal drugs or substances. [1988 c 150 § 12.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.20.160 Moneys paid as deposit or security for performance by tenant—Written rental agreement to specify terms and conditions for retention by landlord. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a written rental agreement, such rental agreement shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the mobile home space for which the tenant is responsible, the rental agreement shall so specify. It is unlawful to charge or collect a deposit or security for performance if the parties have not entered into a written rental agreement. [1984 c 58 § 17; 1979 ex.s. c 186 § 11.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.170 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims. (1) All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a financial institution as defined by RCW 30.22.041 or licensed escrow agent located in Washington. Except as provided in subsection (2) of this section, unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant

with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address and location of the new depository. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.

(2) All moneys paid, in excess of two months' rent on the mobile home lot, to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a rental agreement shall be deposited into an interest-bearing trust account for the particular tenant. The interest accruing on the deposit in the account, minus fees charged to administer the account, shall be paid to the tenant on an annual basis. All other provisions of subsection (1) of this section shall apply to deposits under this subsection. [2004 c 136 § 2; 1999 c 359 § 15; 1979 ex.s. c 186 § 12.]

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.180 Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention. Within fourteen days after the termination of the rental agreement and vacation of the mobile home space, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the mobile home space.

The statement shall be delivered to the tenant personally or by mail to the last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above such landlord shall be liable to the tenant for the full amount of the refund due.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible. [1984 c 58 § 11; 1979 ex.s. c 186 § 13.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.190 Health and sanitation standards—Penalties. The state board of health shall adopt rules on or before January 1, 1982, setting health and sanitation standards for mobile home parks. Such rules shall be enforced by the city, county, city-county, or district health officer of the jurisdiction in which the mobile home park is located, upon notice of a violation to such health officer. Failure to remedy the violation after enforcement efforts are made may result in a fine being imposed on the park owner, or tenant as may be applicable, by the enforcing governmental body of up to one hundred dollars per day, depending on the degree of risk of injury

or illness to persons in or around the park. [1988 c 126 § 1; 1981 c 304 § 22.]

Severability—1981 c 304: See note following RCW 26.16.030.

59.20.200 Landlord—Failure to carry out duties—Notice from tenant—Time limits for landlord's remedial action. If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.20.130, the tenant may, in addition to pursuit of remedies otherwise provided the tenant by law, deliver written notice to the landlord, which notice shall specify the property involved, the name of the owner, if known, and the nature of the defective condition. For the purposes of this chapter, a reasonable time for the landlord to commence remedial action after receipt of such notice by the tenant shall be, except where circumstances are beyond the landlord's control;

(1) Not more than twenty-four hours, where the defective condition is imminently hazardous to life;

(2) Not more than forty-eight hours, where the landlord fails to provide water or heat;

(3) Subject to the provisions of subsections (1) and (2) of this section, not more than seven days in the case of a repair under RCW 59.20.130(3);

(4) Not more than thirty days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed with reasonable promptness.

Where circumstances beyond the landlord's control, including the availability of financing, prevent the landlord from complying with the time limitations set forth in this section, the landlord shall endeavor to remedy the defective condition with all reasonable speed. [1984 c 58 § 6.]

Severability—1984 c 58: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 58 § 18.]

59.20.210 Landlord—Failure to carry out duties—Repairs effected by tenant—Bids—Notice—Deduction of cost from rent—Limitations. (1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.20.130, and notice of the defect is given to the landlord pursuant to RCW 59.20.200, the tenant may submit to the landlord or the landlord's designated agent by certified mail or in person at least two bids to perform the repairs necessary to correct the defective condition from licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, from responsible persons capable of performing such repairs. Such bids may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.20.200.

(2) If the landlord fails to commence repair of the defective condition within a reasonable time after receipt of notice from the tenant, the tenant may contract with the person submitting the lowest bid to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or the landlord's designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's mobile home space in any calendar year. When, however, the landlord is required to begin remedying

the defective condition within thirty days under RCW 59.20.200, the tenant cannot contract for repairs for at least fifteen days following receipt of bids by the landlord. The total costs of repairs deducted by the tenant in any calendar year under this subsection shall not exceed the sum expressed in dollars representing one month's rental of the tenant's mobile home space.

(3) Two or more tenants shall not collectively initiate remedies under this section. Remedial action under this section shall not be initiated for conditions in the design or construction existing in a mobile home park before June 7, 1984.

(4) The provisions of this section shall not:

(a) Create a relationship of employer and employee between landlord and tenant; or

(b) Create liability under the worker's compensation act; or

(c) Constitute the tenant as an agent of the landlord for the purposes of mechanics' and materialmen's liens under chapter 60.04 RCW.

(5) Any repair work performed under this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or rule. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs in return for cash payment or a reasonable reduction in rent, the agreement to be between the parties, and this agreement does not alter the landlord's obligations under this chapter. [1999 c 359 § 16; 1984 c 58 § 8.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.220 Landlord—Failure to carry out duties—Judgment by court or arbitrator for diminished rental value and repair costs—Enforcement of judgment—Reduction in rent. (1) If a court or an arbitrator determines that:

(a) A landlord has failed to carry out a duty or duties imposed by RCW 59.20.130; and

(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord under RCW 59.20.200 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the property due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to RCW 59.20.210 for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to contract to make further corrective repairs. The court or arbitrator shall specify a time period in which the landlord may make such repairs before the tenant may contract for such repairs. Such repairs shall not exceed the sum expressed in dollars representing one month's rental of the tenant's mobile home space in any one calendar year.

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(2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the mobile home space until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise. [1999 c 359 § 17; 1984 c 58 § 9.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.230 Defective condition—Unfeasible to remedy defect—Termination of tenancy. If a court or arbitrator determines a defective condition as described in RCW 59.20.130 to be so substantial that it is unfeasible for the landlord to remedy the defect within the time allotted by RCW 59.20.200, and that the tenant should not remain on the mobile home space in its defective condition, the court or arbitrator may authorize the termination of the tenancy. The court or arbitrator shall set a reasonable time for the tenant to vacate the premises. [1984 c 58 § 10.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.240 Payment of rent condition to exercising remedies. The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded the tenant under the provisions of this chapter: PROVIDED, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: PROVIDED FURTHER, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing. [1984 c 58 § 7.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.250 Mediation of disputes by independent third party. The landlord and tenant may agree in writing to submit any dispute arising under this chapter or under the terms, conditions, or performance of the rental agreement to mediation by an independent third party or to settle the dispute through industry mediation procedures. The parties may agree to submit any dispute to mediation before exercising their right to arbitration under RCW 59.20.260. [1984 c 58 § 12.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.260 Arbitration—Authorized—Selection of arbitrator—Procedure. (1) The landlord and tenant may agree in writing to submit a controversy arising under this chapter to arbitration. The agreement shall contain the name of the arbitrator agreed upon by the parties or the process for selecting the arbitrator.

(2) The arbitration shall be administered under this chapter and chapter 7.04 RCW. [1984 c 58 § 13.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.270 Arbitration—Application—Hearings—Decisions. (1) If the landlord and tenant agree to submit the matter to arbitration, the parties shall complete an application for arbitration and deliver it to the selected arbitrator.

(2) The arbitrator shall schedule a hearing to be held no later than ten days following receipt of the application.

(3) Reasonable notice of the hearings shall be given to the parties, who shall appear and be heard either in person, by counsel, or by other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Hearings may be public or private. The proceedings may be recorded. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator may administer oaths, issue subpoenas, and require the attendance of witnesses and the production of books, papers, contracts, agreements, and documents deemed by the arbitrator to be material to a just determination of the issues in dispute. If a person refuses to obey a subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held under this section, the arbitrator may invoke the jurisdiction of any district or superior court, and the court shall have jurisdiction to issue an appropriate order. Failure to obey the order may be punished by the court as contempt.

(4) Within five days after the hearing, the arbitrator shall make a written decision upon the issues presented. A copy of the decision shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The decision of the arbitrator shall be final and binding upon all parties.

(5) If a dispute exists affecting more than one tenant in a similar manner, the arbitrator may with the consent of the parties consolidate the cases into a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed under chapter 7.04 RCW. [1984 c 58 § 14.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.280 Arbitration—Fee. The administrative fee for this arbitration procedure shall be established by agreement of the parties and the arbitrator and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties. However, upon either party signing an affidavit to the effect that the party is unable to pay the share of the fee, that portion of the fee may be waived or deferred. [1984 c 58 § 15.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.290 Arbitration—Completion of arbitration after giving notice. When a party gives notice of intent to arbitrate by giving reasonable notice to the other party, that party shall, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice under this section, but in no event shall the arbitrator have less than ten days to complete the arbitration process. [1984 c 58 § 16.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.900 Severability—1977 ex.s. c 279. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 279 § 13.]

59.20.901 Effective date—1999 c 359. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999. [1999 c 359 § 21.]

Chapter 59.21 RCW

MOBILE HOME RELOCATION ASSISTANCE

Sections

59.21.005	Declaration—Purpose.
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59.21.904	Severability—1995 c 122.
59.21.905	Effective date—1995 c 122.

59.21.005 Declaration—Purpose. The legislature recognizes that it is quite costly to move a mobile home. Many mobile home tenants need financial assistance in order to move their mobile homes from a mobile home park. The purpose of this chapter is to provide a mechanism for assisting mobile home tenants to relocate to suitable alternative sites when the mobile home park in which they reside is closed or converted to another use. [1995 c 122 § 2; 1991 c 327 § 8.]

59.21.006 Declaration—Intent—Purpose—1995 c 122. The legislature recognizes that, in the decision of *Guimont et al. v. Clarke*, 121 Wn.2d (1993), the Washington supreme court held the mobile home relocation assistance program of chapter 59.21 RCW invalid for its monetary burden on mobile home park-owners. However, during the program's operation, substantial funds were validly collected from mobile home owners and accumulated in the mobile home park relocation fund, created under the program. The legislature intends to utilize those funds for the purposes for which they were collected. The legislature also recognizes that, for a period of almost three years since this state's courts invalidated the program, no such assistance was available. The most needy tenants may have been forced to sell or abandon rather than relocate their homes in the face of park closures. Because the purpose of the program was to assist relocation, those persons should be compensated in a like manner to those who could afford to pay for relocation without assistance. To that end, the legislature has: (1) Repealed RCW 59.21.020, 59.21.035, 59.21.080, 59.21.085, 59.21.095, 59.21.900, 59.21.901, 59.21.902, and 59.21.903; (2) amended RCW 59.21.010, 59.21.030, 59.21.040, 59.21.050, 59.21.070, *59.21.100, 59.21.110, and 43.84.092; (3) reenacted without amendment RCW 59.21.005 and **59.21.105; and (4) added new sections to chapter 59.21 RCW. [1995 c 122 § 1.]

Reviser's note: *(1) RCW 59.21.100 and 59.21.110 were not amended by 1995 c 122.

***(2) RCW 59.21.105 was reenacted and amended by 1995 c 122.

59.21.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Director" means the director of the department of community, trade, and economic development.

(2) "Department" means the department of community, trade, and economic development.

(3) "Fund" means the mobile home park relocation fund established under RCW 59.21.050.

(4) "Mobile home park" or "park" means real property that is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

(5) "Landlord" or "park-owner" means the owner of the mobile home park that is being closed at the time relocation assistance is provided.

(6) "Relocate" means to remove the mobile home from the mobile home park being closed and to either reinstall it in another location or to demolish it and purchase another mobile/manufactured home constructed to the standards set by the department of housing and urban development.

(7) "Relocation assistance" means the monetary assistance provided under this chapter. [2002 c 257 § 1; 1998 c 124 § 1; 1995 c 122 § 3; 1991 c 327 § 10; 1990 c 171 § 1; 1989 c 201 § 1.]

Effective date—2002 c 257: "This act takes effect January 1, 2003." [2002 c 257 § 5.]

59.21.021 Relocation assistance—Eligibility after December 31, 1995—Amounts of assistance—Priority for distribution of assistance. (1) If a mobile home park is closed or converted to another use after December 31, 1995, eligible tenants shall be entitled to assistance on a first-come, first-serve basis. The department shall give priority for distribution of relocation assistance to tenants residing in parks that are closed as a result of park-owner fraud or as a result of health and safety concerns as determined by the local board of health. Payments shall be made upon the department's verification of eligibility, subject to the availability of remaining funds. Eligibility for relocation assistance funds is limited to low-income households. As used in this section, "low-income household" means a single person, family, or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the mobile or manufactured home is located.

(2) Assistance for closures occurring after December 31, 1995, is limited to persons who maintain ownership of and relocate their mobile home or who dispose of a home not relocatable to a new site.

(3) Persons who removed and disposed of their mobile home or maintained ownership of and relocated their mobile homes are entitled to reimbursement of actual relocation expenses up to seven thousand dollars for a double-wide

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home and up to three thousand five hundred dollars for a single-wide home.

(4) Any individual or organization may apply to receive funds from the mobile home park relocation fund, for use in combination with funds from public or private sources, toward relocation of tenants eligible under this section. Funds received from the mobile home park relocation fund shall only be used for relocation assistance expenses or other mobile/manufactured home ownership expenses, that include down payment assistance, if the owners are not planning to relocate their mobile home as long as their original home is removed from the park. [2002 c 257 § 2; 1998 c 124 § 2; 1995 c 122 § 5.]

Effective date—2002 c 257: See note following RCW 59.21.010.

59.21.025 Relocation assistance—Sources other than fund—Reductions. (1) If financial assistance for relocation is obtained from sources other than the mobile home park relocation fund established under this chapter, then the relocation assistance provided to any person under this chapter shall be reduced as necessary to ensure that no person receives from all sources combined more than: (a) That person's actual cost of relocation; or (b) seven thousand dollars for a double-wide mobile home and three thousand five hundred dollars for a single-wide mobile home.

(2) When a person receives financial assistance for relocation from a source other than the mobile home park relocation assistance fund, then the assistance received from the fund will be the difference between the maximum amount to which a person is entitled under RCW 59.21.021(3) and the amount of assistance received from the outside source.

(3) If the amount of assistance received from an outside source exceeds the maximum amounts of assistance to which a person is entitled under RCW 59.21.021(3), then that person will not receive any assistance from the mobile home park relocation assistance fund. [1998 c 124 § 3; 1995 c 122 § 6.]

59.21.030 Notice—Requirements. Notice required by RCW 59.20.080 before park closure or conversion of the park, whether twelve months or longer, shall be given to the director and all tenants in writing, and posted at all park entrances. A copy of the closure notice must be provided with all month-to-month rental agreements signed after the original closure notice date. Notice to the director must include a good faith estimate of the timetable for removal of the mobile homes and the reason for closure. Notice must also be recorded in the office of the county auditor for the county where the mobile home park is located. [1995 c 122 § 7; 1990 c 171 § 3; 1989 c 201 § 3.]

59.21.040 Relocation assistance—Exemptions. A tenant is not entitled to relocation assistance under this chapter if: (1) The tenant has given notice to the landlord of his or her intent to vacate the park and terminate the tenancy before any written notice of closure pursuant to RCW 59.20.080(1)(e) has been given; (2) the tenant purchased a mobile home already situated in the park or moved a mobile home into the park after a written notice of closure pursuant to RCW 59.20.090 has been given and the person received

actual prior notice of the change or closure; or (3) the tenant receives assistance from an outside source that exceeds the maximum amounts of assistance to which a person is entitled under RCW 59.21.021(3). However, no tenant may be denied relocation assistance under subsection (1) of this section if the tenant has remained on the premises and continued paying rent for a period of at least six months after giving notice of intent to vacate and before receiving formal notice of a closure or change of use. [1998 c 124 § 4; 1995 c 122 § 8; 1989 c 201 § 4.]

59.21.050 Relocation fund—Administration—Tenant's application—Form. (1) The existence of the mobile home park relocation fund in the custody of the state treasurer is affirmed. Expenditures from the fund may be used only for relocation assistance awarded under this chapter. Only the director or the director's designee may authorize expenditures from the fund. All relocation payments to tenants shall be made from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) A park tenant is eligible for assistance under this chapter only after an application is submitted by that tenant or an organization acting on the tenant's account under RCW 59.21.021(4) on a form approved by the director which shall include:

(a) For those persons who maintained ownership of and relocated their homes or removed their homes from the park: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; (iii) a copy of the contract for relocating the home which includes the date of relocation, or other proof of actual relocation expenses incurred on a date certain; and (iv) a statement of any other available assistance;

(b) For those persons who sold their homes and incurred no relocation expenses: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; and (iii) a copy of the record of title transfer issued by the department of licensing when the tenant sold the home rather than relocate it due to park closure or conversion.

(3) The department may deduct a percentage amount of the fee collected under RCW 59.21.055, not to exceed five percent of the fees received, for administration expenses incurred by the department. [2002 c 257 § 4; 1998 c 124 § 5; 1995 c 122 § 9; 1991 sp.s. c 13 § 74; 1991 c 327 § 12; 1990 c 171 § 5; 1989 c 201 § 5.]

Effective date—2002 c 257: See note following RCW 59.21.010.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

59.21.055 Fee imposed on transfer of title—Circumstances—Deposit—Rules. (1) A one hundred dollar fee is imposed upon the purchaser on every transfer of title issued under chapter 46.12 RCW on a mobile home one year old or more where (a) the ownership of the mobile home changes;

and (b) the mobile home is located in a mobile home park. A transfer of title does not include the addition or deletion of a spouse co-owner or secured interest.

(2) Mobile homes with a sale price of less than five thousand dollars are not subject to the fee imposed in subsection (1) of this section.

(3) The department of licensing or its agents shall collect the fee when processing an application for transfer of title. The fee collected under this section shall be forwarded to the state treasurer for deposit into the mobile home park relocation fund created in this chapter. The department of licensing may deduct a percentage amount, not to exceed two percent of the fees collected, for the collection expenses incurred by the department of licensing.

(4) The department of licensing and the state treasurer may adopt rules necessary to carry out this section. [2002 c 257 § 3.]

Effective date—2002 c 257: See note following RCW 59.21.010.

59.21.070 Rental agreement—Covenants. If the rental agreement includes a covenant by the landlord as described in RCW 59.20.060(1)(g)(i), the covenant runs with the land and is binding upon the purchasers, successors, and assigns of the landlord. [1995 c 122 § 10; 1989 c 201 § 10.]

59.21.100 Tenants—Waiver of rights—Attorney approval. A tenant may, with the written approval of his or her attorney at law, waive or compromise their right to relocation assistance under this chapter. [1989 c 201 § 14.]

59.21.105 Existing older mobile homes—Forced relocation—Code waiver. (1) The legislature finds that existing older mobile homes provide affordable housing to many persons, and that requiring these homes that are legally located in mobile home parks to meet new fire, safety, and construction codes because they are relocating due to the closure or conversion of the mobile home park, compounds the economic burden facing these tenants.

(2) Mobile homes that are relocated due to either the closure or conversion of a mobile home park, may not be required by any city or county to comply with the requirements of any applicable fire, safety, or construction code for the sole reason of its relocation. This section shall only apply if the original occupancy classification of the building is not changed as a result of the move.

(3) This section shall not apply to mobile homes that are substantially remodeled or rehabilitated, nor to any work performed in compliance with installation requirements. For the purpose of determining whether a moved mobile home has been substantially remodeled or rebuilt, any cost relating to preparation for relocation or installation shall not be considered. [1995 c 122 § 11; 1991 c 327 § 16.]

59.21.110 Violations—Penalty. Any person who intentionally violates, intentionally attempts to evade, or intentionally evades the provisions of this chapter is guilty of a misdemeanor. [1991 c 327 § 14; 1989 c 201 § 15.]

59.21.904 Severability—1995 c 122. If any provision of this act or its application to any person or circumstance is

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 122 § 14.]

59.21.905 Effective date—1995 c 122. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 20, 1995]. [1995 c 122 § 15.]

Chapter 59.22 RCW

OFFICE OF MOBILE HOME AFFAIRS— RESIDENT-OWNED MOBILE HOME PARKS

Sections

59.22.010	Legislative findings.
59.22.020	Definitions.
59.22.030	Mobile home park purchase account.
59.22.032	Loans for mobile home park conversion costs—Resident eligibility—Flexible repayment terms.
59.22.034	Loan duration—Rate of interest—Security—Administration of loan.
59.22.036	Requirements for financing approval—Department's duties.
59.22.038	Eligibility for loans—Amount of loans—Determining factors.
59.22.039	Technical assistance for mobile home park conversion.
59.22.050	Office of mobile home affairs—Duties.
59.22.070	Mobile home affairs account.
59.22.080	Transfer of title—Fee—Department of licensing—Rules.
59.22.085	Transfer of title—Fee supersedes other fee.
59.22.090	Manufactured housing task force—Duties—Membership.

Manufactured/mobile home landlord-tenant act: Chapter 59.20 RCW.

59.22.010 Legislative findings. (1) The legislature finds:

(a) That manufactured housing and mobile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing; but rising costs of mobile home park development and operation, as well as turnover in ownership, has resulted in mobile home park living becoming unaffordable to the low income, elderly, poor and infirmed, resulting in increased numbers of homeless persons, and persons who must look to public housing and public programs, increasing the burden on the state to meet the housing needs of its residents;

(b) That state government can play a vital role in addressing the problems confronted by mobile home park residents by providing assistance which makes it possible for mobile home park residents to acquire the mobile home parks in which they reside and convert them to resident ownership; and

(c) That to accomplish this purpose, information and technical support shall be made available through the department.

(2) Therefore, it is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile home park residents from both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market. [1995 c 399 § 154; 1987 c 482 § 1.]

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59.22.020 Definitions. The following definitions shall apply throughout this chapter unless the context clearly requires otherwise:

(1) "Account" means the mobile home affairs account created under RCW 59.22.070.

(2) "Affordable" means that, where feasible, low-income residents should not pay more than thirty percent of their monthly income for housing costs.

(3) "Conversion costs" includes the cost of acquiring the mobile home park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a government agency or lender for the project.

(4) "Department" means the department of community, trade, and economic development.

(5) "Fee" means the mobile home title transfer fee imposed under RCW 59.22.080.

(6) "Fund" or "park purchase account" means the mobile home park purchase account created pursuant to RCW 59.22.030.

(7) "Housing costs" means the total cost of owning, occupying, and maintaining a mobile home and a lot or space in a mobile home park.

(8) "Individual interest in a mobile home park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobile home park for a period of not less than either fifteen years or the life of the holder. Individual interests in a mobile home park include, but are not limited to, the following:

(a) Ownership of a lot or space in a mobile home park or subdivision;

(b) A membership or shares in a stock cooperative, or a limited equity housing cooperative; or

(c) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobile home park.

(9) "Low-income resident" means an individual or household who resided in the mobile home park prior to application for a loan pursuant to this chapter and with an annual income at or below eighty percent of the median income for the county of standard metropolitan statistical area of residence. Net worth shall be considered in the calculation of income with the exception of the resident's mobile/manufactured home which is used as their primary residence.

(10) "Low-income spaces" means those spaces in a mobile home park operated by a resident organization which are occupied by low-income residents.

(11) "Mobile home park" means a mobile home park, as defined in *RCW 59.20.030(4), or a manufactured home park subdivision as defined by *RCW 59.20.030(6) created by the conversion to resident ownership of a mobile home park.

(12) "Resident organization" means a group of mobile home park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobile home park in which they reside and converting the mobile home park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobile home park at the time of application for assistance from the department.

(13) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobile home park which entitles the resident organization to control the operations of the mobile home park for a term of no less than fifteen years, or the ownership of individual interests in a mobile home park, or both.

(14) "Landlord" shall have the same meaning as it does in RCW 59.20.030.

(15) "Manufactured housing" means residences constructed on one or more chassis for transportation, and which bear an insignia issued by a state or federal regulatory agency indication compliance with all applicable construction standards of the United States department of housing and urban development.

(16) "Mobile home" shall have the same meaning as it does in RCW 46.04.302.

(17) "Mobile home lot" shall have the same meaning as it does in RCW 59.20.030.

(18) "Tenant" means a person who rents a mobile home lot for a term of one month or longer and owns the mobile home on the lot. [1995 c 399 § 155; 1993 c 66 § 9; 1991 c 327 § 2; 1988 c 280 § 3; 1987 c 482 § 2.]

***Reviser's note:** RCW 59.20.030 was amended by 1999 c 359 § 2, changing subsection (4) to subsection (6) and subsection (6) to subsection (8).

59.22.030 Mobile home park purchase account. The mobile home park purchase account is hereby created in the state treasury. The purpose of this account is to provide loans according to the provisions of this chapter and for related administrative costs of the department. The account shall include appropriations, loan repayments, and any other money from private sources made available to the state for the purposes of this chapter. Owners of mobile home parks shall not be assessed for the purposes of this account. [1991 sp.s. c 13 § 89; 1987 c 482 § 4.]

Reviser's note: Substantial portions of 1987 c 482, authorizing loans from the mobile home park purchase fund [account], were vetoed by the governor.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

59.22.032 Loans for mobile home park conversion costs—Resident eligibility—Flexible repayment terms.

(1) The department may make loans from the fund to resident organizations for the purpose of financing mobile home park conversion costs. The department may only make loans to resident organizations of mobile home parks where a significant portion of the residents are low-income or infirm.

(2) The department may make loans from the fund to low-income residents of mobile home parks converted to resident ownership or which plan to convert to resident ownership. The purpose of providing loans under this subsection is to reduce the monthly housing costs for low-income residents to an affordable level. The department may establish flexible repayment terms for loans provided under this subsection if the terms are necessary to reduce the monthly housing costs for low-income residents to an affordable level, and do not represent an unacceptable risk to the security of the fund. Flexible repayment terms may include, but are not limited to,

graduated payment schedules with negative amortization. [1993 c 66 § 10.]

59.22.034 Loan duration—Rate of interest—Security—Administration of loan. (1) Any loans granted under RCW 59.22.032 shall be for a term of no more than thirty years.

(2) The department shall establish the rate of interest to be paid on loans made from the fund.

(3) The department shall obtain security for loans made under this chapter. The security may be in the form of a note, deed of trust, assignment of lease, or other form of security on real or personal property which the department determines is adequate to protect the security of the fund and the interests of the state. To the extent applicable, the documents evidencing the security shall be recorded or referenced in a recorded document in the office of the county auditor of the county in which the mobile home park is located.

(4) The department may contract with private lenders, nonprofit organizations, or units of local government to provide program administration and to service loans made under this chapter. [1993 c 66 § 11.]

59.22.036 Requirements for financing approval—Department's duties. Before providing financing under this chapter, the department shall require:

(1) Verification that at least two-thirds of the households residing in the mobile home park support the plan for acquisition and conversion of the park;

(2) Verification that either no park residents will be involuntarily displaced as a result of the park conversion, or the impacts of displacement will be mitigated so as not to impose a hardship on the displaced resident;

(3) Projected costs and sources of funds for conversion activities;

(4) A projected operating budget for the park during and after conversion; and

(5) A management plan for the conversion and operation of the park. [1993 c 66 § 12.]

59.22.038 Eligibility for loans—Amount of loans—Determining factors. The department shall consider the following factors in determining the eligibility for, and the amount, of loans made under this chapter:

(1) The reasonableness of the conversion costs relating to repairs, rehabilitation, construction, or other costs;

(2) The number of available and affordable mobile home park spaces in the general area;

(3) The adequacy of the management plan for the conversion and operation of the park; and

(4) Other factors established by the department by rule. [1993 c 66 § 13.]

59.22.039 Technical assistance for mobile home park conversion. The department may provide technical assistance to resident organizations who wish to convert the mobile home park in which they reside to resident ownership. Technical assistance does not include details connected with the sale or conversion of a mobile home park which would require the department to act in a representative capacity, or

the drafting of documents affecting legal or property rights of the parties by the department. [1993 c 66 § 14.]

59.22.050 Office of mobile home affairs—Duties. (1)

In order to provide general assistance to mobile home resident organizations, park owners, and landlords and tenants, the department shall establish an office of mobile home affairs which will serve as the coordinating office within state government for matters relating to mobile homes or manufactured housing.

This office will provide an ombudsman service to mobile home park owners and mobile home tenants with respect to problems and disputes between park owners and park residents and to provide technical assistance to resident organizations or persons in the process of forming a resident organization pursuant to chapter 59.22 RCW. The office will keep records of its activities in this area.

(2) The office shall perform all the consumer complaint and related functions of the state administrative agency that are required for purposes of complying with the regulations established by the federal department of housing and urban development for manufactured housing, including the preparation and submission of the state administrative plan.

(3) The office shall administer the mobile home relocation assistance program established in chapter 59.21 RCW, including verifying the eligibility of tenants for relocation assistance. [1991 c 327 § 3; 1989 c 294 § 1; 1988 c 280 § 2.]

59.22.070 Mobile home affairs account. There is created in the custody of the state treasurer a special account known as the mobile home affairs account.

Disbursements from this special account shall be as follows:

(1) For the two-year period beginning July 1, 1988, forty thousand dollars, or so much thereof as may be necessary for costs incurred in registering landlords and collecting fees, and thereafter five thousand dollars per year for that purpose.

(2) All remaining amounts shall be remitted to the department for the purpose of implementing RCW 59.22.050 and *59.22.060. [1995 c 399 § 156; 1989 c 201 § 8; 1988 c 280 § 5.]

*Reviser's note: RCW 59.22.060 was repealed by 1996 c 88 § 1, effective July 1, 1996.

59.22.080 Transfer of title—Fee—Department of licensing—Rules. (1) There is hereby imposed a fee of fifteen dollars on every transfer of title issued pursuant to chapter 46.12 RCW on a new or used mobile home where ownership of the mobile home is changed and on each application for the elimination of title under chapter 65.20 RCW. A transfer of title does not include the addition or deletion of a spouse co-owner or a secured interest. The department of licensing or its agents shall collect the fee when processing the application for transfer or elimination of title. The fee collected under this section shall be forwarded to the state treasurer. The state treasurer shall deposit each fee collected in the mobile home affairs account created by RCW 59.22.070.

(2) The department of licensing and the state treasurer may enact any rules necessary to carry out this section. [1991 c 327 § 1.]

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59.22.085 Transfer of title—Fee supersedes other fee.

The fifteen-dollar fee imposed in RCW 59.22.080 on the transfer or elimination of mobile home titles for deposit in the mobile home affairs account, shall supersede the fifteen dollars collected in *RCW 59.21.060 for deposit into the mobile home affairs account on July 1, 1991. [1991 c 327 § 7.]

*Reviser's note: RCW 59.21.060 expired July 1, 1992.

59.22.090 Manufactured housing task force—Duties—Membership. (1) A manufactured housing task force is established to study and make recommendations concerning the structure state government should use to regulate manufactured housing in this state. In conducting this study, the task force shall review the structures used in other states, including those states with a commission structure. The task force shall consider the report prepared by the department of licensing, the department of labor and industries, and the department of community, trade, and economic development on consolidating mobile home-related functions in conducting its study. The task force may not consider any form of mobile home rent control, but shall consider mobile home park siting and density regulatory issues.

(2) The task force shall terminate on December 31, 1992.

(3) The task force shall consist of the following members:

(a) Two members of the house of representatives appointed by the speaker of the house of representatives, from different political caucuses;

(b) Two members of the senate appointed by the president of the senate, from different political caucuses;

(c) Two members who represent mobile home park owners, appointed by the governor;

(d) Two members who represent mobile home owners, appointed by the governor;

(e) One member who represents mobile home manufacturers, appointed by the governor;

(f) One member who represents mobile home dealers, appointed by the governor;

(g) One member who represents mobile home transporters, appointed by the governor;

(h) One member who represents local building officials, appointed by the governor;

(i) One member who is either an elected or appointed government official of a county with a population of one hundred thousand or more persons, appointed by the governor;

(j) One member who is either an elected or appointed government official of a county with a population of less than one hundred thousand persons, appointed by the governor;

(k) One member who is either an elected or appointed government official of a city with a population of thirty-five thousand persons, appointed by the governor;

(l) One member who is either an elected or appointed government official of a city with a population of less than thirty-five thousand persons, appointed by the governor;

(m) One member who represents local health officials, appointed by the governor; and

(n) The director, or the director's designee from the department of community, trade, and economic development, the department of licensing, the department of labor and industries, and the attorney general's office. The designees shall be nonvoting, ex officio members of the task force.

(4) The members of the task force shall select the chair or co-chairs of the task force.

(5) Staff assistance for the task force will be provided by legislative staff and staff from the agencies or offices listed in subsection (3)(n) of this section. [1998 c 245 § 105; 1991 c 327 § 4.]

Chapter 59.23 RCW

MOBILE HOME PARKS—RESIDENT OWNERSHIP IN EVENT OF SALE

Sections

59.23.005	Findings—Intent.
59.23.010	Obligation of good faith.
59.23.015	Application of chapter—Definition of "notice."
59.23.020	Definitions.
59.23.025	Notice to qualified tenant organization of sale of mobile home park—Time frame for negotiations—Terms—Transfer or sale to relatives.
59.23.030	Improper notice by mobile home park owner—Sale may be set aside—Attorneys' fees.
59.23.035	Notice to mobile home park owner of sale of tenant's mobile home—Time frame for negotiations—Terms—Transfer or sale to relatives.
59.23.040	Improper notice by mobile home owner—Sale may be set aside—Attorneys' fees.

59.23.005 Findings—Intent. The legislature finds that mobile home parks provide a significant source of homeownership for many Washington residents, but increasing rents and low vacancy rates, as well as the pressure to convert mobile home parks to other uses, increasingly make mobile home park living insecure for mobile home owners. The legislature also finds that many homeowners who reside in mobile home parks are also those residents most in need of reasonable security in the siting of their manufactured homes. It is the intent of the legislature to encourage and facilitate the conversion of mobile home parks to resident ownership in the event of a voluntary sale of the park. [1993 c 66 § 1.]

59.23.010 Obligation of good faith. An obligation of good faith is imposed on the parties in the conduct of transactions affected by this chapter. Rights created by this chapter are forfeited by any party failing to act in good faith. Further obligations under this chapter on other parties are also discharged by a failure to act in good faith. [1993 c 66 § 2.]

59.23.015 Application of chapter—Definition of "notice." If a qualified tenant organization gives written notice to the mobile home park owner where the tenants reside that they have a present and continuing desire to purchase the mobile home park, the park may then be sold only according to this chapter.

"Notice" for the purposes of this section means a writing signed by sixty percent of the tenants in the park indicating that they desire to participate in the purchase of the park, and that they are contractually bound to the other signatories of the notice to participate by purchasing an ownership interest that will entitle them to occupy a mobile home space for the remainder of their life or for a term of at least fifteen years. [1993 c 66 § 3.]

59.23.020 Definitions. (1) "Mobile home park" means the same as defined in RCW 59.20.030.

(2)(a) The terms "sold" or "sale" for the purposes of this chapter have their ordinary meaning and include: (i) A conveyance, grant, assignment, quitclaim, or transfer of ownership or title to real property and improvements that comprise the mobile home park, or mobile homes, for a valuable consideration; (ii) a contract for the conveyance, grant, assignment, quitclaim, or transfer; (iii) a lease with an option to purchase the real property and improvements, or mobile home, or any estate or interest therein; or (iv) other contract under which possession of the property is given to the purchaser, or any other person by his or her direction, where title is retained by the vendor as security for the payment of the purchase price. These terms also include any other transfer of the beneficial or equitable interest in the mobile home park such as a transfer of equity stock or other security evidencing ownership that results in a change in majority interest ownership.

(b) The terms "sale" or "sold" do not include: (i) A transfer by gift, devise, or inheritance; (ii) a transfer of a leasehold interest other than of the type described in this subsection; (iii) a cancellation or forfeiture of a vendee's interest in a contract for the sale of the mobile home park; (iv) a deed in lieu of foreclosure of a mortgage; (v) the assumption by a grantee of the balance owing on an obligation that is secured by a mortgage or deed in lieu of forfeiture of the vendee's interest in a contract of sale where no consideration passes otherwise; (vi) the partition of property by tenants in common by agreement or as the result of a court decree; (vii) a transfer, conveyance, or assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or dissolution or in fulfillment of a property settlement agreement incident thereto; (viii) the assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved; (ix) transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation; (x) a mortgage or other transfer of an interest in real property or mobile home merely to secure a debt, or the assignment thereof; (xi) a transfer or conveyance made under an order of sale by the court in a mortgage or lien foreclosure proceeding or upon execution of a judgment; (xii) a deed in lieu of foreclosure to satisfy a mortgage; (xiii) a conveyance to the federal housing administration or veterans' administration by an authorized mortgagee made under a contract of insurance or guarantee with the federal housing administration or veterans' administration; (xiv) a transfer in compliance with the terms of any lease or contract upon which notice has already been given under this chapter, or where the lease or contract was entered into before July 25, 1993; or (xv) a transfer to a corporation or partnership the majority interest of which is wholly owned by the transferor.

(3) A "qualified tenant organization" means a formal organization of tenants in the park in question, organized for the purpose of purchasing the park, with membership made available to all tenants with the only requirements for membership being: (a) Payment of reasonable dues; and (b) being a tenant in the park. [1993 c 66 § 4.]

59.23.025 Notice to qualified tenant organization of sale of mobile home park—Time frame for negotiations—

Terms—Transfer or sale to relatives. If notice of a desire to purchase has been given under RCW 59.23.015, a park owner shall notify the qualified tenant organization that an agreement to purchase and sell has been reached and the terms of the agreement, including the availability and terms of seller financing, before closing a sale with any other person or entity. If, within thirty days after the actual notice has been received, the qualified tenant organization tenders to the park owner an amount equal to two percent of the agreed purchase price, refundable only according to this chapter, together with a fully executed purchase and sale agreement at least as favorable to the park owner as the original agreement, the mobile home park owner must sell the mobile home park to the qualified tenant organization. The tenant organization must then close the sale on the same terms as outlined in the original agreement between the park owner and the prospective purchaser. In the case of seller financing, a mobile home park owner may decline to sell the mobile home park to the qualified tenant organization if, based on reasonable and objective evidence, to do so would present a greater financial risk to the seller than would selling on the same terms to the original offeror.

If the qualified tenant organization fails to perform under the terms of the agreement the owner may proceed with the sale to any other party at these terms. If the park owner thereafter elects to accept an offer at a price lower than the price specified in the notice, the homeowners will have an additional ten days to meet the price and terms and conditions of this lower offer by executing a contract. If the qualified tenant organization fails to perform following two such opportunities, the park owner shall be free for a period of twenty-four months to execute a sale of the park to any other party.

A mobile home park owner who enters into a signed agreement to sell or transfer the ownership of the mobile home park to a relative or a legal entity composed of relatives or established for the benefit of relatives of the mobile home park owner, who signs an agreement stating the intention to maintain the property as a mobile home park is exempted from the requirements of this section and RCW 59.23.030. [1993 c 66 § 5.]

59.23.030 Improper notice by mobile home park owner—Sale may be set aside—Attorneys' fees. Failure on the part of a mobile home park owner to give notice as required by this chapter renders a sale of the mobile home park that occurs within thirty days of the time the qualified tenant organization knows or has reason to know that a violation of the notice provisions of RCW 59.23.015 has occurred, voidable upon application to superior court after notice and hearing. If the court determines that the notice provisions of this chapter have been violated, the court shall issue an order setting aside the improper sale. In an action brought under this section, the court shall award the prevailing party attorneys' fees and costs. For the purposes of this section, a "prevailing party" includes any third party purchaser who appears and successfully defends his or her interest. [1993 c 66 § 6.]

59.23.035 Notice to mobile home park owner of sale of tenant's mobile home—Time frame for negotiations—Terms—Transfer or sale to relatives. If a mobile home

park owner gives written notice to all tenants residing in the park, including new tenants at the commencement of their tenancy, that he or she has a desire to purchase their mobile homes, the mobile homes may be sold only according to the following provisions:

(1) Before transfer of title to any other person or entity, the mobile home owner shall notify the park owner if an agreement to purchase and sell has been reached and specify the terms of the agreement.

(2) If, within ten days of the notice, the mobile home park owner tenders to the mobile home owner an amount equal to five percent of the agreed purchase price, together with a fully executed purchase and sale agreement, the mobile home owner must sell the mobile home to the mobile home park owner.

(3) The mobile home park owner must then perform under the agreement and stand ready to close the sale according to the terms of the agreement between buyer and seller. Failure to perform under the terms of the agreement on the part of the mobile home park owner results in the forfeiture of the five percent deposit and voids the purchase and sale agreement.

(4) The rights of the mobile home park owner or of the mobile home owner under the purchase and sale agreement, including the deposit, are not forfeited if the transaction fails to close due to no fault or inability to perform on the part of the seller.

(5) In the case of seller financing, the mobile home owner may decline to sell to the mobile home park owner if, based on reasonable and objective evidence, to do so would present a greater financial risk to the seller than would selling to the original offeror.

A mobile home owner who enters into a signed agreement to sell or transfer the ownership of the mobile home to a relative is exempted from the requirements of this section and RCW 59.23.040. [1993 c 66 § 7.]

59.23.040 Improper notice by mobile home owner—Sale may be set aside—Attorneys' fees. Failure on the part of a mobile home owner to give notice as required by this chapter renders a sale of the mobile home that occurs within sixty days of the time the mobile home park owner knows or has reason to know that a violation of the notice provisions of RCW 59.23.035 has occurred, voidable upon application to superior court after notice and hearing. If the court determines that the notice provisions of this chapter have been violated, the court shall issue an order setting aside the improper sale. In an action brought under this section, the court shall award the prevailing party attorneys' fees and costs. For the purposes of this section a "prevailing party" includes a third party purchaser who appears and successfully defends his or her interest. [1993 c 66 § 8.]

Chapter 59.24 RCW RENTAL SECURITY DEPOSIT GUARANTEE PROGRAM

Sections

59.24.010	Legislative findings.
59.24.020	Program established—Grants—Eligible participants.
59.24.030	Contracts required—Terms.

59.24.040	Authority of grant recipients.
59.24.050	Rules.
59.24.060	Sources of funds.
59.24.900	Severability—1988 c 237.

59.24.010 Legislative findings. The legislature finds that one of the most difficult problems that temporarily homeless persons or families face in seeking permanent housing is the necessity of paying a security deposit in addition to paying the first month's rent. The security deposit requirement is often impossible for the temporarily homeless person or family to meet because their savings are depleted due, for example, to purchasing temporary shelter in a motel when space at an emergency shelter was not available. A program to guarantee the security deposit for the temporarily homeless person or family will help the poor in this state achieve adequate permanent shelter. [1988 c 237 § 1.]

59.24.020 Program established—Grants—Eligible participants. (1) The department of community, trade, and economic development shall establish the rental security deposit guarantee program. Through this program the department of community, trade, and economic development shall provide grants and technical assistance to local governments or nonprofit corporations, including local housing authorities as defined in RCW 35.82.030, who operate emergency housing shelters or transitional housing programs. The grants are to be used for the payment of residential rental security deposits under this chapter. The technical assistance is to help the local government or nonprofit corporation apply for grants and carry out the program. In order to be eligible for grants under this program, the recipient local government or nonprofit corporation shall provide fifteen percent of the total amount needed for the security deposit. The security deposit may include last month's rent where such rent is required as a normal practice by the landlord.

(2) The grants and matching funds shall be placed by the recipient local government or nonprofit corporation in a revolving loan fund and deposited in a bank or savings institution in an account that is separate from all other funds of the recipient. The funds and interest earned on these funds shall be utilized only as collateral to guarantee the payment of a security deposit required by a residential rental property owner as a condition for entering into a rental agreement with a prospective tenant.

(3) Prospective tenants who are eligible to participate in the rental security deposit guarantee program shall be limited to homeless persons or families who are residing in an emergency shelter or transitional housing operated by a local government or a nonprofit corporation, or to families who are temporarily residing in a park, car, or are otherwise without adequate shelter. The local government or nonprofit corporation shall make a determination regarding the person's or family's eligibility to participate in this program and a determination that a local rental unit is available for occupation. A determination of eligibility shall include, but is not limited to: (a) A determination that the person or family is homeless or is in transitional housing; (b) a verification of income and that the person or family can reasonably make the monthly rental payment; and (c) a determination that the person or family does not have the financial resources to make the rental security deposit. [1995 c 399 § 157; 1988 c 237 § 2.]

59.24.030 Contracts required—Terms. (1) A three-party contract shall be required of persons participating in the rental deposit guarantee program. The parties to the contract shall be the local government or nonprofit corporation operating a shelter for homeless persons or transitional housing, the tenant, and the rental property owner. The terms of the contract shall include, but are not limited to, all of the following:

(a) The owner of the rental property shall agree to allow the security deposit to be paid by the tenant over a specified number of months as an addition to the regular rental payment, rather than as a lump-sum payment.

(b) Upon execution of the agreement, the local government or nonprofit corporation shall encumber or reserve funds in a special fund created under RCW 59.24.020, as a guarantee of the contract, an amount no less than eighty percent of the outstanding balance of the security deposit owed by the tenant to the landlord.

(c) The tenant shall agree to a payment schedule of a specified number of months in which time the total amount of the required deposit shall be paid to the property owner.

(d) At any time during the operation of the guarantee, the property owner shall make all claims first against amounts of the security deposit actually paid by the tenant and secondly against the guarantee. At no time during or after the tenancy may the property owner make claims against the guarantee in excess of that amount agreed to as the guarantee.

(e) If a deduction from the guarantee fund is required, it may be accomplished only to the extent permitted by the contract and in the manner provided by law, including notice to the legal agency or organization. The tenant shall have no direct use of guarantee funds, including funds which may be referred to as "last month's rent."

(2) The department shall make available to local governments and nonprofit corporations receiving grants under this chapter the forms deemed necessary for the contracts and the determination of eligibility. Local governments and nonprofit corporations may develop and use their own forms as long as the forms meet the requirements specified in this chapter. [1988 c 237 § 3.]

59.24.040 Authority of grant recipients. A local government or nonprofit corporation receiving a grant under this chapter may utilize a portion of the allocation for costs of administering and operating its rental security deposit guarantee program. The department shall approve the amount so utilized prior to expenditure, and the amount may not exceed five percent of the allocation. The staff of the grant recipient shall be responsible for soliciting housing opportunities for low-income homeless persons, coordinating with local low-income rental property owners, making determinations regarding the eligibility of prospective tenants for the program, and providing information to prospective tenants on the tenant-property owner relationship, appropriate treatment of property, and the importance of timely rental payments. The staff of the grant recipient assigned to administer the program shall be reasonably available to property owners and tenants to answer questions or complaints about the program. [1988 c 237 § 4.]

59.24.050 Rules. The department of community, trade, and economic development may adopt rules to implement this chapter, including but not limited to: (1) The eligibility of and the application process for local governments and nonprofit corporations; (2) the criteria by which grants and technical assistance shall be provided to local governments and nonprofit corporations; and (3) the criteria local governments and nonprofit corporations shall use in entering into contracts with tenants and rental property owners. [1995 c 399 § 158; 1988 c 237 § 5.]

59.24.060 Sources of funds. The department of community, trade, and economic development may receive such gifts, grants, or endowments from public or private sources, as may be made from time to time, in trust or otherwise, to be used by the department of community, trade, and economic development for its programs, including the rental security deposit guarantee program. Funds from the housing trust fund, chapter 43.185 RCW, up to one hundred thousand dollars, may be used for the rental security deposit guarantee program by the department of community, trade, and economic development, local governments, and nonprofit organizations, provided all the requirements of this chapter and chapter 43.185 RCW are met. [1995 c 399 § 159; 1988 c 237 § 6.]

59.24.900 Severability—1988 c 237. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 237 § 8.]

Chapter 59.28 RCW

FEDERALLY ASSISTED HOUSING

Sections

59.28.010	Legislative findings—Purpose.
59.28.020	Definitions.
59.28.030	Contracts—Expiration or termination—Notice—Applicability.
59.28.040	Notice of expiration or prepayment—Owner's duty.
59.28.050	Owner's rights—Public regulatory powers—Applicability.
59.28.060	Notice of expiration or prepayment—Contents—Location—Requests for information.
59.28.070	Removal of tenants—Notice of expiration or prepayment—Timing.
59.28.080	Rent increase—Notice of expiration or prepayment—Timing.
59.28.090	Modification of rental agreement—Notice of expiration or prepayment—Timing.
59.28.100	Violations—Civil actions—Parties.
59.28.120	Department of community, trade, and economic development—Develop and provide information and technical assistance.
59.28.130	Eviction of tenant—Restriction.
59.28.900	Severability—1989 c 188.
59.28.901	Severability—2000 c 255.
59.28.902	Effective date—2000 c 255.

59.28.010 Legislative findings—Purpose. The legislature finds that:

(1) There is a severe shortage of federally assisted housing within the state of Washington. Over one hundred seventy thousand low and moderate-income households are eligible for federally assisted housing but are unable to locate vacant units.

(2) Within the next twenty years, more than twenty-six thousand existing low-income housing units may be lost as a result of the prepayment of mortgages or loans by the owners, or as a result of the expiration of rental assistance contracts. Over three thousand units of federally assisted housing have already been lost and an additional nine thousand units may be lost within the next two and one-half years.

(3) Recent reductions in federal housing assistance and tax benefits related to low-income housing make it uncertain whether additional units of federally assisted housing will be built or that those lost will be replaced.

(4) The loss of federally assisted housing will adversely affect current tenants and lead to their displacement. It will also drastically reduce the supply of affordable housing in our communities.

It is the purpose of this chapter to preserve federally assisted housing in the state of Washington and to minimize the involuntary displacement of tenants currently residing in such housing. [1989 c 188 § 1.]

59.28.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Federally assisted housing" means any multifamily housing that is insured, financed, assisted, or held by the secretary of housing and urban development or the secretary of agriculture under:

(a) Section 8 of the United States housing act of 1937, as amended (42 U.S.C. Sec. 1437f);

(b) Section 101 of the housing and urban development act of 1965, as amended (12 U.S.C. Sec. 1701s);

(c) The following sections of the national housing act:

(i) Section 202 (12 U.S.C. Sec. 1701q);

(ii) Section 213 (12 U.S.C. Sec. 1715e);

(iii) Section 221(d) (3) and (4) (12 U.S.C. Sec. 17151(d)

(3) and (4));

(iv) Section 223(f) (12 U.S.C. Sec. 1715n(f));

(v) Section 231 (12 U.S.C. Sec. 1715v); or

(vi) Section 236 (12 U.S.C. Sec. 1715z-1); and

(d) The following sections of the housing act of 1949, as amended:

(i) Section 514 (42 U.S.C. Sec. 1484);

(ii) Section 515 (42 U.S.C. Sec. 1485);

(iii) Section 516 (42 U.S.C. Sec. 1486);

(iv) Section 521(a)(1)(B) (42 U.S.C. Sec. 1490a(a)(1));

or

(v) Section 521(a)(2) (42 U.S.C. Sec. 1490a(a)(2)).

(2) "Rental agreement" means any agreement that establishes or modifies the terms, conditions, rules, regulations, or any other provision concerning the use and occupancy of a federally assisted housing unit.

(3) "Owner" means the current or subsequent owner or owners of federally assisted housing.

(4) "Low-income use restrictions" means any federal, state, or local statute, rule, regulation, ordinance, or contract which, as a condition of receipt of any federal, state, or local financial assistance, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development, or requires that rent for any of the units

within a development be reviewed by any governmental body or agency before the rents are implemented.

(5) "Prepayment" means the payment in full or refinancing of the federally insured or federally held mortgage or loan prior to its original maturity date, or the voluntary cancellation of mortgage insurance, if that would have the effect of terminating any low-income use restrictions.

(6) "Public housing agency" means any state or local agency or nonprofit entity that is authorized to administer tenant-based rental assistance under federal, state, or local law. [2000 c 255 § 1; 1989 c 188 § 2.]

59.28.030 Contracts—Expiration or termination—Notice—Applicability. (1) This chapter shall not apply to the expiration or termination of a housing assistance contract between a public housing agency and an owner of existing housing participating in either the section 8 certificate or voucher program (42 U.S.C. Sec. 1437f).

(2) An owner of federally assisted housing shall not be required to give notice of a prepayment under this chapter, if the owner has: (a) Entered into an agreement with a federal, state, or local agency continuing existing, or imposing new, low-income use restrictions for at least twenty years that ensure that the tenants residing in the development at the time of prepayment are not involuntarily displaced except for good cause and that the housing will continue to serve very low and low-income families and persons in need of affordable housing; and (b) served notice of the agreement on the clerk of the city, or county if in an unincorporated area, in which the property is located, on any public housing agency that would be responsible for administering tenant-based rental assistance to persons who would otherwise be displaced from this housing, and on the department of community, trade, and economic development by regular and certified mail and posted a copy of the agreement in a conspicuous place at the development where it is likely to be seen by the tenants. The posted agreement shall be maintained intact and in legible form for the life of the agreement.

(3) An owner of federally assisted housing is not required to give notice that a rental assistance contract is expiring if: (a) The owner has entered into an agreement with the United States department of housing and urban development or other federal, state, or local agency to renew the rental assistance contract for a minimum of five years subject to the availability of adequate appropriations; (b) the agreement itself does not expire in less than twelve months; and (c) the owner has served written notice of the agreement on the clerk of the city, or county if in an unincorporated area, in which the property is located, on any public housing agency that would be responsible for administering tenant-based rental assistance to persons who would otherwise be displaced from this housing, and on the department of community, trade, and economic development, by regular and certified mail and posted these notices in a conspicuous place at the development where they are likely to be seen by the tenants. The posted notices shall be maintained intact and in legible form for the life of the agreement to renew the rental assistance contract. [2000 c 255 § 2; 1989 c 188 § 3.]

59.28.040 Notice of expiration or prepayment—Owner's duty. Except as provided in RCW 59.28.030, all owners of federally assisted housing shall, at least twelve months before the expiration of the rental assistance contract or prepayment of a mortgage or loan, serve a written notice of the anticipated expiration or prepayment date on each tenant household residing in the housing, on the clerk of the city, or clerk of the county legislative authority if in an unincorporated area, in which the property is located, on any public housing agency that would be responsible for administering tenant-based rental assistance to persons who would otherwise be displaced from this housing, and on the department of community, trade, and economic development, by regular and certified mail. All owners of federally assisted housing shall also serve written notice of the anticipated expiration or prepayment date on each tenant household that moves into the housing after the initial notice has been given, but before the expiration of the rental assistance contract or prepayment of the mortgage or loan. This notice shall be given before a new tenant is asked to execute a rental agreement or required to pay any deposits. [2002 c 30 § 3; 2000 c 255 § 3; 1995 c 399 § 160; 1989 c 188 § 4.]

59.28.050 Owner's rights—Public regulatory powers—Applicability. This chapter shall not in any way prohibit an owner of federally assisted housing from terminating a rental assistance contract or prepaying a mortgage or loan. The requirement in this chapter for notice shall not be construed as conferring any new or additional regulatory power upon the city or county clerk or upon the department of community, trade, and economic development. [1995 c 399 § 161; 1989 c 188 § 5.]

59.28.060 Notice of expiration or prepayment—Contents—Location—Requests for information. (1) The notice to tenants required by RCW 59.28.040 shall state:

(a) Whether the owner (i) intends to prepay the mortgage or loan or allow the rental assistance contract to expire in order to operate the housing without any low-income use restrictions, (ii) plans on renewing the rental assistance contract subject to the availability of adequate appropriations, or (iii) is seeking additional financial incentives or higher rents as a condition of remaining in the federal program; (b) the reason the owner plans on taking this action; (c) the owner's plans for the project, including any timetables or deadlines for actions to be taken by the owner and any specific federal, state, or local agency approvals that the owner is required to obtain; (d) the anticipated date of the prepayment of the mortgage or loan or expiration of the rental assistance contract; (e) the effect, if any, that prepayment of the mortgage or loan or expiration of the rental assistance contract will have upon the tenants' rent and other terms of their rental agreement; and (f) that additional information will be served on the city or county, on the local public housing agency, and on the department of community, trade, and economic development and will be posted at the development. The owner shall also include with the notice written information, prepared by the department of community, trade, and economic development under RCW 59.28.120(1), concerning the legal rights, responsibilities, and options of owners and tenants when an

owner intends to prepay a mortgage or loan or terminate a rental assistance contract.

(2) The notice to the city or county clerk and to the department of community, trade, and economic development required by RCW 59.28.040 shall state: (a) The name, location, and project number of the federally assisted housing and the type of assistance received from the federal government; (b) the number and size of units; (c) the age, race, family size, and estimated incomes of the tenants who will be affected by the prepayment of the loan or mortgage or expiration of the federal assistance contract; (d) the current rents and projected rent increases for each affected tenant after the prepayment of the mortgage or loan or expiration of the rental assistance contract without disclosing the identities of the affected tenants; (e) the availability and type, if any, of rental assistance after the prepayment of the mortgage or loan or expiration of the rental assistance contract; and (f) the age, race, family size, and estimated incomes of any applicants on the project's waiting list without disclosing the identities of the applicants. The owner shall attach to this notice a copy of the notice the owner sends to the tenants under this chapter.

(3) All owners of federally assisted housing shall immediately post a copy of any notices they send the city or county clerk, any public housing agency, and the department of community, trade, and economic development, under RCW 59.28.040, in a conspicuous place at the development where they are likely to be seen by current and prospective tenants. The notices shall be maintained intact and in legible form for twelve months from the date they are posted.

All owners of federally assisted housing shall, upon request of any state or local agency, provide the agency with a copy of any rent comparability study, market analysis, or projected budget that they submit to the United States department of housing and urban development or other federal agency in conjunction with the prepayment of their mortgage or loan or in anticipation of the expiration of their rental assistance contract, together with any physical inspection reports or capital needs assessments completed by the owner or federal agency within the last three years. [2000 c 255 § 4; 1995 c 399 § 162; 1989 c 188 § 6.]

59.28.070 Removal of tenants—Notice of expiration or prepayment—Timing. From the date of service of the notice under RCW 59.28.040 until either twelve months have elapsed or expiration or prepayment of the rental assistance contract or mortgage or loan, whichever is later, no owner of federally assisted housing may evict a tenant or demand possession of any federally assisted housing unit, except as authorized by the federal assistance program applicable to the project, prior to expiration or prepayment of the rental assistance contract or mortgage or loan. [1989 c 188 § 7.]

59.28.080 Rent increase—Notice of expiration or prepayment—Timing. From the date of service of the notice under RCW 59.28.040 until either twelve months have elapsed or expiration or prepayment of the rental assistance contract, mortgage, or loan, whichever is later, no owner of federally assisted housing may increase the rent of a federally assisted housing unit, or the share of the rent paid by the tenant, above the amount authorized by the federal assistance

program applicable to the project prior to expiration or prepayment of the rental assistance contract or mortgage or loan. [2000 c 255 § 5; 1989 c 188 § 8.]

59.28.090 Modification of rental agreement—Notice of expiration or prepayment—Timing. From the date of service of the notice under RCW 59.28.040 until either twelve months have elapsed or expiration or prepayment of the rental assistance contract, mortgage, or loan, whichever is later, no owner of federally assisted housing may change the terms of the rental agreement, except as permitted under the existing rental agreement, prior to expiration or prepayment of the rental assistance contract or mortgage or loan. [1989 c 188 § 9.]

59.28.100 Violations—Civil actions—Parties. Any party who is entitled to receive notice under this chapter may bring a civil action to enjoin or recover actual damages for any violation of this chapter, together with the costs of the suit including reasonable attorneys' fees. Any tenant who is entitled to receive notice under this chapter shall also recover statutory damages of fifty dollars. [2000 c 255 § 6; 1989 c 188 § 10.]

59.28.120 Department of community, trade, and economic development—Develop and provide information and technical assistance. The department of community, trade, and economic development shall within ninety days after March 31, 2000, consult with all interested stakeholders and develop and provide to owners and tenants of federally assisted housing, state and local agencies, and other interested persons all of the following:

(1) Written information concerning the legal rights, responsibilities, and options of owners and tenants when an owner intends to prepay a mortgage or loan or terminate a rental assistance contract. This information shall include the name and telephone number of any qualified legal aid program that provides civil legal services to indigent persons and of any other state, regional, or local organization that can be contacted to request additional information about an owner's responsibilities and the rights and options of an affected tenant;

(2) Written information sufficient to enable an owner of federally assisted housing to comply with the notification requirements of this chapter, including the name and address of any public housing agency that would be responsible for administering tenant-based rental assistance to persons who would otherwise be displaced from federally assisted housing; and

(3) Any other information or technical assistance the department determines will further the purposes of this chapter. [2000 c 255 § 7.]

59.28.130 Eviction of tenant—Restriction. An owner of federally assisted housing who prepays the mortgage or loan or whose rental assistance contract expires and who continues to operate the property as residential housing within the scope of this chapter shall not evict a tenant residing in the dwelling unit when the mortgage or loan is prepaid or the rental assistance contract expires, except as authorized by the

federal assistance program applicable to the project prior to prepayment of the mortgage or loan, or expiration of the rental assistance contract. [2000 c 255 § 8.]

59.28.900 Severability—1989 c 188. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 188 § 12.]

59.28.901 Severability—2000 c 255. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2000 c 255 § 10.]

59.28.902 Effective date—2000 c 255. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000]. [2000 c 255 § 11.]

Title 60

LIENS

Chapters

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Chapter 60.04 RCW

MECHANICS' AND MATERIALMEN'S LIENS

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60.04.011 Definitions. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Construction agent" means any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person having charge of any improvement to real property, who shall be deemed the agent of the owner for the limited purpose of establishing the lien created by this chapter.

(2) "Contract price" means the amount agreed upon by the contracting parties, or if no amount is agreed upon, then the customary and reasonable charge therefor.

(3) "Draws" means periodic disbursements of interim or construction financing by a lender.

(4) "Furnishing labor, professional services, materials, or equipment" means the performance of any labor or professional services, the contribution owed to any employee benefit plan on account of any labor, the provision of any supplies or materials, and the renting, leasing, or otherwise supplying of equipment for the improvement of real property.

(5) "Improvement" means: (a) Constructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property or street or road in

front of or adjoining the same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns, or providing other landscaping materials on any real property; and (c) providing professional services upon real property or in preparation for or in conjunction with the intended activities in (a) or (b) of this subsection.

(6) "Interim or construction financing" means that portion of money secured by a mortgage, deed of trust, or other encumbrance to finance improvement of, or to real property, but does not include:

(a) Funds to acquire real property;

(b) Funds to pay interest, insurance premiums, lease deposits, taxes, assessments, or prior encumbrances;

(c) Funds to pay loan, commitment, title, legal, closing, recording, or appraisal fees;

(d) Funds to pay other customary fees, which pursuant to agreement with the owner or borrower are to be paid by the lender from time to time;

(e) Funds to acquire personal property for which the potential lien claimant may not claim a lien pursuant to this chapter.

(7) "Labor" means exertion of the powers of body or mind performed at the site for compensation. "Labor" includes amounts due and owed to any employee benefit plan on account of such labor performed.

(8) "Mortgagee" means a person who has a valid mortgage of record or deed of trust of record securing a loan.

(9) "Owner-occupied" means a single-family residence occupied by the owner as his or her principal residence.

(10) "Payment bond" means a surety bond issued by a surety licensed to issue surety bonds in the state of Washington that confers upon potential claimants the rights of third party beneficiaries.

(11) "Potential lien claimant" means any person or entity entitled to assert lien rights under this chapter who has otherwise complied with the provisions of this chapter and is registered or licensed if required to be licensed or registered by the provisions of the laws of the state of Washington.

(12) "Prime contractor" includes all contractors, general contractors, and specialty contractors, as defined by chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who contract directly with a property owner or their common law agent to assume primary responsibility for the creation of an improvement to real property, and includes property owners or their common law agents who are contractors, general contractors, or specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year.

(13) "Professional services" means surveying, establishing or marking the boundaries of, preparing maps, plans, or specifications for, or inspecting, testing, or otherwise performing any other architectural or engineering services for the improvement of real property.

(14) "Real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, trust, or individual that makes loans secured by real property located in the state of Washington.

(15) "Site" means the real property which is or is to be improved.

(16) "Subcontractor" means a general contractor or specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who is otherwise required to be registered or licensed by law, who contracts for the improvement of real property with someone other than the owner of the property or their common law agent. [1992 c 126 § 1; 1991 c 281 § 1.]

60.04.021 Lien authorized. Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner. [1991 c 281 § 2.]

60.04.031 Notices—Exceptions. (1) Except as otherwise provided in this section, every person furnishing professional services, materials, or equipment for the improvement of real property shall give the owner or reputed owner notice in writing of the right to claim a lien. If the prime contractor is in compliance with the requirements of RCW 19.27.095, 60.04.230, and 60.04.261, this notice shall also be given to the prime contractor as described in this subsection unless the potential lien claimant has contracted directly with the prime contractor. The notice may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after the date which is sixty days before:

- (a) Mailing the notice by certified or registered mail to the owner or reputed owner; or
- (b) Delivering or serving the notice personally upon the owner or reputed owner and obtaining evidence of delivery in the form of a receipt or other acknowledgement signed by the owner or reputed owner or an affidavit of service.

In the case of new construction of a single-family residence, the notice of a right to claim a lien may be given at any time but only protects the right to claim a lien for professional services, materials, or equipment supplied after a date which is ten days before the notice is given as described in this subsection.

(2) Notices of a right to claim a lien shall not be required of:

- (a) Persons who contract directly with the owner or the owner's common law agent;
- (b) Laborers whose claim of lien is based solely on performing labor; or
- (c) Subcontractors who contract for the improvement of real property directly with the prime contractor, except as provided in subsection (3)(b) of this section.

(3) Persons who furnish professional services, materials, or equipment in connection with the repair, alteration, or remodel of an existing owner-occupied single-family residence or appurtenant garage:

- (a) Who contract directly with the owner-occupier or their common law agent shall not be required to send a written notice of the right to claim a lien and shall have a lien for the full amount due under their contract, as provided in RCW 60.04.021; or

(b) Who do not contract directly with the owner-occupier or their common law agent shall give notice of the right to claim a lien to the owner-occupier. Liens of persons furnishing professional services, materials, or equipment who do not contract directly with the owner-occupier or their common law agent may only be satisfied from amounts not yet paid to the prime contractor by the owner at the time the notice described in this section is received, regardless of whether amounts not yet paid to the prime contractor are due. For the purposes of this subsection "received" means actual receipt of notice by personal service, or registered or certified mail, or three days after mailing by registered or certified mail, excluding Saturdays, Sundays, or legal holidays.

(4) The notice of right to claim a lien described in subsection (1) of this section, shall include but not be limited to the following information and shall substantially be in the following form, using lower-case and upper-case ten-point type where appropriate.

NOTICE TO OWNER

IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

PROTECT YOURSELF FROM PAYING TWICE

To:Date:

Re: (description of property: Street address or general location.)

From:

AT THE REQUEST OF: (Name of person ordering the professional services, materials, or equipment)

THIS IS NOT A LIEN: This notice is sent to you to tell you who is providing professional services, materials, or equipment for the improvement of your property and to advise you of the rights of these persons and your responsibilities. Also take note that laborers on your project may claim a lien without sending you a notice.

OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

Under Washington law, those who furnish labor, professional services, materials, or equipment for the repair, remodel, or alteration of your owner-occupied principal residence and who are not paid, have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

The law limits the amount that a lien claimant can claim against your property. Claims may only be made against that portion of the contract price you have not yet paid to your prime contractor as of the time this notice was given to you or three days after this notice was mailed to you. Review the back of this notice for more information and ways to avoid lien claims.

COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

We have or will be providing professional services, materials, or equipment for the improvement of your commercial or new residential project. In the event you or your contractor

fail to pay us, we may file a lien against your property. A lien may be claimed for all professional services, materials, or equipment furnished after a date that is sixty days before this notice was given to you or mailed to you, unless the improvement to your property is the construction of a new single-family residence, then ten days before this notice was given to you or mailed to you.

Sender:
Address:
Telephone:

Brief description of professional services, materials, or equipment provided or to be provided:

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

This notice is sent to inform you that we have or will provide professional services, materials, or equipment for the improvement of your property. We expect to be paid by the person who ordered our services, but if we are not paid, we have the right to enforce our claim by filing a construction lien against your property.

LEARN more about the lien laws and the meaning of this notice by discussing them with your contractor, suppliers, Department of Labor and Industries, the firm sending you this notice, your lender, or your attorney.

COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods available to protect your property from construction liens. The following are two of the more commonly used methods.

DUAL PAYCHECKS (Joint Checks): When paying your contractor for services or materials, you may make checks payable jointly to the contractor and the firms furnishing you this notice.

LIEN RELEASES: You may require your contractor to provide lien releases signed by all the suppliers and subcontractors from whom you have received this notice. If they cannot obtain lien releases because you have not paid them, you may use the dual payee check method to protect yourself.

YOU SHOULD TAKE APPROPRIATE STEPS TO PROTECT YOUR PROPERTY FROM LIENS.

YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT RECEIVED IT, ASK THEM FOR IT.

(5) Every potential lien claimant providing professional services where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been commenced, and the professional services provided are not visible from an inspection of the real property may record in the real property records of the county where the property is located a notice which shall

contain the professional service provider's name, address, telephone number, legal description of the property, the owner or reputed owner's name, and the general nature of the professional services provided. If such notice is not recorded, the lien claimed shall be subordinate to the interest of any subsequent mortgagee and invalid as to the interest of any subsequent purchaser if the mortgagee or purchaser acts in good faith and for a valuable consideration acquires an interest in the property prior to the commencement of an improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of the professional services being provided. The notice described in this subsection shall be substantially in the following form:

NOTICE OF FURNISHING PROFESSIONAL SERVICES

That on the (day) day of (month and year), (name of provider) began providing professional services upon or for the improvement of real property legally described as follows:

[Legal Description is mandatory]

The general nature of the professional services provided is

The owner or reputed owner of the real property is

(Signature)
(Name of Claimant)
(Street Address)
(City, State, Zip Code)
(Phone Number)

(6) A lien authorized by this chapter shall not be enforced unless the lien claimant has complied with the applicable provisions of this section. [1992 c 126 § 2; 1991 c 281 § 3.]

60.04.035 Acts of coercion—Application of chapter 19.86 RCW. The legislature finds that acts of coercion or attempted coercion, including threats to withhold future contracts, made by a contractor or developer to discourage a contractor, subcontractor, or material or equipment supplier from giving an owner the notice of right to claim a lien required by RCW 60.04.031, or from filing a claim of lien under this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. These acts of coercion are not reasonable in relation to the development and preservation of business. These acts of coercion shall constitute an unfair or deceptive act or practice in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1992 c 126 § 3.]

60.04.041 Contractor registration. A contractor or subcontractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other certificate or license issued pursuant to law, covering the period when the labor, professional services, material, or equipment shall be furnished, and the lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. No lien rights described in this chapter shall be lost or denied by virtue of the absence, suspension, or revocation of such registration or license with respect to any contractor or subcontractor not in immediate contractual privity with the lien claimant. [1992 c 126 § 4; 1991 c 281 § 4.]

60.04.051 Property subject to lien. The lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the owner at whose instance, directly or through a common law or construction agent the labor, professional services, equipment, or materials were furnished, as the court deems appropriate for satisfaction of the lien. If, for any reason, the title or interest in the land upon which the improvement is situated cannot be subjected to the lien, the court in order to satisfy the lien may order the sale and removal of the improvement from the land which is subject to the lien. [1992 c 126 § 5; 1991 c 281 § 5.]

60.04.061 Priority of lien. The claim of lien created by this chapter upon any lot or parcel of land shall be prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant. [1991 c 281 § 6.]

60.04.071 Release of lien rights. Upon payment and acceptance of the amount due to the lien claimant and upon demand of the owner or the person making payment, the lien claimant shall immediately prepare and execute a release of all lien rights for which payment has been made, and deliver the release to the person making payment. In any suit to compel deliverance of the release thereafter in which the court determines the delay was unjustified, the court shall, in addition to ordering the deliverance of the release, award the costs of the action including reasonable attorneys' fees and any damages. [1991 c 281 § 7.]

60.04.081 Frivolous claim—Procedure. (1) Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order directing the lien claimant to appear before the court at a time

no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the relief requested should not be granted. The motion shall state the grounds upon which relief is asked, and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien shall be released, with prejudice, and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(5) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1992 c 126 § 6; 1991 c 281 § 8.]

60.04.091 Recording—Time—Contents of lien. Every person claiming a lien under RCW 60.04.021 shall file for recording, in the county where the subject property is located, a notice of claim of lien not later than ninety days after the person has ceased to furnish labor, professional services, materials, or equipment or the last date on which employee benefit contributions were due. The notice of claim of lien:

(1) Shall state in substance and effect:

(a) The name, phone number, and address of the claimant;

(b) The first and last date on which the labor, professional services, materials, or equipment was furnished or employee benefit contributions were due;

(c) The name of the person indebted to the claimant;

(d) The street address, legal description, or other description reasonably calculated to identify, for a person familiar with the area, the location of the real property to be charged with the lien;

(e) The name of the owner or reputed owner of the property, if known, and, if not known, that fact shall be stated; and

(f) The principal amount for which the lien is claimed.

(2) Shall be signed by the claimant or some person authorized to act on his or her behalf who shall affirmatively state they have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury, and shall be acknowledged pursuant to chapter 64.08 RCW. If the lien has been assigned, the name of the assignee

shall be stated. Where an action to foreclose the lien has been commenced such notice of claim of lien may be amended as pleadings may be by order of the court insofar as the interests of third parties are not adversely affected by such amendment. A claim of lien substantially in the following form shall be sufficient:

CLAIM OF LIEN

....., claimant, vs, name of person indebted to claimant:

Notice is hereby given that the person named below claims a lien pursuant to *chapter 64.04 RCW. In support of this lien the following information is submitted:

1. NAME OF LIEN CLAIMANT:
TELEPHONE NUMBER:
ADDRESS:

2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR, PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME DUE:

3. NAME OF PERSON INDEBTED TO THE CLAIMANT:

4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS CLAIMED (Street address, legal description or other information that will reasonably describe the property):

5. NAME OF THE OWNER OR REPUTED OWNER (If not known state "unknown"):

6. THE LAST DATE ON WHICH LABOR WAS PERFORMED; PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS FURNISHED:

7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:

8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE HERE:

....., Claimant
.....
.....
(Phone number, address, city, and state of claimant)

STATE OF WASHINGTON, COUNTY OF
....., ss.

....., being sworn, says: I am the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

Subscribed and sworn to before me this ... day of

The period provided for recording the claim of lien is a period of limitation and no action to foreclose a lien shall be maintained unless the claim of lien is filed for recording within the ninety-day period stated. The lien claimant shall give a copy of the claim of lien to the owner or reputed owner by mailing it by certified or registered mail or by personal service within fourteen days of the time the claim of lien is filed for recording. Failure to do so results in a forfeiture of any right the claimant may have to attorneys' fees and costs against the owner under RCW 60.04.181. [1992 c 126 § 7; 1991 c 281 § 9.]

*Reviser's note: The reference to chapter 64.04 RCW appears to be erroneous. Reference to chapter 60.04 RCW was apparently intended.

60.04.101 Separate residential units—Time for filing. When furnishing labor, professional services, materials, or equipment for the construction of two or more separate residential units, the time for filing claims of lien against each separate residential unit shall commence to run upon the cessation of the furnishing of labor, professional services, materials, or equipment on each residential unit, as provided in this chapter. For the purposes of this section a separate residential unit is defined as consisting of one residential structure together with any garages or other outbuildings appurtenant thereto. [1991 c 281 § 10.]

60.04.111 Recording—Fees. The county auditor shall record the notice of claim of lien in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of lien for registered land need not be recorded in the Torrens register. The county auditor shall charge no higher fee for recording notices of claim of lien than other documents. [1991 c 281 § 11.]

60.04.121 Lien—Assignment. Any lien or right of lien created by this chapter and the right of action to recover therefor, shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made. [1991 c 281 § 12.]

60.04.131 Claims—Designation of amount due. In every case in which the notice of claim of lien is recorded against two or more separate pieces of property owned by the same person or owned by two or more persons jointly or otherwise, who contracted for the labor, professional services, material, or equipment for which the notice of claim of lien is recorded, the person recording the notice of claim of lien

shall designate in the notice of claim of lien the amount due on each piece of property, otherwise the lien is subordinated to other liens that may be established under this chapter. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon any of such pieces of property. [1991 c 281 § 13.]

60.04.141 Lien—Duration—Procedural limitations.

No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim of lien has been recorded unless an action is filed by the lien claimant within that time in the superior court in the county where the subject property is located to enforce the lien, and service is made upon the owner of the subject property within ninety days of the date of filing the action; or, if credit is given and the terms thereof are stated in the claim of lien, then eight calendar months after the expiration of such credit; and in case the action is not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the action for want of prosecution, and the dismissal of the action or a judgment rendered thereon that no lien exists shall constitute a cancellation of the lien. This is a period of limitation, which shall be tolled by the filing of any petition seeking protection under Title Eleven, United States Code by an owner of any property subject to the lien established by this chapter. [1992 c 126 § 8; 1991 c 281 § 14.]

60.04.151 Rights of owner—Recovery options.

The lien claimant shall be entitled to recover upon the claim recorded the contract price after deducting all claims of other lien claimants to whom the claimant is liable, for furnishing labor, professional services, materials, or equipment; and in all cases where a claim of lien shall be recorded under this chapter for labor, professional services, materials, or equipment supplied to any lien claimant, he or she shall defend any action brought thereupon at his or her own expense. During the pendency of the action, the owner may withhold from the prime contractor the amount of money for which a claim is recorded by any subcontractor, supplier, or laborer. In case of judgment against the owner or the owner's property, upon the lien, the owner shall be entitled to deduct from sums due to the prime contractor the principal amount of the judgment from any amount due or to become due from the owner to the prime contractor plus such costs, including interest and attorneys' fees, as the court deems just and equitable, and the owner shall be entitled to recover back from the prime contractor the amount for which a lien or liens are established in excess of any sum that may remain due from the owner to the prime contractor. [1992 c 126 § 9; 1991 c 281 § 15.]

60.04.161 Bond in lieu of claim.

Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who disputes the correctness or validity of the claim of lien may record, either before or after the commencement of an action to enforce the lien, in the office of the county recorder or auditor in the county where the claim of lien was recorded, a bond issued by a surety company authorized to issue surety bonds in the state. The surety shall be listed in the latest fed-

eral department of the treasury list of surety companies acceptable on federal bonds, published in the Federal Register, as authorized to issue bonds on United States government projects with an underwriting limitation, including applicable reinsurance, equal to or greater than the amount of the bond to be recorded. The bond shall contain a description of the claim of lien and real property involved, and be in an amount equal to the greater of five thousand dollars or two times the amount of the lien claimed if it is ten thousand dollars or less, and in an amount equal to or greater than one and one-half times the amount of the lien if it is in excess of ten thousand dollars. If the claim of lien affects more than one parcel of real property and is segregated to each parcel, the bond may be segregated the same as in the claim of lien. A separate bond shall be required for each claim of lien made by separate claimants. However, a single bond may be used to guarantee payment of amounts claimed by more than one claim of lien by a single claimant so long as the amount of the bond meets the requirements of this section as applied to the aggregate sum of all claims by such claimant. The condition of the bond shall be to guarantee payment of any judgment upon the lien in favor of the lien claimant entered in any action to recover the amount claimed in a claim of lien, or on the claim asserted in the claim of lien. The effect of recording a bond shall be to release the real property described in the notice of claim of lien from the lien and any action brought to recover the amount claimed. Unless otherwise prohibited by law, if no action is commenced to recover on a lien within the time specified in RCW 60.04.141, the surety shall be discharged from liability under the bond. If an action is timely commenced, then on payment of any judgment entered in the action or on payment of the full amount of the bond to the holder of the judgment, whichever is less, the surety shall be discharged from liability under the bond.

Nothing in this section shall in any way prohibit or limit the use of other methods, devised by the affected parties to secure the obligation underlying a claim of lien and to obtain a release of real property from a claim of lien. [1992 c 126 § 10; 1991 c 281 § 16.]

60.04.171 Foreclosure—Parties.

The lien provided by this chapter, for which claims of lien have been recorded, may be foreclosed and enforced by a civil action in the court having jurisdiction in the manner prescribed for the judicial foreclosure of a mortgage. The court shall have the power to order the sale of the property. In any action brought to foreclose a lien, the owner shall be joined as a party. The interest in the real property of any person who, prior to the commencement of the action, has a recorded interest in the property, or any part thereof, shall not be foreclosed or affected unless they are joined as a party.

A person shall not begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to the prior action, he or she may apply to the court to be joined as a party thereto, and his or her lien may be foreclosed in the same action. The filing of such application shall toll the running of the period of limitation established by RCW 60.04.141 until disposition of the application or other time set by the court. The court shall grant the application for joinder unless to do so would create

an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions as the court deems just. If a lien foreclosure action is filed during the pendency of another such action, the court may, on its own motion or the motion of any party, consolidate actions upon such terms and conditions as the court deems just, unless to do so would create an undue delay or cause hardship which cannot be cured by the imposition of costs or other conditions. If consolidation of actions is not permissible under this section, the lien foreclosure action filed during the pendency of another such action shall not be dismissed if the filing was the result of mistake, inadvertence, surprise, excusable neglect, or irregularity. An action to foreclose a lien shall not be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien. [1992 c 126 § 11; 1991 c 281 § 17.]

60.04.181 Rank of lien—Application of proceeds—Attorneys' fees. (1) In every case in which different construction liens are claimed against the same property, the court shall declare the rank of such lien or class of liens, which liens shall be in the following order:

- (a) Liens for the performance of labor;
- (b) Liens for contributions owed to employee benefit plans;
- (c) Liens for furnishing material, supplies, or equipment;
- (d) Liens for subcontractors, including but not limited to their labor and materials; and
- (e) Liens for prime contractors, or for professional services.

(2) The proceeds of the sale of property must be applied to each lien or class of liens in order of its rank and, in an action brought to foreclose a lien, pro rata among each claimant in each separate priority class. A personal judgment may be rendered against any party personally liable for any debt for which the lien is claimed. If the lien is established, the judgment shall provide for the enforcement thereof upon the property liable as in the case of foreclosure of judgment liens. The amount realized by such enforcement of the lien shall be credited upon the proper personal judgment. The deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against any party liable therefor.

(3) The court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for recording the claim of lien, costs of title report, bond costs, and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems reasonable. Such costs shall have the priority of the class of lien to which they are related, as established by subsection (1) of this section.

(4) Real property against which a lien under this chapter is enforced may be ordered sold by the court and the proceeds deposited into the registry of the clerk of the court, pending further determination respecting distribution of the proceeds of the sale. [1992 c 126 § 12; 1991 c 281 § 18.]

60.04.190 Destruction or concealment of property—Removal from premises—Penalty. See RCW 61.12.030, 9.45.060.

60.04.191 Effect of note—Personal action preserved. The taking of a promissory note or other evidence of indebtedness for any labor, professional services, material, or equipment furnished for which a lien is created by this chapter does not discharge the lien therefor, unless expressly received as payment and so specified therein.

Nothing in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for the furnishing of labor, professional services, material, or equipment to maintain a personal action to recover the debt against any person liable therefor. [1991 c 281 § 19.]

60.04.201 Material exempt from process—Exception. Whenever material is furnished for use in the improvement of property subject to a lien created by this chapter, the material is not subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of the material, except a debt due for the purchase money thereof, so long as in good faith, the material is about to be applied in the improvement of such property. [1991 c 281 § 20.]

60.04.211 Lien—Effect on community interest. The claim of lien, when filed as required by this chapter, shall be notice to the husband or wife of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both husband and wife to the lien. [1991 c 281 § 21.]

60.04.221 Notice to lender—Withholding of funds. Any lender providing interim or construction financing where there is not a payment bond of at least fifty percent of the amount of construction financing shall observe the following procedures and the rights and liabilities of the lender and potential lien claimant shall be affected as follows:

(1) Any potential lien claimant who has not received a payment within five days after the date required by their contract, invoice, employee benefit plan agreement, or purchase order may within thirty-five days of the date required for payment of the contract, invoice, employee benefit plan agreement, or purchase order, give a notice as provided in subsections (2) and (3) of this section of the sums due and to become due, for which a potential lien claimant may claim a lien under this chapter.

(2) The notice shall be signed by the potential lien claimant or some person authorized to act on his or her behalf.

(3) The notice shall be given in writing to the lender at the office administering the interim or construction financing, with a copy given to the owner and appropriate prime contractor. The notice shall be given by:

(a) Mailing the notice by certified or registered mail to the lender, owner, and appropriate prime contractor; or

(b) Delivering or serving the notice personally and obtaining evidence of delivery in the form of a receipt or other acknowledgment signed by the lender, owner, and appropriate prime contractor, or an affidavit of service.

(4) The notice shall state in substance and effect as follows:

(a) The person, firm, trustee, or corporation filing the notice is entitled to receive contributions to any type of employee benefit plan or has furnished labor, professional services, materials, or equipment for which a lien is given by this chapter.

(b) The name of the prime contractor, common law agent, or construction agent ordering the same.

(c) A common or street address of the real property being improved or the legal description of the real property.

(d) The name, business address, and telephone number of the lien claimant.

The notice to the lender may contain additional information but shall be in substantially the following form:

NOTICE TO REAL PROPERTY LENDER
(Authorized by RCW)

TO: (Name of Lender)

(Administrative Office-Street Address)

(City) (State) (Zip)

AND TO: (Owner)

AND TO: (Prime Contractor-If Different Than Owner)

(Name of Laborer, Professional, Materials, or Equipment Supplier)

whose business address is, did at the property located at

(Check appropriate box) () perform labor () furnish professional services () provide materials () supply equipment as follows:

which was ordered by (Name of Person)

whose address was stated to be

The amount owing to the undersigned according to contract or purchase order for labor, supplies, or equipment (as above mentioned) is the sum of Dollars (\$). Said sums became due and owing as of

(State Date)

You are hereby required to withhold from any future draws on existing construction financing which has been made on the subject property (to the extent there remain undisbursed funds) the sum of Dollars (\$).

IMPORTANT

Failure to comply with the requirements of this notice may subject the lender to a whole or partial compromise of any priority lien interest it may have pursuant to RCW 60.04.226.

DATE:
By:
Its:

(5) After the receipt of the notice, the lender shall withhold from the next and subsequent draws the amount claimed to be due as stated in the notice. Alternatively, the lender may obtain from the prime contractor or borrower a payment bond for the benefit of the potential lien claimant in an amount sufficient to cover the amount stated in the potential lien claimant's notice. The lender shall be obligated to withhold amounts only to the extent that sufficient interim or construction financing funds remain undisbursed as of the date the lender receives the notice.

(6) Sums so withheld shall not be disbursed by the lender, except by the written agreement of the potential lien claimant, owner, and prime contractor in such form as may be prescribed by the lender, or the order of a court of competent jurisdiction.

(7) In the event a lender fails to abide by the provisions of *subsections (4) and (5) of this section, then the mortgage, deed of trust, or other encumbrance securing the lender shall be subordinated to the lien of the potential lien claimant to the extent of the interim or construction financing wrongfully disbursed, but in no event more than the amount stated in the notice plus costs as fixed by the court, including reasonable attorneys' fees.

(8) Any potential lien claimant shall be liable for any loss, cost, or expense, including reasonable attorneys' fees and statutory costs, to a party injured thereby arising out of any unjust, excessive, or premature notice filed under purported authority of this section. "Notice" as used in this subsection does not include notice given by a potential lien claimant of the right to claim liens under this chapter where no actual claim is made.

(9)(a) Any owner of real property subject to a notice to real property lender under this section, or the contractor, subcontractor, lender, or lien claimant who believes the claim that underlies the notice is frivolous and made without reasonable cause, or is clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order commanding the potential lien claimant who issued the notice to the real property lender to appear before the court at a time no earlier than six nor later than fifteen days from the date of service of the application and order on the potential lien claimant, and show cause, if any he or she has, why the notice to real property lender should not be declared void. The motion shall state the grounds upon which relief is asked and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(b) The order shall clearly state that if the potential lien claimant fails to appear at the time and place noted, the notice to lender shall be declared void and that the potential lien claimant issuing the notice shall be ordered to pay the costs

requested by the applicant including reasonable attorneys' fees.

(c) The clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee of thirty-five dollars.

(d) If, following a hearing on the matter, the court determines that the claim upon which the notice to real property lender is based is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order declaring the notice to real property lender void if frivolous and made without reasonable cause, or reducing the amount stated in the notice if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the person who issued the notice. If the court determines that the claim underlying the notice to real property lender is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the issuer of the notice to be paid by the applicant.

(e) Proceedings under this subsection shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1992 c 126 § 13; 1991 c 281 § 22.]

***Reviser's note:** The reference to subsections (4) and (5) of this section appears to be erroneous. Engrossed Senate Bill No. 6441 changed the subsection numbers. Subsections (4) and (5) are now subsections (5) and (6).

60.04.226 Financial encumbrances—Priorities.

Except as otherwise provided in RCW 60.04.061 or 60.04.221, any mortgage or deed of trust shall be prior to all liens, mortgages, deeds of trust, and other encumbrances which have not been recorded prior to the recording of the mortgage or deed of trust to the extent of all sums secured by the mortgage or deed of trust regardless of when the same are disbursed or whether the disbursements are obligatory. [1991 c 281 § 23.]

60.04.230 Construction projects—Notice to be posted by prime contractor—Penalty. (1) For any construction project costing more than five thousand dollars the prime contractor shall post in plain view for the duration of the construction project a legible notice at the construction job site containing the following:

(a) The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number and identification; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

(ii) The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner if the bond is for an amount not less than fifty percent of the total amount of the construction project.

(2) For any construction project which requires a building permit under local ordinance, compliance with the posting requirements of RCW 19.27.095 shall constitute compliance with this section. Otherwise, the information shall be posted as set forth in this section.

(3) Failure to comply with this section shall subject the prime contractor to a civil penalty of not more than five thousand dollars, payable to the county where the project is located. [1991 c 281 § 28; 1984 c 202 § 3.]

60.04.250 Informational materials on construction lien laws—Master documents. The department of labor and industries shall prepare master documents that provide informational material about construction lien laws and available safeguards against real property lien claims. The material shall include methods of protection against lien claims, including obtaining lien release documents, performance bonds, joint payee checks, the opportunity to require contractor disclosure of all potential lien claimants as a condition of payment, and lender supervision under *RCW 60.04.200 and 60.04.210. The material shall also include sources of further information, including the department of labor and industries and the office of the attorney general. [1990 c 81 § 1; 1988 c 270 § 1.]

***Reviser's note:** RCW 60.04.200 and 60.04.210 were repealed by 1991 c 281 § 31, effective April 1, 1992.

Effective date—1988 c 270: "This act shall take effect July 1, 1989." [1988 c 270 § 4.]

60.04.255 Informational materials on construction lien laws—Copies—Liability. (1) Every real property lender shall provide a copy of the informational material described in RCW 60.04.250 to all persons obtaining loans, the proceeds of which are to be used for residential construction or residential repair or remodeling.

(2) Every contractor shall provide a copy of the informational material described in RCW 60.04.250 to customers required to receive contractor disclosure notice under RCW 18.27.114.

(3) No cause of action may lie against the state, a real property lender, or a contractor arising from the provisions of RCW 60.04.250 and this section.

(4) For the purpose of this section, "real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, or individual that makes loans secured by real property in this state. [1988 c 270 § 2.]

Effective date—1988 c 270: See note following RCW 60.04.250.

60.04.261 Availability of information. The prime contractor shall immediately supply the information listed in RCW 19.27.095(2) to any person who has contracted to supply materials, equipment, or professional services or who is a subcontractor on the improvement, as soon as the identity and mailing address of such subcontractor, supplier, or professional is made known to the prime contractor either directly or through another subcontractor, supplier, or professional. [1991 c 281 § 24.]

60.04.900 Liberal construction—1991 c 281. RCW 19.27.095, 60.04.230, and 60.04.011 through 60.04.226 and 60.04.261 are to be liberally construed to provide security for all parties intended to be protected by their provisions. [1991 c 281 § 25.]

60.04.901 Captions not law—1991 c 281. Section headings as used in this chapter do not constitute any part of the law. [1991 c 281 § 26.]

60.04.902 Effective date, application—1991 c 281. This act shall take effect June 1, 1992. Lien claims based on an improvement commenced by a potential lien claimant on or after June 1, 1992, shall be governed by the provisions of this act. [1992 c 126 § 14; 1991 c 281 § 32.]

60.04.903 Effective date—1992 c 126. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1992, except section 14 of this act which shall take effect immediately [March 31, 1992]. [1992 c 126 § 15.]

60.04.904 Application of chapter 281, Laws of 1991, to actions pending as of June 1, 1992—1993 c 357. All rights acquired and liabilities incurred under acts or parts of act repealed by chapter 281, Laws of 1991, are hereby preserved, and all actions pending as of June 1, 1992, shall proceed under the law as it existed at the time chapter 281, Laws of 1991, took effect. [1993 c 357 § 1.]

Retroactive application—1993 c 357: "This act is remedial in nature and shall be applied retroactively to June 1, 1992." [1993 c 357 § 2.]

Effective date—1993 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 357 § 3.]

**Chapter 60.08 RCW
CHATTEL LIENS**

Sections

- 60.08.010 Lien authorized.
- 60.08.020 Notice of lien—Contents—Form.
- 60.08.030 Priority of lien.
- 60.08.040 Enforcement of lien—Limitation of action.
- 60.08.050 Rank of lien—Personal judgment—Deficiency—Costs.
- 60.08.060 Filing notice of liens.

60.08.010 Lien authorized. Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: PROVIDED, HOWEVER, That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien. [1917 c 68 § 1; 1909 c 166 § 1; 1905 c 72 § 1; RRS § 1154.]

(2004 Ed.)

60.08.020 Notice of lien—Contents—Form. In order to make such lien effectual the lien claimant shall, within ninety days from the date of delivery of such chattel to the owner, file in the office of the auditor of the county in which such chattel is kept, a lien notice, which notice shall state the name of the claimant, the name of the owner, a description of the chattel upon which the claimant has performed labor or furnished material, the amount for which a lien is claimed and the date upon which such expenditure of labor or material was completed, which notice shall be signed by the claimant or someone on his behalf, and may be in substantially the following form:

CHATTEL LIEN NOTICE.

.....	Claimant,	}
against	Owner.	
.....		

Notice is hereby given that has and claims a lien upon (here insert description of chattel), owned by for the sum of dollars, for and on account of labor, skill and material expended upon said which was completed upon the day of, 19...
.....
Claimant.

[1983 c 33 § 1; 1917 c 68 § 2; 1905 c 72 § 2; RRS § 1155.]

60.08.030 Priority of lien. The liens created by this chapter are preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of the commencement of the performance of the labor, or the furnishing of the materials for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant has no notice. [1917 c 68 § 3; 1905 c 72 § 3; RRS § 1156.]

60.08.040 Enforcement of lien—Limitation of action. The lien herein provided for may be enforced against all persons having a junior or subsequent interest in any such chattel, by judicial procedure or by summary procedure as set forth in chapter 60.10 RCW within nine months after the filing of such lien notice, and if no such action shall be commenced within such time such lien shall cease. [1995 c 62 § 4; 1969 c 82 § 11; 1917 c 68 § 4; 1905 c 72 § 4; RRS § 1157.]

Secured transactions: Article 62A.9A RCW.

60.08.050 Rank of lien—Personal judgment—Deficiency—Costs. In every case originating in or removed to a court of competent jurisdiction, in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

- (1) All persons performing labor;
- (2) All persons furnishing material;

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought

to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the action. [1917 c 68 § 5; RRS § 1157a.]

60.08.060 Filing notice of liens. Upon presentation of such lien notice to the auditor of any county, he shall file the same, and endorse thereon the time of the reception, the number thereof, and shall enter the same in a suitable book or file (but need not record the same). Such book or file shall have herewith an alphabetic index, in which the county auditor shall index such notice by noting the name of the owner, name of lien claimant, description of property, date of lien (which shall be the date upon which such expenditure of labor, skill or material was completed), date of filing and when released, the date of release. [1983 c 33 § 2; 1905 c 72 § 5; RRS § 1158.]

Chapter 60.10 RCW

PERSONAL PROPERTY LIENS— SUMMARY FORECLOSURE

Sections

60.10.010	Definitions.
60.10.020	Methods of foreclosure.
60.10.023	Judicial foreclosure of personal property liens.
60.10.027	Judicial foreclosure of a security interest.
60.10.030	Notice and sale—Priorities—Sale procedure—Surplus—Deficiency.
60.10.040	Rights and interest of purchaser for value.
60.10.050	Redemption.
60.10.060	Noncompliance with chapter—Rights of lien debtor.
60.10.070	"Commercially reasonable."

60.10.010 Definitions. As used in this chapter:

(1) The term "lien debtor" means the person who is obligated, owes payment or other performance. Where the lien debtor and the owner of the collateral are not the same person, the term "lien debtor" means the owner of the collateral.

(2) "Collateral" means the property subject to a statutory lien.

(3) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest.

(4) "Secured party" has the same meaning as used in Article 9A of the Uniform Commercial Code (Title 62A RCW). [2001 c 32 § 3; 1969 c 82 § 2.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Judicial foreclosure of personal property liens: RCW 60.10.023.

60.10.020 Methods of foreclosure. Any lien upon personal property, excluded by *RCW 62A.9-104 from the provisions of the Uniform Commercial Code (Title 62A RCW), may be foreclosed by: (1) An action in the district court hav-

ing jurisdiction in the district in which the property is situated in accordance with RCW 60.10.023, if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the property is situated in accordance with RCW 60.10.023, if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in this chapter. [1995 c 62 § 5; 1991 c 33 § 3; 1969 c 82 § 3.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Effective date—1991 c 33: See note following RCW 3.66.020.

60.10.023 Judicial foreclosure of personal property liens. The provisions of chapter 61.12 RCW, so far as they are applicable, govern in actions for the judicial foreclosure of liens on personal property excluded by *RCW 62A.9-104 from the provisions of the Uniform Commercial Code, Title 62A RCW. The lien holder may proceed on the lien; and if there is a separate obligation secured by the lien, the lienholder may bring suit on the obligation. If the lienor proceeds on the obligation, the court shall, in addition to entering a decree foreclosing the lien, render judgment for the amount due on the obligation. The decree shall direct the sale of the lien property, and if there is a judgment on an obligation and the proceeds of the sale are insufficient to satisfy the judgment, the sheriff is authorized to proceed under the same execution and levy on and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied.

Redemption rights and the rights and interest of a purchaser for value under this section are governed by RCW 60.10.040 and 60.10.050. [1995 c 62 § 1; 1969 c 82 § 1. Formerly RCW 61.12.162.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

60.10.027 Judicial foreclosure of a security interest.

The provisions of chapter 61.12 RCW, so far as they are applicable, shall also be available to a secured party seeking to enforce a security interest by judicial proceedings as authorized by *RCW 62A.9-501(1). In such a proceeding, the court shall enter a judgment foreclosing the security interest and shall render judgment for the amount due on the secured obligation. The decree shall direct the sale of property that is subject to the foreclosed security interest and is within the court's jurisdiction, and if the proceeds of sale are insufficient to satisfy the judgment, the sheriff is authorized to proceed under the same execution and levy on other property of the judgment debtor, not exempt from execution, for the sum remaining unsatisfied.

The rights and interest of a purchaser for value are governed by RCW 60.10.040 except as otherwise provided in Title 62A RCW. [1995 c 62 § 2.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

60.10.030 Notice and sale—Priorities—Sale procedure—Surplus—Deficiency. (1) A lien foreclosure authorized by RCW 60.10.020 may be summarily foreclosed by notice and sale as provided herein. The lien holder may sell, or otherwise dispose of the collateral in its then condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the lien under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the lien holder, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the lien holder need not comply with his demand.

(2) The lien holder must account to the lien debtor for any surplus, and, unless otherwise agreed, the lien debtor is not liable for any deficiency.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable which shall be construed as provided in RCW 60.10.070. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the lien holder to the lien debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the lien debtor in this state or who is known by the lien holder to have a security interest in the collateral. The lien holder may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale. [1969 c 82 § 4.]

60.10.040 Rights and interest of purchaser for value.

When a lien is foreclosed in accordance with the provisions of this chapter, the disposition transfers to a purchaser for value all of the lien debtor's rights therein, discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the lien holder fails to comply with the requirements of this chapter:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the lien holder, other bidders or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith. [1995 c 62 § 6; 1969 c 82 § 5.]

60.10.050 Redemption. At any time before the lien holder has disposed of collateral or entered into a contract for its disposition under this chapter, the lien debtor or any other secured party may redeem the collateral by tendering fulfillment of all obligations to the holder that are secured by the collateral as well as the expenses reasonably incurred by the lien holder in holding and preparing the collateral for disposition, in arranging for the sale, and for reasonable attorneys' fees and legal expenses. [1995 c 62 § 7; 1969 c 82 § 6.]

60.10.060 Noncompliance with chapter—Rights of lien debtor. If it is established that the lien holder is not proceeding in accordance with the provisions of this chapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the lien debtor or any person entitled to notification or whose security interest has been made known to the lien holder prior to the disposition has a right to recover from the lien holder any loss caused by a failure to comply with the provisions of this chapter. The lien debtor has a right to recover in any event an amount not less than ten percent of the original lien claimed. [1969 c 82 § 7.]

60.10.070 "Commercially reasonable." As used in this chapter, "commercially reasonable" shall be construed in a manner consistent with the following:

The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the lien holder is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the lien holder either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [1969 c 82 § 8.]

**Chapter 60.11 RCW
CROP LIENS**

Sections

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60.11.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Crop" means all products of the soil either growing or cropped, cut, or gathered which require annual planting, harvesting, or cultivating. A crop includes orchard crops, but does not include vegetation produced by the powers of nature alone, nursery stock, or vegetation intended as a permanent enhancement of the land itself.

(2) "Handler" means a person who prepares an orchard crop for market for the account of, or as agent for, the producer of the orchard crop, which preparation includes, but is not limited to, receiving, storing, packing, marketing, selling, or delivering the orchard crop; and who takes delivery of the orchard crop from the producer of the orchard crop or from another handler. "Handler" does not include a person who solely transports the orchard crop from the producer or another handler to another person.

(3) "Landlord" means a person who leases or subleases to a tenant real property upon which crops are growing or will be grown.

(4) "Orchard crop" means cherries, peaches, nectarines, plums or prunes, pears, apricots, and apples.

(5) "Secured party" and "security interest" have the same meaning as used in the Uniform Commercial Code, Title 62A RCW.

(6) "Supplier" includes, but is not limited to, a person who furnishes seed, furnishes and/or applies commercial fertilizer, pesticide, fungicide, weed killer, or herbicide, including spraying and dusting, upon the land of the grower or landowner, or furnishes any work or labor upon the land of the grower or landowner including tilling, preparing for the growing of crops, sowing, planting, cultivating, cutting, digging, picking, pulling, or otherwise harvesting any crop grown thereon, or in gathering, securing, or housing any crop grown thereon, or in threshing any grain or hauling to any warehouse any crop, including grain, grown thereon.

(7) "Lien debtor" means the person who is obligated or owes payment or other performance. If the lien debtor and the owner of the property encumbered by the crop lien or security interest are not the same person, "lien debtor" means the owner of the property encumbered by the crop lien or security interest.

(8) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest. [2000 c 250 § 9A-824; 1991 c 286 § 1; 1986 c 242 § 1.]

Effective date—2000 c 250: See RCW 62A.9A-701.

60.11.020 Persons entitled to crop liens—Property subject to lien. (1) A landlord whose lease or other agreement with the tenant provides for cash rental payment shall have a lien upon all crops grown upon the demised land in which the landlord has an interest for payment of no more

than one year's rent, where the last or only payment of such one year's rent is due or will become due within six months following the last day of harvest of the crops encumbered by the crop lien. A landlord with a crop share agreement has an interest in the growing crop which shall not be encumbered by crop liens except as provided in subsections (2) and (3) of this section.

(2) A supplier shall have a lien upon all crops for which the supplies are used or applied for payment of the purchase price of the supplies and/or services performed: **PROVIDED**, That the landlord's interest in the crop shall only be subject to the lien for the amount obligated to be paid by the landlord if prior written consent of the landlord is obtained or if the landlord has agreed in writing with the tenant to pay or be responsible for a portion of the supplies and/or services provided by the lien holder.

(3) A handler shall have a lien on all orchard crops delivered by the lien debtor or another handler to the handler and on all proceeds of the orchard crops for payment of: (a) All customary charges for the ordinary and necessary handling of the orchard crop, including but not limited to charges for transporting, receiving, inspecting, materials and supplies furnished, washing, waxing, sorting, packing, storing, promoting, marketing, selling, advertising, insuring, or otherwise handling the lien debtor's orchard crop; and (b) reasonable cooperative per unit retainages, and for all governmental or quasi-governmental assessments imposed by statute, ordinance, or government regulation. Charges shall not include direct or indirect advances or extensions of credit to a lien debtor. [2000 c 250 § 9A-825; 1991 c 286 § 2; 1986 c 242 § 2.]

Effective date—2000 c 250: See RCW 62A.9A-701.

60.11.030 Attachment and effectiveness of lien on crops and proceeds—Filing. (1) Upon the later of both: (a) Execution of the lease or other agreement, or commencement of delivery of such supplies, and/or of provision of such services giving rise to the crop lien; and (b) filing a financing statement as required by RCW 62A.9A-310 and subsection (3) of this section, the crop liens described in RCW 60.11.020 (1) and (2) shall become effective and attach to the subject crop for all sums then and thereafter due and owing the lien holder under this chapter, and those liens shall continue in all identifiable cash proceeds of the crop.

(2) Upon the delivery of an orchard crop by the lien debtor or another handler to a handler without the necessity of filing, the crop lien described in RCW 60.11.020(3) shall become effective and attach to and be perfected in the delivered orchard crop for all sums then and thereafter due and owing the lien holder under this chapter, and the lien shall continue and be perfected in all proceeds of the orchard crop.

(3) Except as provided in RCW 60.11.040(4) with respect to the lien of a landlord, and except for the lien of a handler on orchard crops as provided in RCW 60.11.020(3), the lien holder must file the required financing statement during the period after the commencement of delivery of such supplies and/or of provision of such services, but before the completion of the harvest of the crops for which the lien is claimed, or in the case of a lien for furnishing work or labor, before the end of the fortieth day after the cessation of the

work or labor for which the lien is claimed. If the lien holder under the crop liens described in RCW 60.11.020 (1) or (2) is to be allowed costs, disbursements, and attorneys' fees, the lien holder must also mail a copy of such financing statement to the last known address of the debtor by certified mail, return receipt requested, within ten days after filing the financing statement. [2001 c 32 § 4; 2000 c 250 § 9A-826; 1991 c 286 § 3; 1986 c 242 § 3.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Effective date—2000 c 250: See RCW 62A.9A-701.

60.11.040 Statement of lien—Filing—Contents—

Duration. (1) Within fourteen days of receipt of a written request from the lien debtor, or other person who provides the lien holder authorization from the lien debtor for such statement, the lien holder shall provide that person a statement described in subsection (2) of this section. Failure timely to provide the statement shall cause the lien holder to be liable to the person requesting for the attorneys' fees and costs incurred by that person to obtain the statement, together with damages incurred by that person due to the failure of the lien holder to provide the statement, including in the case of the lien debtor any loss resulting from the lien debtor's inability to obtain financing, or the increased costs thereof.

(2) The statement shall be in writing, authenticated by the claimant, and shall contain in substance the following information:

- (a) The name and address of the claimant;
- (b) The name and address of the debtor;
- (c) The date of commencement of performance for which the lien is claimed;
- (d) A description of the labor services, materials, or supplies furnished;
- (e) A description of the crop and its location to be charged with the lien sufficient for identification; and
- (f) The signature of the claimant.

(3) The statement need not be filed with the department of licensing.

(4) A lien for rent claimed by a landlord pursuant to this chapter shall be effective during the term of the lease for a period of up to five years. A financing statement for a landlord lien covering a lease term longer than five years may be continued in accordance with RCW 62A.9A-515(d). A landlord who has a right to a share of the crop may place suppliers on notice by filing a financing statement in the same manner as provided for filing a financing statement for a landlord's lien. [2000 c 250 § 9A-827; 1991 c 286 § 4; 1989 c 229 § 1; 1986 c 242 § 4.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Severability—1989 c 229: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 229 § 2.]

60.11.050 Priorities of liens and security interests.

(1) Except as provided in subsections (2), (3), (4), and (5) of this section, conflicting liens and security interests in crops and their proceeds shall rank in accordance with the time of filing.

(2) The lien created in RCW 60.11.020(2) in favor of any person who furnishes any work or labor upon the land of the

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grower or landowner shall be preferred and prior to any other lien or security interest upon the crops to which they attach including the liens described in subsections (3), (4), and (5) of this section.

(3) The lien created in RCW 60.11.020(3) in favor of handlers is preferred and prior to a lien or security interest described in subsection (4) or (5) of this section and to any other lien or security interest upon the orchard crops to which they attach except the liens in favor of a person who furnishes work or labor upon the land of the grower or landlord. Whenever more than one handler holds a handler's lien created by RCW 60.11.020(3) in the same orchard crop, unless the affected parties otherwise agree in writing, the later of the liens to attach has priority over all previously attached handlers' liens created by RCW 60.11.020(3).

(4) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a later perfected lien or security interest incurred to produce the crop to the extent that obligations secured by such earlier perfected security interest or lien were not incurred to produce such crops.

(5) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a properly perfected landlord's lien. [2000 c 250 § 9A-828; 1991 c 286 § 5; 1986 c 242 § 5.]

Effective date—2000 c 250: See RCW 62A.9A-701.

60.11.060 Foreclosure and enforcement of crop lien.

Any lien created by this chapter may be foreclosed or enforced by: (1) An action in the district court having jurisdiction in the district in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070, if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070, if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in RCW 60.11.080; or (4) procedures in Part 6 of Article 9A of the Uniform Commercial Code. [2000 c 250 § 9A-829; 1991 c 33 § 4; 1986 c 242 § 6.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1991 c 33: See note following RCW 3.66.020.

60.11.070 Judicial foreclosure. The lien holder may proceed upon his or her lien; and if there is a separate obligation in writing to pay the same, secured by the lien, he or she may bring suit upon such separate promise. When he or she proceeds on the promise, if there is a specific agreement therein contained, for the payment of a certain sum or there is a separate obligation for the sum in addition to a decree of sale of lien property, judgment shall be rendered for the amount due upon the promise or other instrument, the payment of which is thereby secured; the decree shall direct the sale of the lien property and if the proceeds of the sale are insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied. In

a judicial foreclosure, the court shall allow reasonable attorneys' fees and disbursements for establishing a lien. [2000 c 250 § 9A-830; 1986 c 242 § 7.]

Effective date—2000 c 250: See RCW 62A.9A-701.

60.11.080 Summary foreclosure. (1) A lien may be summarily foreclosed by notice and sale as provided in this section. The lien holder may sell or otherwise dispose of the collateral in its existing condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale, selling and the like, and to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the lien under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the lien holder, the holder of a subordinate security interest must seasonably furnish reasonable proof of his or her interest, and unless he or she does so, the lien holder need not comply with the demand.

(2) The lien holder shall account to the lien debtor for any surplus, and, unless otherwise agreed, the lien debtor is not liable for any deficiency.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline quickly in value or is of a type customarily sold on a recognized market, reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the lien holder to the lien debtor, and to any other person who has a duly filed crop lien, or who has a security interest in the collateral and has duly filed a financing statement indexed in the name of the lien debtor in this state, or who is known by the lien holder to have a security interest or crop lien in the collateral. The lien holder may buy at any public sale, and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the lien holder may buy at private sale. [1986 c 242 § 8.]

60.11.090 Rights and interest of purchaser for value.

When a lien is foreclosed in accordance with RCW 60.11.060, the disposition transfers to a purchaser for value all of the lien debtor's right therein and discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the lien holder fails to comply with the requirements of this chapter or of any judicial proceedings under RCW 60.11.070:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the lien holder, other bidders, or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith. [1986 c 242 § 9.]

60.11.100 Redemption. The right of the lien debtor and others to redeem collateral shall be as provided in RCW 62A.9A-623. [2000 c 250 § 9A-831; 1986 c 242 § 10.]

Effective date—2000 c 250: See RCW 62A.9A-701.

60.11.110 Noncompliance with chapter—Rights of lien debtor. If the lien holder is not proceeding in accordance with the provisions of this chapter, disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the lien debtor or any person entitled to notification or whose security interest has been made known to the lien holder prior to the disposition has a right to recover from the lien holder any loss caused by a failure to comply with the provisions of this chapter. [1986 c 242 § 11.]

60.11.120 "Commercially reasonable." For purposes of this chapter, "commercially reasonable" has the meaning given and shall be construed in a manner consistent with RCW 62A.9A-627. [2000 c 250 § 9A-832; 1986 c 242 § 12.]

Effective date—2000 c 250: See RCW 62A.9A-701.

60.11.130 Limitation of action to foreclose. Judicial foreclosure or summary procedure as provided in RCW 60.11.060 shall be brought within twenty-four calendar months after filing the financing statement for the lien, except: (1) In the case of a landlord lien which shall be twenty-four calendar months from the date of default on the lease, and (2) in the case of a handler's lien on a given orchard crop which shall be twenty-four calendar months from the date of default on payment of the charges described in RCW 60.11.020(3) attributable to that orchard crop. Upon expiration of such time, the claimed lien shall expire. [2000 c 250 § 9A-833; 1986 c 242 § 13.]

Effective date—2000 c 250: See RCW 62A.9A-701.

60.11.140 Termination statement. Whenever the total amount of the lien has been fully paid and as otherwise provided in RCW 62A.9A-513 (c) and (d), within twenty days following receipt of an authenticated demand following such full payment of the lien, the lien holder filing a lien shall send to the lien debtor or file with the department of licensing a termination statement for the financing statement. Failure to file a termination statement by the lien holder or the assignee of the lien holder shall cause the lien holder or its assignee to be liable to the debtor for the attorneys' fees and costs incurred by the debtor to have the lien terminated together with damages incurred by the debtor due to the failure of the lien holder to terminate the lien. [2000 c 250 § 9A-834; 1991 c 286 § 6; 1986 c 242 § 14.]

Effective date—2000 c 250: See RCW 62A.9A-701.

60.11.900 Savings—Liens created under prior law.

Liens created prior to January 1, 1987, which are based on statutes repealed by *this act, shall remain in effect for the duration provided by the law in effect before January 1, 1987. The department of licensing shall notify persons requesting information for crop liens that, for this transition period, records of crop liens may exist at a county auditor's office as well as at the department of licensing. [1986 c 242 § 15.]

*Reviser's note: "this act" [1986 c 242] repealed chapters 60.12, 60.14, and 60.22 RCW.

60.11.901 Section captions. As used in this chapter, section captions constitute no part of the law. [1986 c 242 § 18.]

60.11.902 Severability—1986 c 242. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 242 § 19.]

60.11.903 Effective date—1986 c 242. This act shall take effect January 1, 1987. [1986 c 242 § 21.]

60.11.904 Transition rule for filings made before July 1, 2001. All statements filed with the department of licensing under this chapter before July 1, 2001, shall satisfy the requirements of RCW 62A.9A-310 and 60.11.030 for filing a financing statement. [2001 c 32 § 5; 2000 c 250 § 9A-835.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Effective date—2000 c 250: See RCW 62A.9A-701.

Chapter 60.13 RCW

PROCESSOR AND PREPARER LIENS FOR AGRICULTURAL PRODUCTS

Sections

60.13.010	Definitions.
60.13.020	Processor lien.
60.13.030	Preparer lien for grain, hay, or straw.
60.13.035	Notice of preparer lien for dairy products—Proof of lien.
60.13.040	Filing of statement evidencing lien—Contents—Standard filing forms, fees, and procedures.
60.13.050	Priority of lien.
60.13.060	Duration of lien—Statement of discharge.
60.13.070	Foreclosure and enforcement of lien—Costs.

60.13.010 Definitions. As used in this chapter, the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Agricultural product" means any unprocessed horticultural, vermicultural and its byproducts, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock. When used in RCW 60.13.020, "agricultural product" means horticultural, viticultural, aquacultural, or berry products, hay and straw, milk and milk products, vegetable seed, or turf and forage seed and applies only when such products are delivered to a processor or conditioner in an unprocessed form.

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(2) "Conditioner," "consignor," "person," and "producer" have the meanings defined in RCW 20.01.010.

(3) "Delivers" means that a producer completes the performance of all contractual obligations with reference to the transfer of actual or constructive possession or control of an agricultural product to a processor or conditioner or preparer, regardless of whether the processor or conditioner or preparer takes physical possession.

(4) "Preparer" means a person engaged in the business of feeding livestock or preparing livestock products for market.

(5) "Processor" means any person, firm, company, or other organization that purchases agricultural products except milk and milk products from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale, or that purchases or markets milk from a dairy producer and is obligated to remit payment to such dairy producer directly.

(6) "Commercial fisherman" means a person licensed to fish commercially for or to take food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute.

(7) "Fish" means food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute. [2002 c 278 § 1; 1991 c 174 § 2; 1987 c 148 § 1; 1985 c 412 § 1.]

60.13.020 Processor lien. Starting on the date a producer delivers any agricultural product to a processor or conditioner, the producer has a first priority statutory lien, referred to as a "processor lien." A commercial fisherman who delivers fish to a processor also has a first priority statutory "processor lien" starting on the date the fisherman delivers fish to the processor. This processor lien shall continue until twenty days after payment for the product is due and remains unpaid, without filing any notice of lien, for the contract price, if any, or the fair market value of the products delivered. The processor lien attaches to the agricultural products or fish delivered, to the processor's or conditioner's inventory, and to the processor's or conditioner's accounts receivable. However, no processor lien may attach to agricultural products or fish delivered by a producer or commercial fisherman, or on the producer's or fisherman's behalf, to a processor which is organized and operated on a cooperative basis and of which the producer or fisherman is a member, nor may such lien attach to such processor's inventory or accounts receivable. [1987 c 148 § 2; 1985 c 412 § 2.]

60.13.030 Preparer lien for grain, hay, or straw. Starting on the date a producer delivers grain, hay, or straw to a preparer, the producer has a first priority statutory lien, referred to as a "preparer lien." This preparer lien shall continue twenty days after payment for the product is due and remains unpaid, without filing any notice of lien, for the contract price, if any, or the fair market value of the products delivered. The preparer lien attaches to the agricultural products delivered by the producer to the preparer, and to the preparer's accounts receivable. [1985 c 412 § 3.]

60.13.035 Notice of preparer lien for dairy products—Proof of lien. A person who controls or possesses amounts payable to the preparer of dairy products or the preparer's assigns, if the preparer or preparer's assigns is not a producer-handler, which are properly encumbered by a preparer's lien upon an account receivable shall not be obligated to pay a producer amounts to which the producer's preparer lien has attached until that person receives written notice of such lien, nor shall that person be liable to the producer for any amounts paid out prior to receipt of said notice. The notice required herein shall contain the information described in RCW 60.13.040(2). If requested by the person responsible for payment of such amounts, the producer must seasonably furnish reasonable proof that the preparer lien continues to exist and unless such proof is so furnished, that person has no obligation to pay the producer. A preparer of dairy products shall provide the name of the purchaser or marketing agent of the products to the producer upon request.

Failure to furnish the written notice as provided in this section shall not affect the status of the lien established under this chapter in regard to the relationship with other creditors. [1986 c 178 § 15.]

60.13.040 Filing of statement evidencing lien—Contents—Standard filing forms, fees, and procedures. (1) A producer or commercial fisherman claiming a processor or preparer lien may file a statement evidencing the lien with the department of licensing after payment from the processor, conditioner, or preparer to the producer or fisherman is due and remains unpaid. For purposes of this subsection and RCW 60.13.050, payment is due on the date specified in the contract, or if not specified, then within thirty days from time of delivery.

(2) The statement shall be in a record, authenticated by the producer or fisherman, and shall contain in substance the following information:

(a) A true statement or a reasonable estimate of the amount demanded after deducting all credits and offsets;

(b) The name of the processor, conditioner, or preparer who received the agricultural product or fish to be charged with the lien;

(c) A description sufficient to identify the agricultural product or fish to be charged with the lien;

(d) A statement that the amount claimed is a true and bona fide existing debt as of the date of the filing of the notice evidencing the lien;

(e) The date on which payment was due for the agricultural product or fish to be charged with the lien; and

(f) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers. [2002 c 278 § 2; 2001 c 32 § 6. Prior: 1987 c 189 § 7; 1987 c 148 § 3; 1985 c 412 § 4.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

60.13.050 Priority of lien. (1)(a) If a statement is filed pursuant to RCW 60.13.040 within twenty days of the date upon which payment from the processor, conditioner, or preparer to the producer or commercial fisherman is due and remains unpaid, the processor or preparer lien evidenced by the statement continues its priority over all other liens or

security interests upon agricultural products or fish, inventory, and accounts receivable, except as provided in (b) of this subsection. Such priority is without regard to whether the other liens or security interests attached before or after the date on which the processor or preparer lien attached.

(b) The processor or preparer lien shall be subordinate to liens for taxes or labor perfected before filing of the processor or preparer lien.

(2) If the statement provided for in RCW 60.13.040 is not filed within twenty days of the date payment is due and remains unpaid, the processor or preparer lien shall thereupon become subordinate to:

(a) A lien that has attached to the agricultural product or fish, inventory, or accounts receivable before the date on which the processor or preparer lien attaches; and

(b) A perfected security interest in the agricultural product or fish, inventory, or accounts receivable. [1987 c 148 § 4; 1985 c 412 § 5.]

60.13.060 Duration of lien—Statement of discharge.

(1) The processor lien shall terminate twelve months after, and the preparer lien shall terminate fifty days after, the later of the date of attachment or filing, unless a suit to foreclose the lien has been filed before that time as provided in RCW 60.13.070.

(2) If a statement has been filed as provided in RCW 60.13.040 and the producer or commercial fisherman has received payment for the obligation secured by the lien, the producer or fisherman shall promptly file with the department of licensing a statement declaring that full payment has been received and that the lien is discharged. If, after payment, the producer or fisherman fails to file such statement of discharge within ten days following a request to do so, the producer or fisherman shall be liable to the processor, conditioner, or preparer in the sum of one hundred dollars plus actual damages caused by the failure. [2002 c 278 § 3; 1987 c 148 § 5; 1985 c 412 § 6.]

60.13.070 Foreclosure and enforcement of lien—Costs. (1) The processor or preparer liens may be foreclosed and enforced by civil action in superior court.

(2) In all suits to enforce processor or preparer liens, the court shall, upon entering judgment, allow to the prevailing party as a part of the costs, all moneys paid for the filing and recording of the lien and reasonable attorney fees. [1985 c 412 § 7.]

Chapter 60.16 RCW

LABOR LIENS ON ORCHARDS AND ORCHARD LANDS

Sections

60.16.010	Liens authorized.
60.16.020	Notice of lien—Filing—Contents—Foreclosure.
60.16.030	Limitation of action to foreclose—Costs.

60.16.010 Liens authorized. Any person or corporation who shall do or cause to be done any labor upon any orchard or orchard lands, in pruning, spraying, cultivating and caring for the same, at the request of the owner thereof, or his agent, shall have a lien upon such orchard and orchard

lands for such work and labor so performed. [1917 c 110 § 1; RRS § 1131-1.]

60.16.020 Notice of lien—Filing—Contents—Foreclosure. Any person or corporation claiming the benefit of this chapter, must within forty days after the close of such work or labor for each season during which such work and labor is done, file for record with the county auditor of the county in which said work and labor was performed and in which said land or part thereof is situated, a claim of lien which shall be in substance in accordance with the provisions of *RCW 60.04.060, so far as the same is applicable, which said claim of lien shall be verified as in said section provided, and such lien may be enforced in a civil action in the same manner as near as may be, as provided in *RCW 60.04.120. [1917 c 110 § 2; RRS § 1131-2.]

***Reviser's note:** RCW 60.04.060 and 60.04.120 were repealed by 1991 c 281 § 31, effective April 1, 1992.

60.16.030 Limitation of action to foreclose—Costs. Any action to foreclose such claim of lien shall be brought within eight calendar months after the filing of such claim for lien as provided in RCW 60.16.020 and in any such action brought to enforce such lien, the court shall allow as part of the costs the money paid for making, filing and recording such claim of lien and a reasonable attorney's fee. [1917 c 110 § 3; RRS § 1131-3.]

Chapter 60.24 RCW

LIEN FOR LABOR AND SERVICES ON TIMBER AND LUMBER

Sections

60.24.020	Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber.
60.24.030	Lien on lumber—"Lumber" defined.
60.24.033	Lien on real property for labor or services on timber and lumber.
60.24.035	Lien for stumpage.
60.24.038	Priority of lien.
60.24.040	Period covered by labor liens.
60.24.070	Period covered by stumpage lien.
60.24.075	Claims—Contents—Form.
60.24.080	Filing claim for stumpage lien.
60.24.100	Recording claims—Fees.
60.24.110	Limitation of action.
60.24.120	Venue—Procedure.
60.24.130	Sheriff as receiver—Deposit to recover possession—Costs.
60.24.140	Pleadings by defendant—Amendments—Hearing.
60.24.150	Enforcement against all or part of property.
60.24.160	Errors in claim, effect of.
60.24.170	Purchase of property subject to lien—Presumption of notice.
60.24.180	Joinder—Costs.
60.24.190	Judgment—Sale—Disposition of proceeds.
60.24.195	Sale of property subject to lien—When.
60.24.200	Damages for eloining, injuring, destroying or removing marks, etc.—Recovery.

Lien under this chapter extends to real property on which labor and services are performed: RCW 60.24.033.

60.24.020 Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber. Every person performing labor upon or who shall assist in obtaining or securing saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any tugboat or towboat, which shall tow or assist in towing, from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts

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or other timber, and the owner or owners of any team or any logging engine, which shall haul or assist in hauling from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any logging or other railroad over which saw logs, spars, piles, cord wood, shingle bolts, or other timber shall be transported and delivered, shall have a lien upon the same for the work or labor done upon, or in obtaining or securing, or for services rendered in towing, transporting, hauling, or driving, the particular saw logs, spars, cord wood, shingle bolts, or other timber in said claim of lien described whether such work, labor or services was done, rendered or performed at the instance of the owner of the same or his agent. Scalers, and bull cooks, and cooks, flunkies and waiters in lumber camps, shall be regarded as persons who assist in obtaining or securing the timber herein mentioned. [1923 c 10 § 1; 1907 c 9 § 1; 1895 c 88 § 1; 1893 c 132 § 1; RRS § 1162. Prior: Code 1881 § 1941; 1879 p 100 § 2; 1877 p 217 § 3; 1860 p 340 § 1.]

60.24.030 Lien on lumber—"Lumber" defined.

Every person performing work or labor or assisting in manufacturing saw logs and other timber into lumber and shingles, has a lien upon such lumber while the same remains at the mill where it was manufactured, or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner. The term lumber, as used in this chapter, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from saw logs or other timber. [1893 c 132 § 2; 1893 c 10 § 1; RRS § 1163. Prior: Code 1881 § 1942; 1877 p 217 § 4. Formerly RCW 60.24.010, part.]

60.24.033 Lien on real property for labor or services on timber and lumber. The lot tract, parcel of land, or any other type of real property or real property improvements upon which the type of activities listed in RCW 60.24.020, 60.24.030, or 60.24.035 are to be performed, or so much property thereof as may be necessary to satisfy the lien and the judgment thereon, to be determined by the court on rendering judgment in a foreclosure of lien, shall also be subject to the lien to the extent of its interest of the persons who in their own behalf, or through any of their agents, caused any of the types of activities listed in RCW 60.24.020, 60.24.030, or 60.24.035. [1986 c 179 § 1. Formerly RCW 60.04.045.]

60.24.035 Lien for stumpage. Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles or other timber, has a lien upon the same for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price. [1893 c 132 § 3; RRS § 1164. Prior: Code 1881 § 1943; 1877 p 217 § 5. Formerly RCW 60.24.060.]

60.24.038 Priority of lien. The liens provided for in this chapter are preferred liens and are prior to any other liens, and no sale or transfer of any saw logs, spars, piles or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this chapter those for work and labor shall be preferred: PROVIDED, That as between liens for work and labor claimed by several laborers on the same logs or lot of logs the claim or claims for work or labor done or performed on the identical logs proceeded against to the extent that said logs can be identified, shall be preferred as against the general claim of lien for work and labor recognized and provided for in this chapter. [1893 c 132 § 4; RRS § 1165. Prior: Code 1881 § 1944; 1877 p 217 § 6. Formerly RCW 60.24.090.]

60.24.040 Period covered by labor liens. The person rendering the service of [or] doing the work or labor named in RCW 60.24.020 and 60.24.030 is only entitled to the liens as provided herein for services, work or labor for the period of eight calendar months, or any part thereof next preceding the filing of the claim, as provided in *section 8 of this act. [1893 c 132 § 5; RRS § 1166. Prior: Code 1881 § 1945; 1877 p 217 § 7.]

*Reviser's note: "section 8 of this act" is codified as RCW 60.24.080. Section 7 (codified as RCW 60.24.075) was probably intended.

60.24.070 Period covered by stumpage lien. The person granting the privilege mentioned in RCW 60.24.035 is only entitled to the lien as provided therein for saw logs, spars, piles and other timber cut during the eight months next preceding the filing of the claim, as herein provided in RCW 60.24.075. [1893 c 132 § 6; RRS § 1167. Prior: Code 1881 § 1946; 1877 p 217 § 8.]

60.24.075 Claims—Contents—Form. Every person, within sixty days after the close of the rendition of the services, or after the close of the work or labor mentioned in the preceding sections, claiming the benefit hereof, must file for record with the county auditor of the county in which such saw logs, spars, piles, and other timber were cut, or in which such lumber or shingles were manufactured, a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:

..... Claimant, vs.

Notice is hereby given that of county, state of Washington, claims a lien upon a of, being about in quantity, which were cut or manufactured in county, state of Washington, are marked thus, and are now lying in, for labor performed upon and assistance rendered in said

.....; that the name of the owner or reputed owner is; that employed said to perform such labor and render such assistance upon the following terms and conditions, to wit:

The said agreed to pay the said for such labor and assistance; that said contract has been faithfully performed and fully complied with on the part of said, who performed labor upon and assisted in said for the period of; that said labor and assistance were so performed and rendered upon said between the day of and the day of; and the rendition of said service was closed on the day of, and sixty days have not elapsed since that time; that the amount of claimant's demand for said service is; that no part thereof has been paid except, and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of, in which amount he claims a lien upon said, The said also claims a lien on all said now owned by said of said county to secure payment for the work and labor performed in obtaining or securing the said logs, spars, piles, or other timber, lumber, or shingles herein described.

State of Washington, county of ss.

..... being first duly sworn, on oath says that he is named in the foregoing claim, has heard the same read, knows the contents thereof, and believes the same to be true.

.....
Subscribed and sworn to before me this day of

[1986 c 179 § 2; 1893 c 132 § 7; RRS § 1168. Prior: Code 1881 § 1947; 1879 p 100 § 4; 1877 p 217 § 9. Formerly RCW 60.24.050.]

60.24.080 Filing claim for stumpage lien. Every person mentioned in RCW 60.24.035 claiming the benefit thereof must file for record with the county auditor of the county in which such saw logs, spars, piles or other timber were cut, a claim in substance the same as provided in RCW 60.24.075, and verified as therein provided. [1893 c 132 § 8; RRS § 1169. Prior: Code 1881 § 1948; 1877 p 218 § 10.]

60.24.100 Recording claims—Fees. The county auditor must record any claim filed under this chapter in a book kept by him for that purpose, which record must be indexed, as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments. [1893 c 132 § 9; RRS § 1170. Prior: Code 1881 § 1949; 1877 p 218 § 11.]

60.24.110 Limitation of action. No lien provided for in this chapter binds any saw logs, spars, piles or other timber, or lumber and shingles, for a longer period than eight calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court, within that time, to enforce the same: PROVIDED, HOWEVER, That in case such civil action so commenced should for any

cause other than the merits, be nonsuited or dismissed, then the lien shall continue for the term of one calendar month, if the said eight months have expired, to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of eight months hereinbefore stated. [1893 c 132 § 10; RRS § 1171. Prior: Code 1881 § 1950; 1879 p 100 § 5; 1877 p 218 § 12.]

60.24.120 Venue—Procedure. The liens provided for in this chapter shall be enforced by a civil action in the superior court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that be against it; except as hereinafter otherwise provided. [1893 c 132 § 11; RRS § 1172. Prior: Code 1881 § 1951; 1877 p 218 § 13.]

60.24.130 Sheriff as receiver—Deposit to recover possession—Costs. The sheriff of the county wherein the lien is filed shall be the receiver when one is appointed, and the superior court upon a showing made shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees collected by him in his official capacity: PROVIDED, That at any time when any property is in the custody of such sheriff under the provisions of this chapter, and any person claiming any interest therein, may deposit with the clerk of the court in which such action is pending, a sum of money in an amount equal to the claim sued upon, together with one hundred dollars, to cover costs and interest, (unless the court shall make an order fixing a different amount to cover such costs and interest, then such an amount as the court shall fix to secure such costs and interest, which such action is being prosecuted) and shall have the right to demand and receive forthwith from such sheriff the possession and custody of such property: PROVIDED, That in no action brought under the provisions of this chapter shall costs be allowed to lien holders unless a demand has been made for payment of his lien claim before commencement of suit, unless the court shall find the claimants at time of bringing action had reasonable ground to believe that the owner or the person having control of the property upon which such lien is claimed was attempting to defraud such claimant, or prevent the collection of such lien. [1899 c 90 § 1; 1893 c 132 § 12; RRS § 1173.]

60.24.140 Pleadings by defendant—Amendments—Hearing. If the defendant or defendants appear in a suit to enforce any lien provided by this chapter he or they shall make their answer on the merits of the complaint, and any motion or demurrer against the said complaint must be filed with the answer; and no motion shall be allowed to make complaint more definite and certain, if it appear to the court that the defendant or defendants have or should have knowledge of the facts, or that it can be made more certain and definite by facts which will appear necessarily in the testimony; but the case, unless the court sustains the demurrer to the complaint, shall be heard on the merits as speedily as possi-

ble, and amendments of the pleadings, if necessary, shall be liberally allowed. [1893 c 132 § 13; RRS § 1174.]

60.24.150 Enforcement against all or part of property. Any person who shall bring a civil action to enforce the lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such civil action, has the right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining, or which he has cut on his timber land during the eight months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said logs, spars, piles or other timber, or in manufacturing said lumber or shingles during the whole or any part of the eight months mentioned in *section seven (7) of this act, or for timber cut during the whole or any part of the eight months above mentioned. And where proceedings are commenced against any lot of saw logs, spars, piles or other timber or lumber or shingles as herein provided, and some of the lienors claim liens against the specific logs, spars, piles or other timber or lumber or shingles proceeded against, and others against the same generally, to secure their claims for work and labor, the priority of the liens shall be determined as hereinbefore provided. [1893 c 132 § 14; RRS § 1175. Prior: Code 1881 § 1952; 1877 p 218 § 14.]

***Reviser's note:** "section seven (7) of this act" is codified as RCW 60.24.075. Section 5 (codified as RCW 60.24.040) was probably intended.

60.24.160 Errors in claim, effect of. No mistake or error in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets or of the balance due was made with intent to defraud, or the court shall find that an innocent third party without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry, in any manner. [1893 c 132 § 15; RRS § 1176.]

60.24.170 Purchase of property subject to lien—Presumption of notice. It shall be conclusively presumed by the court that a party purchasing the property liened upon within thirty days given herein to claimants wherein to file their liens, is not an innocent third party, nor that he has become a bona fide owner of the property liened upon, unless it shall appear that he has paid full value for the said property, and has seen that the purchase money of the said property has been applied to the payment of such bona fide claims as are entitled to liens upon the said property under the provisions of this chapter, according to the priorities herein established. [1893 c 132 § 16; RRS § 1177.]

60.24.180 Joinder—Costs. Any number of persons claiming liens under this chapter may join in the affidavit in RCW 60.24.075 provided, and may join in the same action,

and when separate actions are commenced the court may consolidate them. The court shall also allow as part of the costs the moneys paid for filing, making and recording the claim, and a reasonable attorney's fee for each person claiming a lien. [1901 c 23 § 1; 1893 c 132 § 17; RRS § 1178. Prior: Code 1881 § 1691; 1877 p 219 § 15.]

60.24.190 Judgment—Sale—Disposition of proceeds.

In each civil action judgment must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale to the payment of each judgment, according to the priorities established in this chapter pro rata in its class according to the amount of such judgment. [1893 c 132 § 18; RRS § 1179. Prior: Code 1881 § 1954; 1877 p 219 § 16. FORMER PART OF SECTION: 1893 c 132 § 19; RRS § 1180 now codified as RCW 60.24.195.]

Sale of property on execution: Chapter 6.21 RCW.

60.24.195 Sale of property subject to lien—When.

The court or judge may order any property subject to a lien as in this chapter provided to be sold by the sheriff as personal property is sold on execution either before or at the time judgment is rendered, as provided in RCW 60.24.190, and the proceeds of such sale must be paid into court to be applied as in RCW 60.24.190 directed. [1893 c 132 § 19; RRS § 1180. Prior: Code 1881 § 1955; 1877 p 219 § 17. Formerly RCW 60.24.190, part.]

Sale of property on execution: Chapter 6.21 RCW.

60.24.200 Damages for eloigning, injuring, destroying or removing marks, etc.—Recovery. Any person who shall eloign, injure or destroy, or who shall render difficult, uncertain or impossible of identification any saw logs, spars, piles, shingles or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for the damages to the amount secured by his lien, and it being shown to the court in the civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the said person, provided he be a party to such action, or the damages may be recovered by a civil action against such person. [1893 c 132 § 20; RRS § 1181. Prior: Code 1881 § 1956; 1877 p 219 § 18.]

Chapter 60.28 RCW

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS

Sections

- 60.28.010 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration.
- 60.28.011 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions.

- 60.28.015 Recovery from retained percentage—Written notice to contractor of materials furnished.
- 60.28.020 Excess over lien claims to contractor.
- 60.28.021 Excess over lien claims paid to contractor.
- 60.28.030 Foreclosure of lien—Limitation of action—Release of funds.
- 60.28.040 Tax liens—Priority of liens.
- 60.28.050 Duties of disbursing officer upon final acceptance of contract.
- 60.28.051 Duties of disbursing officer upon completion of contract.
- 60.28.060 Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue.
- 60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination.
- 60.28.900 Severability—1955 c 236.

Contractor's bond for payment of mechanics, laborers, materialmen, etc., on public works: Chapter 39.08 RCW.

60.28.010 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration.

(1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum not to exceed five percent, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: PROVIDED, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any amendments that may hereafter be made thereto: PROVIDED FURTHER, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor: PROVIDED, That the contractor may request that retainage be reduced to one hundred percent of the value of the work remaining on the project; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: PROVIDED, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed. When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(4) With the consent of the public body the contractor may submit a bond for all or any portion of the amount of funds retained by the public body in a form acceptable to the public body. Such bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(5) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or

less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

(6) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, thirty days after completion and final acceptance of each ferry vessel, the department may release and pay in full the amounts retained in connection with the construction of such vessel subject to the provisions of RCW 60.28.020: PROVIDED, That the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on such ferry after a period of thirty days following final acceptance of such ferry; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the materialmen and laborers filing claims.

(7) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations shall not be subject to subsections (1) through (6) of this section. [1986 c 181 § 6; 1984 c 146 § 1; 1982 c 170 § 1; 1981 c 260 § 14. Prior: 1977 ex.s. c 205 § 1; 1977 ex.s. c 166 § 5; 1975 1st ex.s. c 104 § 1; 1970 ex.s. c 38 § 1; 1969 ex.s. c 151 § 1; 1963 c 238 § 1; 1955 c 236 § 1; 1921 c 166 § 1; RRS § 10320.]

Application—1992 c 233: See RCW 39.04.901.

Severability—1977 ex.s. c 166: See note following RCW 39.08.030.

60.28.011 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions. (1) Public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public

body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and

make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.020 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue and the materialmen and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.061. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or materialperson who performs labor or provides materials for a public improvement contract, and any other

person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.020. [2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.015 Recovery from retained percentage—

Written notice to contractor of materials furnished. Every person, firm, or corporation furnishing materials, supplies, or equipment to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state, or any county, city, town, district, municipality, or other public body, shall give to the contractor of the work a notice in writing, which notice shall cover the material, supplies, or equipment furnished or leased during the sixty days preceding the giving of such notice as well as all subsequent materials, supplies, or equipment furnished or leased, stating in substance and effect that such person, firm, or corporation is and/or has furnished materials and supplies, or equipment for use thereon, with the name of the subcontractor ordering the same, and that a lien against the retained percentage may be claimed for all materials and supplies, or equipment furnished by such person, firm, or corporation for use thereon, which notice shall be given by (1) mailing the same by registered or certified mail in an envelope addressed to the contractor, or (2) by serving the same personally upon the contractor or the contractor's representative and obtaining evidence of such service in the form of a receipt or other acknowledgement signed by the contractor or the contractor's representative, and no suit or action shall be maintained in any court against the retained percentage to recover for such material, supplies, or equipment or any part thereof unless the provisions of this section have been complied with. [1986 c 314 § 5.]

60.28.020 Excess over lien claims to contractor. After the expiration of the thirty day period, and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body shall pay to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [1975

1st ex.s. c 104 § 2; 1970 ex.s. c 38 § 2; 1967 ex.s. c 26 § 23; 1955 c 236 § 2; 1921 c 166 § 2; RRS § 10321.]

Application—1992 c 223: See RCW 39.04.901.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.021 Excess over lien claims paid to contractor.

After the expiration of the forty-five day period for giving notice of lien provided in RCW 60.28.011(2), and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body may withhold from the remaining retained amounts for claims the public body may have against the contractor and shall pay the balance, if any, to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [1992 c 223 § 3.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.030 Foreclosure of lien—Limitation of action—Release of funds.

Any person, firm, or corporation filing a claim against the reserve fund shall have four months from the time of the filing thereof in which to bring an action to foreclose the lien. The lien shall be enforced by action in the superior court of the county where filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien against it: PROVIDED, That the public body shall not be required to make any detailed answer to any complaint or other pleading but need only certify to the court the name of the contractor; the work contracted to be done; the date of the contract; the date of completion and final acceptance of the work; the amount retained; the amount of taxes certified due or to become due to the state; and all claims filed with it showing respectively the dates of filing, the names of claimants, and amounts claimed. Such certification shall operate to arrest payment of so much of the funds retained as is required to discharge the taxes certified due or to become due and the claims filed in accordance with this chapter. In any action brought to enforce the lien, the claimant, if he prevails, is entitled to recover, in addition to all other costs, attorney fees in such sum as the court finds reasonable. If a claimant fails to bring action to foreclose his lien within the four months period, the reserve fund shall be discharged from the lien of his claim and the funds shall be paid to the contractor. The four months limitation shall not, however, be construed

as a limitation upon the right to sue the contractor or his surety where no right of foreclosure is sought against the fund. [1979 ex.s. c 38 § 1; 1955 c 236 § 3; 1927 c 241 § 1; 1921 c 166 § 3; RRS § 10322.]

60.28.040 Tax liens—Priority of liens. The amount of all taxes, increases and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is twenty thousand dollars or more shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract, except that the employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens. The amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid. [1985 c 80 § 1; 1971 ex.s. c 299 § 1; 1955 c 236 § 4. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Severability—Effective dates—1971 ex.s. c 299: See notes following RCW 82.04.050.

60.28.050 Duties of disbursing officer upon final acceptance of contract. Upon final acceptance of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of contracts over twenty thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage. [1982 c 170 § 2; 1970 ex.s. c 38 § 3; 1967 ex.s. c 26 § 24; 1955 c 236 § 5. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Application—1992 c 223: See RCW 39.04.901.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.051 Duties of disbursing officer upon completion of contract. Upon completion of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of contracts over twenty thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily col-

lectible without recourse to the state's lien on the retained percentage. [1992 c 223 § 4.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.060 Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue. If within thirty days after receipt of notice by the department of revenue of the completion of the contract, the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the department of revenue may certify to the disbursing officer the amount of all taxes, increases and penalties due from the contractor, together with the amount of all taxes due and to become due with respect to the contract and may request payment thereof to the department of revenue in accordance with the priority provided by this chapter. The disbursing officer shall within ten days after receipt of such certificate and request pay to the department of revenue the amount of all taxes, increases and penalties certified to be due or to become due with respect to the particular contract, and, after payment of all claims which by statute are a lien upon the retained percentage withheld by the disbursing officer, shall pay to the department of revenue the balance, if any, or so much thereof as shall be necessary to satisfy the claim of the department of revenue for the balance of all taxes, increases or penalties shown to be due by the certificate of the department of revenue. If the contractor owes no taxes imposed pursuant to Title 82 RCW, the department of revenue shall so certify to the disbursing officer. [1967 ex.s. c 26 § 25; 1955 c 236 § 6. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination. (1) If any delay in issuance of notice to proceed or in construction following an award of any public construction contract is primarily caused by acts or omissions of persons or agencies other than the contractor and a preliminary, special or permanent restraining order of a court of competent jurisdiction is issued pursuant to litigation and the appropriate public contracting body does not elect to delete the completion of the contract as provided by *RCW 60.28.010(3), the appropriate contracting body will issue a change order or force account directive to cover reasonable costs incurred by the contractor as a result of such delay. These costs shall include but not be limited to contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, bonds, professional fees, and sub-contracts, attributable to such delay plus a reasonable sum for overhead and profit.

In the event of a dispute between the contracting body and the contractor, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, under the then obtaining rules of the American Arbitration Association.

If the delay caused by litigation exceeds six months, the contractor may then elect to terminate the contract and to delete the completion of the contract and receive payment in proportion to the amount of the work completed plus the cost of the delay. Amounts retained and accumulated under RCW 60.28.010 shall be held for a period of thirty days following the election of the contractor to terminate. Election not to terminate the contract by the contractor shall not affect the accumulation of costs incurred as a result of the delay provided above.

(2) This section shall not apply to any contract awarded pursuant to an invitation for bid issued on or before July 16, 1973. [1982 c 170 § 3; 1973 1st ex.s. c 62 § 3.]

***Reviser's note:** RCW 60.28.010 was amended by 1982 c 170 § 1, changing subsection (3) to subsection (5).

Severability—1973 1st ex.s. c 62: See note following RCW 39.04.120. *Change orders due to environmental protection requirements, costs:* RCW 39.04.120.

60.28.900 Severability—1955 c 236. If any section, provision or part of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole or any section, provision or part hereof not adjudged invalid or unconstitutional. [1955 c 236 § 8.]

Chapter 60.32 RCW

LABOR LIENS ON FRANCHISES, EARNINGS, AND PROPERTY OF CERTAIN COMPANIES

Sections

- 60.32.010 Liens authorized.
- 60.32.020 Notice of lien—Contents—Filing and serving.
- 60.32.030 Manner of serving notice.
- 60.32.040 Manner of enforcing liens.
- 60.32.050 Receiver or assignee to pay claims first.

60.32.010 Liens authorized. Every person performing labor for any person, company or corporation, in the operation of any railway, canal or transportation company, or any water, mining or manufacturing company, sawmill, lumber or timber company, shall have a prior lien on the franchise, earnings, and on all the real and personal property of said person, company or corporation, which is used in the operation of its business, to the extent of the moneys due him from such person, company or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of his claim therefor, as hereinafter provided; and no mortgage, deed of trust or conveyance shall defeat or take precedence over said lien. [1897 c 43 § 1; RRS § 1149.]

60.32.020 Notice of lien—Contents—Filing and serving. No person shall be entitled to the lien given by RCW 60.32.010, unless he shall, within ninety days after he has ceased to perform labor for such person, company or corporation, filed for record with the county auditor of the county in which said labor was performed, or in which is located the principal office of such person, company or corporation in this state, a notice of claim, containing a statement of his demand, after deducting all just credits and offsets, the name of the person, company or corporation, and the name of the

person or persons employing claimant, if known, with the statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve a copy thereof on said person, company or corporation within thirty days after the same is so filed for record.

Any number of claimants may join in the same notice for the purpose of filing and enforcing their liens, but the amount claimed by each claimant shall be separately stated. [1977 ex.s. c 176 § 1; 1897 c 43 § 2; RRS § 1150.]

60.32.030 Manner of serving notice. Service of notice, as herein required, may be made in the same manner as summons in civil actions. [1897 c 43 § 3; RRS § 1151.]

Service of summons in civil actions: RCW 4.28.080.

60.32.040 Manner of enforcing liens. Any such lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed. [1897 c 43 § 4; RRS § 1152.]

60.32.050 Receiver or assignee to pay claims first. Whenever a receiver or assignee is appointed for any person, company or corporation, the court shall require such receiver or assignee to pay all claims for which a lien could be filed under this chapter, before the payment of any other debts or claims, other than operating expenses. [1897 c 43 § 5; RRS § 1153.]

Chapter 60.34 RCW

LIEN OF RESTAURANT, HOTEL, TAVERN, ETC., EMPLOYEES

Sections

- 60.34.010 Liens authorized.
- 60.34.020 Notice of lien—Contents—Filing and serving.
- 60.34.030 Manner of serving notice.
- 60.34.040 Manner of enforcing liens—Costs.
- 60.34.050 Priority of lien.

60.34.010 Liens authorized. Every person performing labor in the operation of any restaurant, hotel, tavern, or other place of business engaged in the selling of prepared foods or drinks, or any hotel service employee, shall have a lien on the earnings and on all the property of his employer used in the operation of said business to the extent of the moneys due him for labor performed within three months next preceding the filing of his claim therefor. [1953 c 205 § 1.]

60.34.020 Notice of lien—Contents—Filing and serving. The lien claimant shall within thirty days after he has ceased to perform such labor, file for record with the auditor of the county in which the labor was performed a notice of claim, containing a statement of his demand, the name of the employer and the name of the person employing him, if known, with a statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve or mail a copy thereof to said employer within said period. [1953 c 205 § 2.]

60.34.030 Manner of serving notice. Service of the notice of claim may be made in the same manner as summons in civil actions. [1953 c 205 § 3.]

Service of summons in civil actions: RCW 4.28.080.

60.34.040 Manner of enforcing liens—Costs. The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed, when said lien is upon real property, or in the same manner as provided in chapter 60.10 RCW when the lien is upon personal property. The court may allow as part of the costs of the action the money paid for filing or recording the claim and a reasonable attorney fee. [1995 c 62 § 8; 1969 c 82 § 12; 1959 c 173 § 1; 1953 c 205 § 4.]

60.34.050 Priority of lien. The lien created herein shall be preferred to any encumbrance which may attach after the commencement of the labor and is also preferred to any encumbrance which may have attached previously to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1953 c 205 § 5.]

Chapter 60.36 RCW

LIEN ON VESSELS AND EQUIPMENT

Sections

60.36.010	Liens created.
60.36.020	Actions to enforce liens.
60.36.030	Liens for handling cargo.
60.36.040	Liens for handling cargo—Priority.
60.36.050	Liens for handling cargo—Foreclosure.
60.36.060	Lien for breach of contract for towing, dunnaging, stevedoring, etc.

60.36.010 Liens created. All steamers, vessels and boats, their tackle, apparel and furniture, are liable—

(1) For service rendered on board at the request of, or under contract with their respective owners, charterers, masters, agents or consignees.

(2) For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, subcontractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020.

(3) For their wharfage and anchorage within this state.

(4) For nonperformance or malperformance of any contract for the transportation of persons or property between places within this state, or to or from places within this state, made by their respective owners, masters, agents or consignees.

(5) For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state. Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in the order of the subdivisions hereinbefore enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued. [1901 c 24 § 1; Code 1881 § 1939; 1877 p 216 § 1; RRS § 1182. Prior: 1858 p 29 § 1.]

Lien of pilot for pilotage compensation: RCW 88.16.140.

60.36.020 Actions to enforce liens. Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any superior court of this state as provided in RCW 60.10.023. [1995 c 62 § 9; 1969 c 82 § 19; Code 1881 § 1940; 1877 p 216 § 2; RRS § 1183.]

60.36.030 Liens for handling cargo. All steamers, vessels and boats, their tackle, apparel and furniture shall be held liable at all ports and places within this state or within the jurisdiction of the courts of this state or within the jurisdiction of the courts of the United States in said state for services rendered by stevedores, longshoremen or others engaged in the loading, unloading, stowing or dunnaging of cargo in or from any steamer, vessel or boat in any harbor or at any other place within said state, or within the jurisdiction of the courts thereof as above stated, and said steamers, vessels and boats shall further be liable as per their contracts for all services performed upon wharfs or landing places by stevedores, longshoremen or others: PROVIDED, That such services must have been so performed in and about and be connected with the loading, unloading, dunnaging or stowing of said cargo. [1901 c 75 § 1; RRS § 1184.]

60.36.040 Liens for handling cargo—Priority. Demands for wages and all sums due under contracts or otherwise for the performance of all or any of the services mentioned in RCW 60.36.030 shall constitute liens upon all steamers, vessels and boats, their tackle, apparel and furniture, and shall have priority over all other demands save and excepting the demands mentioned in RCW 60.36.010 (1), (2) and (3), to which said demands the lien hereby provided shall be subordinate: PROVIDED, That such liens shall only continue in force for the period of three years from the date when such work was done or the last services performed by such stevedores, longshoremen or others. [1901 c 75 § 2; RRS § 1185.]

60.36.050 Liens for handling cargo—Foreclosure. The liens hereby created may be foreclosed as provided in RCW 60.10.023. [1995 c 62 § 10; 1969 c 82 § 13; 1901 c 75 § 3; RRS § 1186.]

60.36.060 Lien for breach of contract for towing, dunnaging, stevedoring, etc. Whenever the owner, charterer, or any person or corporation operating, managing or

controlling any steamship, vessel or boat shall wilfully fail, neglect or refuse to carry out or perform any express contract or portion thereof for the towing, loading, unloading, dunnaging or stevedoring of such steamship, vessel or boat, any person or persons, firm or corporation sustaining thereby any loss or damage which is capable of definite ascertainment shall have a lien upon such steamship, vessel or boat for said loss or damage. The rank and priority of the lien hereby created and the manner of its enforcement shall be fixed, controlled and regulated by the provisions of the existing law pertaining to liens for similar services already performed. [1903 c 149 § 1; RRS § 1187.]

Chapter 60.40 RCW LIEN FOR ATTORNEY'S FEES

Sections

60.40.010	Lien created—Enforcement—Definition—Exception.
60.40.020	Proceedings to compel delivery of money or papers.
60.40.030	Procedure when lien is claimed.

Rules of court: *Return of files of disbarred or suspended attorney—RLD 8.1.*

60.40.010 Lien created—Enforcement—Definition—Exception. (1) An attorney has a lien for his or her compensation, whether specially agreed upon or implied, as hereinafter provided:

(a) Upon the papers of the client, which have come into the attorney's possession in the course of his or her professional employment;

(b) Upon money in the attorney's hands belonging to the client;

(c) Upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party;

(d) Upon an action, including one pursued by arbitration or mediation, and its proceeds after the commencement thereof to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement; and

(e) Upon a judgment to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice.

(2) Attorneys have the same right and power over actions to enforce their liens under subsection (1)(d) of this section and over judgments to enforce their liens under subsection (1)(e) of this section as their clients have for the amount due thereon to them.

(3) The lien created by subsection (1)(d) of this section upon an action and proceeds and the lien created by subsection (1)(e) of this section upon a judgment for money is superior to all other liens.

(4) The lien created by subsection (1)(d) of this section is not affected by settlement between the parties to the action

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until the lien of the attorney for fees based thereon is satisfied in full.

(5) For the purposes of this section, "proceeds" means any monetary sum received in the action. Once proceeds come into the possession of a client, such as through payment by an opposing party or another person or by distribution from the attorney's trust account or registry of the court, the term "proceeds" is limited to identifiable cash proceeds determined in accordance with RCW 62A.9A-315(b)(2). The attorney's lien continues in such identifiable cash proceeds, subject to the rights of a secured party under RCW 62A.9A-327 or a transferee under RCW 62A.9A-332.

(6) Child support liens are exempt from this section. [2004 c 73 § 2; Code 1881 § 3286; 1863 p 406 § 12; RRS § 136.]

Purpose—Intent—Application—2004 c 73: "The purpose of this act is to end double taxation of attorneys' fees obtained through judgments and settlements, whether paid by the client from the recovery or by the defendant pursuant to a statute or a contract. Through this legislation, Washington law clearly recognizes that attorneys have a property interest in their clients' cases so that the attorney's fee portion of an award or settlement may be taxed only once and against the attorney who actually receives the fee. This statute should be liberally construed to effectuate its purpose. This act is curative and remedial, and intended to ensure that Washington residents do not incur double taxation on attorneys' fees received in litigation and owed to their attorneys. Thus, except for RCW 60.40.010(4), the statute is intended to apply retroactively." [2004 c 73 § 1.]

60.40.020 Proceedings to compel delivery of money or papers. When an attorney refuses to deliver over money or papers, to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of any judge of a court of record, to do so within a specified time, or show cause why he should not be punished for a contempt. [Code 1881 § 3287; 1863 p 406 § 13; RRS § 137.]

60.40.030 Procedure when lien is claimed. If, however, the attorney claim a lien, upon the money or papers, under the provisions of *this chapter, the court or judge may: (1) Impose as a condition of making the order, that the client give security in a form and amount to be directed, to satisfy the lien, when determined in an action; (2) summarily to inquire into the facts on which the claim of a lien is founded, and determine the same; or (3) to refer it, and upon the report, determine the same as in other cases. [Code 1881 § 3288; 1863 p 406 § 14; RRS § 138.]

***Reviser's note:** "this chapter" appeared in section 3288, chapter 250 of the Code of 1881, the lien sections of which are codified as chapter 60.40 RCW.

Chapter 60.42 RCW COMMERCIAL REAL ESTATE BROKER LIEN ACT

Sections

60.42.005	Definitions.
60.42.010	Lien upon personal property—Effective date—Notice of claim of lien—Waiver of lien rights—Court costs, attorneys' fees, and statutory interest.
60.42.020	Disputed claim—Order to show cause—Hearing.
60.42.030	Lien on net rental proceeds—Order to show cause—Hearing.
60.42.040	Priority of lien claims.

60.42.050	Deposit made pending resolution of amounts due—Recording of receipt—Release of notice of claim of lien.
60.42.060	County auditor or recorder—Duties—Fees.
60.42.070	Delivery of notice of claim of lien—Form—Time effective—Address.
60.42.900	Application.
60.42.901	Short title.

60.42.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial real estate" means a fee title interest or possessory estate in real property located in this state except an interest in real property which is (a) improved with one single-family residential unit or one multifamily structure with four or less residential units, or (b) unimproved and the maximum permitted development is one to four residential units or structures under the county or city zoning ordinances or comprehensive plan applicable to that real estate, or (c) classified as farm and agricultural land or timber land for assessment purposes pursuant to chapter 84.34 RCW, or (d) improved with single-family residential units such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be legally sold, leased, or otherwise disposed of on a unit-by-unit basis. Real estate will be considered commercial real estate if the commission agreement so provides, or if it meets the definition contained in this section on the date of the disposition.

(2) "Commission agreement" means a written instrument which meets the requirements of RCW 19.36.010 signed by the owner, or by a party duly authorized to sign on behalf of the owner, of commercial real estate, pursuant to which the owner agrees to pay a broker a real estate commission upon either the disposition or lease of commercial real estate or upon entering into an agreement for disposition or lease of commercial real estate. When a broker and owner execute multiple versions of a commission agreement regarding the same disposition of commercial real estate, the final written version of the commission agreement, which incorporates the final agreement between the broker and the owner, constitutes the "commission agreement" and shall be used to determine the amount of the lien created by this chapter.

(3) "Days" means calendar days. However, if a period ends on a day other than a business day, then the last day shall be the next business day.

(4) "Disposition" means a voluntary transfer or conveyance of commercial real estate.

(5) "Escrow closing agent" means the person or entity who receives documents and funds for recording and disbursement in completing a transaction for the disposition of commercial real estate.

(6) "Lease" means a written agreement which gives rise to a relationship of landlord and tenant, affecting commercial real estate, such that the holder of a fee simple interest or possessory estate in commercial real estate permits another to possess the commercial real estate for a period, and which meets the requirements of RCW 19.36.010, if applicable.

(7) "Net rental proceeds" means the base rent paid by the tenant under a lease, less any amounts currently due under the terms of liens which have priority over the lien created under this chapter. Base rent is the rent so designated in a lease as base rent, or a similar term, for the possession and use of the commercial real estate, but does not include separate pay-

ments made by tenants for insurance, taxes, utilities, or other expenses.

(8) "Owner" means a person or entity which is vested in record fee title or a possessory estate in commercial real estate.

(9)(a) "Owner's net proceeds" means the gross sales proceeds from the disposition of the commercial real estate described in a notice of claim of lien against proceeds pursuant to this chapter, less the following: (i) Amounts necessary to pay all encumbrances and liens which have priority over the lien created by this chapter other than those permitted to remain by the buyer; (ii) owner's closing costs, such as real estate excise tax, title insurance premiums, real estate tax and assessment proration, and escrow fees payable by the owner pursuant to an agreement with the buyer; and (iii) amounts held by a third party for use by the owner to complete an exchange of real estate which is deferred from federal income tax under section 1031 of the internal revenue code of 1986, as amended.

(b) "Owner's net proceeds" shall include any gross sales proceeds which are held by a third party for purposes of completing an exchange of real estate which is deferred from federal income tax under section 1031 of the internal revenue code of 1986, as amended, but are subsequently not used for that purpose. "Owner's net proceeds" are personal property, upon which the lien created by this chapter attaches.

(10) "Real estate broker" or "broker" means the same as defined in RCW 18.85.010.

(11) "Real property" means one or more parcels or tracts of land, including appurtenances or improvements. [1997 c 315 § 1.]

60.42.010 Lien upon personal property—Effective date—Notice of claim of lien—Waiver of lien rights—Court costs, attorneys' fees, and statutory interest. (1) The lien created under this chapter is a lien upon personal property, not upon real property.

(2) A broker has a lien upon the owner's net proceeds from the disposition of commercial real estate and a lien upon the net rental proceeds from the lease of commercial real estate in the amount which the owner has agreed to pay the broker under a commission agreement. The lien under this chapter is available only to the broker named in the commission agreement, and may not be assigned voluntarily or by operation of law.

(3) Subject to the requirements of subsection (4) of this section, the lien created by this chapter becomes effective on the date of the recording of a notice of claim of lien upon proceeds pursuant to subsection (6) of this section, and is perfected by such recording. Recording must be made with the county auditor or recorder in the county or counties in which the commercial real estate is located.

(4) In the case of a disposition of commercial real estate, the lien under this chapter is not effective unless it is recorded at least thirty days prior to the date a deed conveying the commercial real estate is recorded in the office of the county auditor or recorder in the county or counties in which the commercial real estate is located. In the case of a lease of commercial real estate, the lien under this chapter is not effective unless it is recorded within ninety days after the tenant takes possession of the leased commercial real estate.

(5) The lien created by this chapter is null and void unless, within ten days of recording its notice of claim of lien against proceeds, the broker delivers a copy of the notice of claim of lien against proceeds to the owner of the commercial real estate in the manner provided in RCW 60.42.070. In the case of the disposition of commercial real estate, on or before the date the deed conveying the commercial real estate is recorded, the broker shall deliver a copy of the notice of claim of lien against proceeds to the escrow closing agent closing the disposition in the manner provided in RCW 60.42.070, if the identity of the escrow closing agent is actually known by the broker.

(6) To be effective, the notice of claim of lien against proceeds must state the following:

- (a) The name, address, and telephone number of the broker;
- (b) The date of the commission agreement;
- (c) The name of the owner of the commercial real estate;
- (d) The legal description of the commercial real estate as described in the commission agreement;
- (e) The amount for which the lien is claimed, which may be stated in a dollar amount or may be stated in the form of a formula for how the amount is to be determined such as a percentage of the sales price;
- (f) The real estate license number of the broker; and
- (g) That the lien claimant has read the claim, knows the contents, and believes the same to be true and correct, and that the claim is made pursuant to a valid commission agreement, and is not frivolous, under penalties of perjury.

A copy of the commission agreement must be attached to the recorded notice of claim of lien against proceeds. The notice of claim of lien against proceeds must recite that the information contained in the notice of claim of lien against proceeds is true and accurate to the knowledge of the signatory. The notice of claim of lien against proceeds must be acknowledged pursuant to chapter 64.08 RCW. A notice of claim of lien against proceeds substantially in the following form is sufficient:

NOTICE OF CLAIM OF LIEN AGAINST PROCEEDS
PURSUANT TO CHAPTER 60.42 RCW

Notice is hereby given that the person named below claims a lien as to owner's net proceeds or net rental proceeds, but not real property, pursuant to chapter 60.42 RCW. In support of this lien, the following information is submitted:

- 1. Name, telephone number, and address of lien claimant:
- 2. Washington state broker's license number of lien claimant:
- 3. Date of the written commission agreement on which this claim is based:, a true and complete copy of which is attached to this notice of claim of lien.
- 4. Name of the owner:
- 5. Legal description of the commercial real estate described in the commission agreement:
- 6. The amount for which the lien is claimed, which may be stated in a dollar amount or may be stated in the form of a formula for how the amount is to be determined such as a percentage of the sales price:

.....
7. The undersigned lien claimant, being sworn, states: I have read the foregoing claim, know the contents, and believe the same to be true and correct, and the claim is made pursuant to a valid commission agreement, and is not frivolous, under penalty of perjury.

.....
Signature of lien claimant
.....
Name, Street Address, City, State
of person signing
.....
Telephone Number of person signing

State of Washington)
) ss
County of)

.....
Subscribed and sworn to, or affirmed, before me on
... by

.....
Signature
(Seal or stamp)
Title
My appointment expires

(Add acknowledgment pursuant to chapter 64.08 RCW)

(7) Whenever a notice of claim of lien against proceeds is recorded and a condition or event occurs, or fails to occur, that would preclude the broker from receiving compensation under the terms of the commission agreement, including the filing of a notice of claim of lien against proceeds in a manner which does not comply with this chapter, the broker shall record, within seven days following demand by the owner, a written release of the notice of claim of lien against proceeds.

(8) Whenever the amount claimed in a notice of claim of lien against proceeds is paid to the lien claimant, the lien claimant shall promptly record a satisfaction or release of the notice of claim of lien against proceeds on written demand of the owner no later than five days after receipt of payment. In the case of a disposition of commercial real estate, the escrow closing agent is required to pay to the lien claimant the owner's net proceeds up to the amount claimed in the notice of claim of lien against proceeds. If the amount claimed in the notice of claim of lien against proceeds is to be fully or partially paid to the lien claimant by the escrow closing agent, upon such disposition, then the lien claimant shall submit a release of the notice of claim of lien against proceeds in the amount of the owner's net proceeds or the amount of the lien, whichever is smaller, to the escrow closing agent to be held in escrow pending such disposition and payment. In a suit brought by the owner to compel delivery of the release by the lien claimant, if the court determines that the delay was unjustified, the court shall, in addition to ordering the release of the notice of claim of lien, award the costs of the action including reasonable attorneys' fees to the prevailing party.

(9) An owner of commercial real estate may request that a broker waive the rights to a lien under this chapter, and such a waiver contained in the commission agreement signed by

the broker is effective to waive the broker's rights to a lien under this chapter. In a suit filed by a broker to recover amounts due under a commission agreement in which the broker has waived lien rights under this chapter, if the court finds that payment is due to the broker under the commission agreement, the court, in addition to awarding normal damages, shall award to the broker court costs, reasonable attorneys' fees, and statutory interest, as provided in RCW 19.52.010, from the date the deed is recorded in the event of a disposition, or from the date the tenant takes possession in the event of a lease. [1997 c 315 § 2.]

60.42.020 Disputed claim—Order to show cause—Hearing. (1) An owner of commercial real estate subject to a recorded notice of claim of lien against proceeds under this chapter, who disputes the broker's claim in the notice of claim of lien against proceeds, may apply by motion to the superior court for the county where the commercial real estate, or some part thereof, is located for an order directing the broker to appear before the court at a time no earlier than seven nor later than fifteen days following the date of service of the motion and order on the broker, to show cause as to why the relief requested should not be granted. The motion must state the grounds upon which relief is asked and must be supported by the affidavit of the owner setting forth a concise statement of the facts upon which the motion is based.

(2) The order to show cause must clearly state that if the broker fails to appear at the time and place noted, the notice of claim of lien against proceeds must be released, with prejudice, and the broker must be ordered to pay the costs requested by the owner, including reasonable attorneys' fees.

(3) If, following a hearing on the matter, the court determines that the owner is not a party to an agreement which will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order releasing the notice of claim of lien against proceeds and awarding costs and reasonable attorneys' fees to the owner to be paid by the broker. If the court determines that the owner is a party to an agreement which will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the broker, to be paid by the owner. Such orders are final judgments.

(4) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1997 c 315 § 3.]

60.42.030 Lien on net rental proceeds—Order to show cause—Hearing. (1) If a broker has a lien on net rental proceeds pursuant to RCW 60.42.010(2), and the broker has recorded a notice of claim of lien against proceeds and otherwise complied with the requirements of this chapter, the broker may apply by motion to the superior court for the county where the commercial real estate, or some part thereof, is located, for an order directing the owner to appear before the court at a time no earlier than seven nor later than fifteen days following the date of service of the motion and order on the owner, and show cause as to why the relief requested should not be granted. The motion must state the grounds upon

which relief is asked, and must be supported by the affidavit of the broker setting forth a concise statement of the facts upon which the motion is based.

(2) The order to show cause must clearly state that if the owner fails to appear at the time and place noted, the broker shall be entitled to an order enjoining the owner from paying the net rental proceeds from such lease to any party other than the broker, and that the owner shall be ordered to pay the costs requested by the broker, including reasonable attorneys' fees.

(3) If, following a hearing on the matter, the court determines that the owner is, or was, a party to an agreement for the lease of commercial real estate, which did or will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order enjoining the owner from paying the net rental proceeds from such lease to any party other than the broker. The court shall also order the owner to pay such net rental proceeds to the broker and award costs and reasonable attorneys' fees to the broker, to be paid by the owner. If the court determines that the owner is not, or was not, a party to an agreement for the lease of commercial real estate, which did or will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the owner, to be paid by the broker. Such orders are final judgments.

(4) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1997 c 315 § 4.]

60.42.040 Priority of lien claims. All statutory liens, consensual liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all advances or charges made or accruing thereunder, whether voluntary or obligatory, and all modifications, extensions, renewals, and replacements thereof, recorded prior to the recording of a notice of claim of lien against proceeds have priority over a lien created under this chapter. A prior recorded lien includes, without limitation, a valid materialmen's or mechanic's lien claim that is recorded after the recording of the broker's notice of claim of lien against proceeds but which relates back to a date prior to the recording date of the broker's notice of claim of lien against proceeds. [1997 c 315 § 5.]

60.42.050 Deposit made pending resolution of amounts due—Recording of receipt—Release of notice of claim of lien. A notice of claim of lien against proceeds recorded under this chapter must be released without further act, upon the recording of a receipt showing the deposit with the superior court of the county in which the commercial real estate, or some part thereof, is located, of an amount equal to one and one-quarter times the amount of the lien claimed. The receipt shall be recorded in the office in which the notice of claim was recorded. The amount of the deposit in the superior court shall be held pending a resolution of amounts due to the broker and the owner. [1997 c 315 § 6.]

60.42.060 County auditor or recorder—Duties—Fees. The county auditor or recorder shall record the notice

of claim of lien against proceeds, and any release thereof, in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of lien against proceeds for registered land need not be recorded in the Torrens register. The county auditor or recorder may not charge a higher fee for recording a notice of claim of lien against proceeds, or for a release thereof, than what the county auditor or recorder charges for other documents. [1997 c 315 § 7.]

60.42.070 Delivery of notice of claim of lien—Form—Time effective—Address. Notices to be delivered to a party under this chapter, other than service of process as required in civil actions, shall be by service of process, or by registered or certified mail, return receipt requested, or by personal or electronic delivery and obtaining evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the party to whom the notice is delivered or an affidavit of service. Delivery is effective at the time of personal service, or personal or electronic delivery, or three days following deposit in the mail as required by this section. Notice to a broker or owner may be given to the address of the broker or owner that is contained in the commission agreement, or such other address as is contained in a written notice from the broker or owner to the party giving the notice. If no address is provided in the commission agreement, the notice to the broker may be given to the broker's address of record with the department of licensing pursuant to chapter 18.85 RCW and notice to the owner may be given to the address of the commercial real estate. [1997 c 315 § 8.]

60.42.900 Application. This chapter applies to lien claims based on a commission agreement entered into on, or after, July 27, 1997. [1997 c 315 § 9.]

60.42.901 Short title. This chapter may be known and cited as the commercial real estate broker lien act. [1997 c 315 § 10.]

Chapter 60.44 RCW

LIEN OF DOCTORS, NURSES, HOSPITALS, AMBULANCE SERVICES

Sections

60.44.010	Liens authorized.
60.44.020	Notice of lien—Contents—Filing.
60.44.030	Record of claims.
60.44.040	Taking note—Effect on lien.
60.44.050	Settlement of damages—Effect on lien.
60.44.060	Enforcement of lien—Payment as evidence.

Lien of department of social and health services for medical care of injured recipient, payment of tortfeasor or tortfeasor's insurer does not discharge lien: RCW 74.09.180, 43.20B.040, and 43.20B.050.

Lien on funds withheld by employer from employee's pay: RCW 49.52.030 and 49.52.040.

60.44.010 Liens authorized. Every operator, whether private or public, of an ambulance service or of a hospital, and every duly licensed nurse, practitioner, physician, and surgeon rendering service, or transportation and care, for any person who has received a traumatic injury and which is rendered by reason thereof shall have a lien upon any claim,

right of action, and/or money to which such person is entitled against any tort-feasor and/or insurer of such tort-feasor for the value of such service, together with costs and such reasonable attorney's fees as the court may allow, incurred in enforcing such lien: PROVIDED, HOWEVER, That nothing in this chapter shall apply to any claim, right of action, or money accruing under the workers' compensation act of the state of Washington, and: PROVIDED, FURTHER, That all the said liens for service rendered to any one person as a result of any one accident or event shall not exceed twenty-five percent of the amount of an award, verdict, report, decision, decree, judgment, or settlement. [1987 c 185 § 36; 1975 1st ex.s. c 250 § 1; 1937 c 69 § 1; RRS § 1209-1.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

60.44.020 Notice of lien—Contents—Filing. No person shall be entitled to the lien given by RCW 60.44.010 unless such person shall, within twenty days after the date of such injury or receipt of transportation or care, or, if settlement has not been accomplished and payment made to such injured person, then at any time before such settlement and payment, file for record with the county auditor of the county in which said service was performed, a notice of claim stating the name and address of the person claiming the lien and whether such person claims as a practitioner, physician, nurse, ambulance service, or hospital, the name and address of the patient and place of domicile or residence, the time when and place where the alleged fault or negligence of the tort-feasor occurred, and the nature of the injury if any, the name and address of the tort-feasor, if same or any thereof are known, which claim shall be subscribed by the claimant and verified before a person authorized to administer oaths. [1975 1st ex.s. c 250 § 2; 1937 c 69 § 2; RRS § 1209-2.]

60.44.030 Record of claims. The county auditor shall record the claims mentioned in this chapter, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1999 c 233 § 6; 1937 c 69 § 3; RRS § 1209-4.]

Effective date—1999 c 233: See note following RCW 4.28.320.

60.44.040 Taking note—Effect on lien. The taking of a promissory note or other evidence of indebtedness for any services performed, as provided in this chapter, shall not discharge the lien therefor unless expressly received as a payment for such services and so specified therein. [1937 c 69 § 4; RRS § 1209-4.]

60.44.050 Settlement of damages—Effect on lien. No settlement made by and between the patient and tortfeasor and/or insurer shall discharge the lien against any money due or owing by such tortfeasor or insurer to the patient or relieve the tortfeasor and/or insurer from liability by reason of such lien unless such settlement also provides for the payment and discharge of such lien or unless a written release or waiver of any such claim of lien, signed by the claimant, be filed in the court where any action has been commenced on such claim, or in case no action has been commenced against the tortfeasor and/or insurer, then such written release or waiver shall

be delivered to the tortfeasor and/or insurer. [1937 c 69 § 5; RRS § 1209-5.]

60.44.060 Enforcement of lien—Payment as evidence. Such lien may be enforced by a suit at law brought by the claimant or his assignee within one year after the filing of such lien against the said tortfeasor and/or insurer. In the event that such tortfeasor and/or insurer shall have made payment or settlement on account of such injury, the fact of such payment shall only for the purpose of such suit be prima facie evidence of the negligence of the tortfeasor and of the liability of the payer to compensate for such negligence. [1937 c 69 § 6; RRS § 1209-6.]

Chapter 60.45 RCW

LIEN OF DEPARTMENT OF SOCIAL AND HEALTH SERVICES FOR MEDICAL CARE FURNISHED INJURED RECIPIENT

Sections

60.45.010 Medical care to injured recipient—Recovery of cost against tortfeasor or tortfeasor's insurer—Lien created, filing—Payment to recipient does not discharge lien.

60.45.010 Medical care to injured recipient—Recovery of cost against tortfeasor or tortfeasor's insurer—Lien created, filing—Payment to recipient does not discharge lien. See RCW 74.09.180, 43.20B.040, and 43.20B.050.

Chapter 60.52 RCW

LIEN FOR SERVICES OF SIRE

Sections

60.52.010 Liens authorized—Filing statement.
 60.52.020 Auditor's certificate—Contents—Posting.
 60.52.030 Statement of lien—Filing—Duration of lien.
 60.52.035 Delivery of semen by artificial insemination procedures—Lien upon female or offspring—No filing—Duration of lien—Statement of account.
 60.52.040 Foreclosure of lien.
 60.52.050 Auditor's fees.

60.52.010 Liens authorized—Filing statement. In order to secure to the owner or owners of sires payment for service, the following provisions are enacted: That every owner of a sire having a service fee, in order to have a lien upon the female served, and upon the get of any such sire, under the provisions of this chapter, for such service, shall file for record with the county auditor of the county where said sire is kept for service a statement, verified by oath or affirmation, to the best of his knowledge and belief, giving the name, age, description and pedigree, as well as the terms and conditions upon which such sire is advertised for service: PROVIDED, That owners of sires who are not in possession of pedigrees for such sires shall not be debarred from the benefits of this chapter. [1890 p 451 § 1; RRS § 3056.]

60.52.020 Auditor's certificate—Contents—Posting. The county auditor, upon the receipt of the statement as specified in RCW 60.52.010, duly verified by affidavit, shall issue a certificate to the owner or owners of said sire, which

shall be posted by the owner in a conspicuous place where said sire may be stationed, which certificate shall state the name, age, description, pedigree and ownership of such sire, the terms and conditions upon which the said sire is advertised for service, and that the provisions of this chapter, so far as relates to the filing of the statement aforesaid, has been complied with. [1890 p 451 § 2; RRS § 3057.]

60.52.030 Statement of lien—Filing—Duration of lien. The owner or owners of any such sire receiving such certificate, by complying with RCW 60.52.010 and 60.52.020, shall obtain and have a lien upon the female served for the period of eighteen months from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: PROVIDED, Said owner or owners shall file for record a statement of account, verified by affidavit, with the county auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served, within ten months from the date of service or date of birth, as the case may be: PROVIDED FURTHER, That the lien upon the get of any such sire shall be a preferred lien: AND PROVIDED FURTHER, That no sale or transfer of any female animal served shall defeat the right of such lien holder. [1998 c 99 § 1; 1913 c 53 § 1; 1890 p 451 § 3; RRS § 3058.]

Effective date—1998 c 99: "This act takes effect July 1, 1998." [1998 c 99 § 3.]

60.52.035 Delivery of semen by artificial insemination procedures—Lien upon female or offspring—No filing—Duration of lien—Statement of account. When an owner of a sire, or an owner of semen from sires, provides, for the insemination of a female, reproductively viable semen from the sire, the owner of the sire, or the owner of the semen, without satisfying the requirements of RCW 60.52.010 and 60.52.020, upon delivery of the semen by artificial insemination procedures, obtains and has a lien upon the female to which the semen is delivered by artificial insemination procedures, or a lien upon the offspring of that female as the result of delivery of the semen by artificial insemination procedures. The lien upon the female survives for eighteen months from the date of the insemination procedure; the lien upon the offspring survives for one year from the date of birth of the resulting offspring. However, the owner of the sire, or the owner of the semen, must, within ten months of the date of the insemination procedure or the date of birth, file for record, with the county auditor of the county where the insemination procedure was rendered, a statement of account, verified by affidavit, indicating the amount due to the owner for the reproductively viable semen, along with a description of the female or the name and address of the person for whom the procedure was provided. The lien, whether upon the female or upon the offspring, is a preferred lien. Sale or transfer of the inseminated female or of the offspring does not defeat the right of the lien holder. [1998 c 99 § 2.]

Effective date—1998 c 99: See note following RCW 60.52.030.

60.52.040 Foreclosure of lien. Liens under this chapter may be foreclosed as provided in chapter 60.10 RCW. [1995 c 62 § 11; 1969 c 82 § 14; 1890 p 452 § 4; RRS § 3059.]

60.52.050 Auditor's fees. For filing certificate, making copy of such affidavit, and the certificate of date of such filing, the clerk of record shall be entitled to the same fees as are provided by law for similar service in regard to chattel mortgages. [1890 p 452 § 5; RRS § 3059 1/2.]

Chapter 60.56 RCW

AGISTER AND TRAINER LIENS

Sections

- 60.56.005 Definition of "agister."
- 60.56.010 Liens created.
- 60.56.015 Liens perfected.
- 60.56.018 Potential sale of animal to which lien is attached—Notice to lien holder and potential buyer.
- 60.56.021 Violation of RCW 60.56.018—Civil action for damages—Civil fine.
- 60.56.025 Lien created for care of animal seized by law enforcement officer.
- 60.56.035 Expiration of lien.
- 60.56.050 Enforcement of lien.

60.56.005 Definition of "agister." For purposes of this chapter "agister" means a farmer, ranchman, herder of cattle, livery and boarding stable keeper, veterinarian, or other person, to whom horses, mules, cattle, or sheep are entrusted for the purpose of feeding, herding, pasturing, training, caring for, or ranching. [1993 c 53 § 1.]

60.56.010 Liens created. Any agister shall have a lien upon the horses, mules, cattle, or sheep, and upon the proceeds or accounts receivable from such animals, for such amount that may be due for the feeding, herding, pasturing, training, caring for, and ranching of the animals, and shall be authorized to retain possession of the horses, mules, cattle, or sheep, until the amount is paid or the lien expires, whichever first occurs. The lien attaches on the date such amounts are due and payable but are unpaid. [1993 c 53 § 2; 1989 c 67 § 1; 1987 c 233 § 1; 1909 c 176 § 1; RRS § 1197.]

60.56.015 Liens perfected. An agister who holds a lien under RCW 60.56.010 shall perfect the lien by (1) posting notice of the lien in a conspicuous location on the premises where the lien holder is keeping the animal or animals, (2) providing a copy of the posted notice to the owner of the animal or animals, and (3) providing a copy of the posted notice to any lien creditor as defined in RCW 62A.9A-102(52) if the amount of the agister lien is in excess of one thousand five hundred dollars. A lien creditor may be determined through a search under RCW 62A.9A-523 and 62A.9A-526. The lien holder is entitled to collect from the buyer, the seller, or the person selling on a commission basis if there is a failure to make payment to the perfected lien holder. [2001 c 32 § 7; 1993 c 53 § 3; 1989 c 67 § 2.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

60.56.018 Potential sale of animal to which lien is attached—Notice to lien holder and potential buyer. A party subject to a lien under RCW 60.56.010 shall notify (1)

the lien holder of a potential sale of the animal or animals to which the lien is attached, (2) a potential buyer of the existence of the unsatisfied lien against the animal or animals for sale, and (3) any lien holder of record of the potential sale of the animal or animals and of the existence of the unsatisfied lien. [1993 c 53 § 4.]

60.56.021 Violation of RCW 60.56.018—Civil action for damages—Civil fine. A person injured by a violation of RCW 60.56.018 may bring civil action in the appropriate court of jurisdiction to recover the actual damages sustained, together with the costs of the suit, including reasonable attorney fees and any other costs associated with satisfaction of the lien. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained.

If damages are awarded under this section, the court may impose on a liable party a civil fine of not more than one thousand dollars to be paid to the plaintiff. [1993 c 53 § 5.]

60.56.025 Lien created for care of animal seized by law enforcement officer. If a law enforcement officer authorizes removal of an animal pursuant to chapter 16.52 RCW, the person or entity receiving the animal and aiding in its care or restoration to health shall have a lien upon the animal for the cost of feeding, pasturing, and caring otherwise for the animal. The lien attaches on the date such costs are due and payable but are unpaid. Any such person is authorized to retain possession of the animal until such costs are paid or the lien expires, whichever first occurs. [1987 c 233 § 2.]

60.56.035 Expiration of lien. Any lien created by this chapter shall expire one hundred eighty days after it attaches, unless, within that period, an action to enforce the lien is filed pursuant to RCW 60.56.050. [1993 c 53 § 6; 1987 c 233 § 3.]

60.56.050 Enforcement of lien. Any person having a lien under the provisions of this chapter may enforce the same under chapter 60.10 RCW or, at the agister's option, by an action in any court of competent jurisdiction. If enforcement is through court proceeding, the property may be sold on execution for the purpose of satisfying the amount of the judgment and costs of sale, together with the proper costs of keeping the same up to the time of the sale. [1993 c 53 § 7; 1987 c 233 § 4; 1891 c 80 § 2; RRS § 1198. Formerly RCW 60.56.020, part.]

Chapter 60.60 RCW

LIEN FOR TRANSPORTATION, STORAGE, ADVANCEMENTS, ETC.

Sections

- 60.60.010 Liens created.
- 60.60.020 Livestock and perishable property—Sale of.
- 60.60.030 Sale of other property.
- 60.60.040 Application of proceeds.
- 60.60.050 Special contract not affected.
- 60.60.060 Notice, how given.

60.60.010 Liens created. Every person, firm or corporation who, as a commission merchant, carrier, wharfinger or storage warehouseman, shall make advances for freight, transportation, wharfage or storage upon the personal property of another, or shall carry or store such personal property, shall have a lien thereon, so long as the same remains in his possession, for the charges for advances, freight, transportation, wharfage or storage, and it shall be lawful for such person, firm or corporation to cause such property to be sold as is herein in this chapter provided. [1927 c 144 § 1; Code 1881 § 1980; 1863 p 421 § 11; 1860 p 288 § 11; RRS § 1191.]

60.60.020 Livestock and perishable property—Sale of. If said property consists of livestock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or consists of perishable property liable, if kept, to destruction, waste or great depreciation, the person, firm or corporation having such lien may sell the same upon giving ten days' notice. [1927 c 144 § 2; Code 1881 § 1981; 1863 p 421 § 13; 1860 p 288 § 13; RRS § 1192.]

60.60.030 Sale of other property. All other property upon which such charges may be unpaid, due, and a lien after the same shall have remained in store uncalled for, for a period of thirty days after such charges shall have become due, may be sold by the person or persons having a lien for the payment of such charges upon giving ten days' notice: PROVIDED, That where the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of the sale. [Code 1881 § 1982; 1863 p 421 § 12; 1860 p 288 § 12; RRS § 1193.]

60.60.040 Application of proceeds. The moneys arising from sales made under the provisions of this chapter shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transportation, wharfage or storage, for whose benefit the sale shall [have] been made; the surplus, if any, shall be retained subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owner still remaining in store uncalled for, if any there be, and to the demand of the owner of the property, who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special fund for the benefit of the lawful claimant thereof. [Code 1881 § 1983; 1863 p 421 § 14; 1860 p 288 § 14; RRS § 1194.]

60.60.050 Special contract not affected. Nothing in this chapter contained shall be so construed as to alter or affect the terms of any special contract in writing, made by the parties as to the advances, affreightment, wharfage or storage; but when any such special contract shall have been made, its terms shall govern irrespective of this chapter. [Code 1881 § 1984; RRS § 1195.]

60.60.060 Notice, how given. All notices required under this chapter shall be given as is or may be by law provided in cases of sales of personal property upon execution. [Code 1881 § 1985; 1863 p 421 § 15; 1860 p 288 § 15; RRS § 1196.]

Sale of property on execution: Chapter 6.21 RCW.

Chapter 60.64 RCW

LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1915 ACT

Sections

60.64.003	"Hotel" defined.
60.64.005	Record of guests—Hotels and trailer camps.
60.64.007	Liability for loss of valuables, baggage and other property.
60.64.010	Lien on property of guest—"Guest" defined.
60.64.040	Sale—Notice—Disposition of funds.
60.64.050	Obtaining accommodations by fraud—Penalty.

Lien of hotels, lodging and boarding houses—1890 act: Chapter 60.66 RCW.

60.64.003 "Hotel" defined. See RCW 19.48.010.

60.64.005 Record of guests—Hotels and trailer camps. See RCW 19.48.020.

60.64.007 Liability for loss of valuables, baggage and other property. See RCW 19.48.030 and 19.48.070.

60.64.010 Lien on property of guest—"Guest" defined. The keeper of any hotel, boarding house or lodging house, whether individual, partnership or corporation, has a lien upon, and may retain, all baggage, sample cases, and other property, lawfully in the possession of a guest, boarder, or lodger, brought upon the premises by such guest, boarder, or lodger, for the proper charges due from him or her, on account of his or her food, board, room rent, lodging and accommodation, and for such extras as are furnished at his or her request, and for all money and credit paid for or advanced to him or her; and for the costs of enforcing such lien; and said hotel keeper, inn keeper, lodging house keeper or boarding house keeper, shall have the right to retain and hold possession of such baggage, sample cases and other property until the amount of such charges and moneys be fully paid, and to sell such baggage, sample cases, or other property for the payment of such lien, charges and moneys in the manner provided in RCW 60.64.040; and such baggage, sample cases and property shall not be subject to attachment or execution until such lien and storage charges and the cost of satisfying such lien are fully satisfied: PROVIDED, HOWEVER, That if any baggage, sample cases, or property becoming subject to the lien herein provided for does not belong to the guest, boarder or lodger who incurred the charges or indebtedness secured thereby at the time when such charges or indebtedness shall be incurred, and if the hotel, inn, boarding house or lodging house keeper entitled to such lien receives actual notice of such fact at any time before the sale of such baggage, sample cases or property hereunder, then and in that event such baggage, sample cases and property which are subject to said lien and do not belong to said guest, boarder or lodger at the time when such charges or indebtedness shall be incurred, shall not be subject to sale in the manner herein pro-

vided, but the same may be sold in the manner provided by law for the sale of property under a writ of execution to satisfy a judgment obtained in any action brought to recover the said charges or indebtedness. A guest, within the meaning of this chapter and chapter 19.48 RCW, includes each and every person who is a member of the family of, or dependent upon, a guest, boarder or lodger, in such hotel, inn, boarding house or lodging house, and for whose support such tenant, guest, boarder or lodger is legally liable. [1929 c 216 § 4; 1915 c 190 § 5; RRS § 6864. Formerly RCW 60.64.010 through 60.64.030.]

Severability—1929 c 216: See RCW 19.48.900.

60.64.040 Sale—Notice—Disposition of funds. If such lien and all such charges and moneys are not fully paid and satisfied within sixty days from the time when such charges and moneys, respectively, become due, the keeper of such hotel, inn, boarding house or lodging house, may then proceed to sell such baggage, sample cases and other property, or any part thereof, at public auction, after giving ten days notice of the time and place of sale by posting said notice in three public places in the city or town wherein such hotel, inn, boarding house or lodging house is located, and by mailing a notice of the time and place of sale to such guest[,] boarder or lodger at the place of residence, if any, registered by him or her on the register, if any, of said hotel, inn, boarding house or lodging house; and after satisfying the lien and paying all legal charges due from such guest, boarder or lodger, including proper charges for storage of the said baggage, sample cases or property, and any expense of selling the same that may accrue, any residue remaining shall, on demand, within one year after such sale, be paid to such guest, boarder or lodger, or his or her legal representatives: PROVIDED, HOWEVER, That should such guest, boarder or lodger fail or refuse to register from any particular town or city, or not register at all, the notice herein required to be mailed shall be addressed to the name of such guest, boarder or lodger at the city or town wherein such hotel, inn, boarding house or lodging house is located; and such sale shall be a perpetual bar to any action against said hotel, inn, boarding house or lodging house keeper for the recovery of such baggage, sample cases, or property, or of the value thereof, or for any damage arising from the failure of such guest, boarder or lodger to receive such baggage, sample cases, or property. [1929 c 216 § 5; 1915 c 190 § 6; RRS § 6865.]

60.64.050 Obtaining accommodations by fraud—Penalty. See RCW 19.48.110.

Chapter 60.66 RCW

LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1890 ACT

Sections

60.66.010 Lien on property of guest.
60.66.020 Sale to satisfy lien—Notice.

Lien of hotels, lodging and boarding houses—1915 act: Chapter 60.64 RCW.

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60.66.010 Lien on property of guest. Hereafter all hotel keepers, inn keepers, lodging house keepers and boarding house keepers in this state shall have a lien upon the baggage, property, or other valuables of their guests, lodgers or boarders, brought into such hotel, inn, lodging house or boarding house by such guests, lodgers or boarders, for the proper charges due from such guests, lodgers or boarders for their accommodation, board or lodging and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property or other valuables until such charges are fully paid, and to sell such baggage, property or other valuables for the payment of such charges in the manner provided in RCW 60.66.020. [1890 p 96 § 1; RRS § 1201.]

60.66.020 Sale to satisfy lien—Notice. Whenever any baggage, property or other valuables which have been retained by any hotel keeper, inn keeper, lodging house keeper or boarding house keeper, in his possession by virtue of the provision of RCW 60.66.010, shall remain unredeemed for the period of three months after the same shall have been so retained, then it shall be lawful for such hotel keeper, inn keeper, lodging house keeper or boarding house keeper to sell such baggage, property or other valuables at public auction, after giving the owner thereof ten days' notice of the time and place of such sale, through the post office, or by advertising in some newspaper published in the county where such sale is made, or by posting notices in three conspicuous places in such county, and out of the proceeds of such sale to pay all legal charges due from the owner of such baggage, property or valuables, including proper charges for storage of the same, and the overplus, if any, shall be paid to the owner upon demand. [1890 p 96 § 2; RRS § 1202.]

Chapter 60.68 RCW

UNIFORM FEDERAL LIEN REGISTRATION ACT

(Formerly: Lien for internal revenue taxes)

Sections

60.68.005 Application of chapter.
60.68.015 Notice of federal liens.
60.68.025 Certification of federal liens.
60.68.035 Fees for recording or filing federal liens.
60.68.045 Tax lien index—Duties of county auditor—Uniform commercial code filing system—Department of licensing.
60.68.900 Uniform application of chapter.
60.68.901 Short title.
60.68.902 Effective date—1988 c 73.
60.68.903 Effective date—1992 c 133.

60.68.005 Application of chapter. This chapter applies only to federal tax liens and to other federal liens, notices of which under any act of congress or any regulation adopted pursuant thereto are required or permitted to be recorded in the same manner as notices of federal tax liens. [1988 c 73 § 1.]

60.68.015 Notice of federal liens. (1) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be recorded for record in accordance with this chapter.

(2) Notices of liens upon real property for obligations payable to the United States and certificates and notices

affecting the liens shall be recorded in the office of the recorder of the county in which the real property subject to the liens is situated.

(3) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed with the department of licensing. [1992 c 133 § 1; 1988 c 73 § 2.]

60.68.025 Certification of federal liens. Certification of notices of liens, certificates, or other notices affecting federal liens by the United States secretary of the treasury or the secretary's delegate, or by an official or entity of the United States responsible for recording or certifying of notice of any other lien, entitles those liens to be recorded and no other attestation, certification, or acknowledgement is necessary. [1988 c 73 § 3.]

60.68.035 Fees for recording or filing federal liens.

(1) The fee for recording a lien on real estate with the county auditor shall be as set forth in RCW 36.18.010.

(2) The fee for filing liens of personal property with the department of licensing of the state of Washington shall be as determined by the department.

(3) The recording or filing officer shall bill the district directors of the internal revenue service or other appropriate federal officials on a monthly basis for fees for documents filed for record by them. [1992 c 133 § 2; 1988 c 73 § 4.]

60.68.045 Tax lien index—Duties of county auditor—Uniform commercial code filing system—Department of licensing. (1) When a notice of a tax lien is recorded under RCW 60.68.015(2), the county auditor shall forthwith enter it in the general index showing the name and residence of the taxpayer named in the notice, the collector's serial number of the notice, the date and hour of recording, and the amount of tax and penalty assessed. The auditor shall have the ability to produce a separate tax lien index listing.

(2) When a notice of a tax lien is filed under RCW 60.68.015(3), the department of licensing shall enter it in the uniform commercial code filing system showing the name and address of the taxpayer as the debtor, and the internal revenue service as a secured party, and include the collector's serial number of the notice, the date and hour of filing, and the amount of tax and penalty assessed. [1999 c 233 § 7; 1992 c 133 § 3; 1988 c 73 § 5.]

Effective date—1999 c 233: See note following RCW 4.28.320.

60.68.900 Uniform application of chapter. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1988 c 73 § 6.]

60.68.901 Short title. This chapter may be known and cited as the uniform federal lien registration act. [1988 c 73 § 7.]

60.68.902 Effective date—1988 c 73. This chapter shall take effect July 1, 1988. [1988 c 73 § 10.]

60.68.903 Effective date—1992 c 133. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1992. [1992 c 133 § 4.]

Chapter 60.70 RCW

**LIMITATIONS ON NONCONSENSUAL
COMMON LAW LIENS**

Sections

60.70.010	Intent—Definitions.
60.70.020	Real property common law liens unenforceable—Personal property common law liens limited.
60.70.030	No duty to accept filing of common law lien—Filing of a notice of invalid lien.
60.70.040	No duty to disclose record of common law lien.
60.70.050	Immunity from liability for failure to accept filing or disclose common law lien.
60.70.060	Petition for order directing common law lien claimant to appear before court—Service of process—Filing fee—Costs and attorneys' fees.
60.70.070	Claim of lien against a federal, state, or local official or employee—Performance of duties—Validity.

60.70.010 Intent—Definitions. (1) It is the intent of this chapter to limit the circumstances in which nonconsensual common law liens shall be recognized in this state.

(2) For the purposes of this chapter:

(a) "Lien" means an encumbrance on property as security for the payment of a debt;

(b) "Nonconsensual common law lien" is a lien that:

(i) Is not provided for by a specific statute;

(ii) Does not depend upon the consent of the owner of the property affected for its existence; and

(iii) Is not a court-imposed equitable or constructive lien;

(c) "State or local official or employee" means an appointed or elected official or any employee of a state agency, board, commission, department in any branch of state government, or institution of higher education; or of a school district, political subdivision, or unit of local government of this state; and

(d) "Federal official or employee" means an employee of the government and federal agency as defined for purposes of the federal tort claims act, 28 U.S.C. Sec. 2671.

(3) Nothing in this chapter is intended to affect:

(a) Any lien provided for by statute;

(b) Any consensual liens now or hereafter recognized under the common law of this state; or

(c) The ability of courts to impose equitable or constructive liens. [1995 c 19 § 1; 1986 c 181 § 1.]

60.70.020 Real property common law liens unenforceable—Personal property common law liens limited. Nonconsensual common law liens against real property shall not be recognized or enforceable. Nonconsensual common law liens claimed against any personal property shall not be recognized or enforceable if, at any time the lien is claimed, the claimant fails to retain actual lawfully acquired possession or exclusive control of the property. [1986 c 181 § 2.]

60.70.030 No duty to accept filing of common law lien—Filing of a notice of invalid lien. (1) No person has a duty to accept for filing or recording any claim of lien unless

the lien is authorized by statute or imposed by a court having jurisdiction over property affected by the lien, nor does any person have a duty to reject for filing or recording any claim of lien, except as provided in subsection (2) of this section.

(2) No person shall be obligated to accept for filing any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien.

(3) If a claim of lien as described in subsection (2) of this section has been accepted for filing, the recording officer shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee; the assistant attorney general representing the state agency, board, commission, department, or institution of higher education of which the individual is an official or employee; or the attorney representing the school district, political subdivision, or unit of local government of this state of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien at his or her last known address. No recording officer or county shall be liable for the acceptance for filing of a claim of lien as described in subsection (2) of this section, nor for the acceptance for filing of a notice of invalid lien pursuant to this subsection. [1995 c 19 § 4; 1986 c 181 § 3.]

60.70.040 No duty to disclose record of common law lien. No person has a duty to disclose an instrument of record or file that attempts to give notice of a common law lien. This section does not relieve any person of any duty which otherwise may exist to disclose a claim of lien authorized by statute or imposed by order of a court having jurisdiction over property affected by the lien. [1986 c 181 § 4.]

60.70.050 Immunity from liability for failure to accept filing or disclose common law lien. A person is not liable for damages arising from a refusal to record or file or a failure to disclose any claim of a common law lien of record. [1986 c 181 § 5.]

60.70.060 Petition for order directing common law lien claimant to appear before court—Service of process—Filing fee—Costs and attorneys' fees. (1) Any person whose real or personal property is subject to a recorded claim of common law lien who believes the claim of lien is invalid, may petition the superior court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by this section should not be granted. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or his or her attorney setting forth a concise statement of the facts upon which the motion is based. The order shall be served

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upon the lien claimant by personal service, or, where the court determines that service by mail is likely to give actual notice, the court may order that service be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted, the claim of lien shall be stricken and released and that the lien claimant shall be ordered to pay the costs incurred by the petitioner, including reasonable attorneys' fees.

(3) The clerk of the court shall assign a cause number to the petition and obtain from the petitioner a filing fee of thirty-five dollars.

(4) If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order striking and releasing the claim of lien and awarding costs and reasonable attorneys' fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys' fees to the lien claimant to be paid by the petitioner. [1995 c 19 § 2.]

60.70.070 Claim of lien against a federal, state, or local official or employee—Performance of duties—Validity. Any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien. [1995 c 19 § 3.]

Chapter 60.72 RCW

LANDLORD'S LIEN FOR RENT

Sections

60.72.010 Liens created—Priority—Extent—Exceptions.
60.72.040 Foreclosure of lien.

60.72.010 Liens created—Priority—Extent—Exceptions. Any person to whom rent may be due, his or her executors, administrators, or assigns, shall have a lien for such rent upon personal property which has been used or kept on the rented premises by the tenant, except property of third persons delivered to or left with the tenant for storage, repair, manufacture, or sale, or under conditional bills of sale duly filed, and such property as is exempt from execution by law. Such liens for rent shall be paramount to, and have preference over, all other liens except liens for taxes, general and special liens of labor, and liens of mortgages duly recorded prior to the tenancy. Such liens shall not be for more than two months' rent due, except that a lien for up to four months' rent due may be established when the tenant is renting a mobile home lot in a mobile home park as defined in RCW

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59.20.030. No lien may be enforced for any rent or any installment thereof which has been due for more than two months at the time of the commencement of an action to foreclose such liens, except that a lien may be enforced for rent due for up to four months at the time of the commencement of an action to foreclose the lien when the tenant is renting a mobile home lot in a mobile home park as defined in RCW 59.20.030. No writing or recording shall be necessary to create such lien; and if such property be removed from the rented premises and not returned to the owner, agent, executor, administrator, or assign, the lien shall continue and be a superior lien on the property so removed for ten days from the date of its removal, and the lien may be enforced against the property wherever found. In the event the property contained in the rented premises be destroyed by fire or other elements, the lien shall extend to any money that may be received by the tenant as indemnity for the destruction of the property, nor shall the lien be lost by the sale of the property, except merchandise sold in the usual course of trade or to purchasers without notice of the tenancy. The provisions of this chapter shall not apply to, nor shall it be enforced against, the property of tenants in dwelling houses or apartments or any other place that is used exclusively as a home or residence of the tenant and his or her family. [1990 c 169 § 3; 1927 c 108 § 1; 1917 c 165 § 1; RRS § 1203-1. Formerly RCW 60.72.010, 60.72.020, 60.72.030.]

60.72.040 Foreclosure of lien. Said lien may be foreclosed as provided in chapter 60.10 RCW. [1995 c 62 § 12; 1969 c 82 § 15; 1917 c 165 § 2; RRS § 1203-2.]

Chapter 60.76 RCW

LIEN OF EMPLOYEES FOR CONTRIBUTIONS TO BENEFIT PLANS

Sections

60.76.010	Lien authorized.
60.76.020	Notice of lien—Contents—Filing and serving.
60.76.030	Manner of serving notice.
60.76.040	Manner of enforcing lien—Costs.
60.76.050	Priority of lien.

60.76.010 Lien authorized. Every employer who is required to pay contributions, by agreement or otherwise, into a fund of any employee benefit plan in order that his employee may participate therein, shall pay such contributions in the required amounts and at the stipulated time or each employee affected thereby shall have a lien on the earnings and on all property used in the operation of said employer's business to the extent of the moneys, plus any penalties, due to be paid by or on his behalf in order to qualify him for participation therein, and for any moneys expended or obligations incurred for medical, hospital, or other expenses to which he would have been entitled had such required contributions been paid. [1961 c 86 § 1.]

60.76.020 Notice of lien—Contents—Filing and serving. The lien claimant, or his representative on his behalf, or the trustee of the fund on the claimant's behalf, within sixty days after such payment becomes due shall file for record with the auditor of the county wherein the claimant is or was

employed by such employer a notice of claim, containing a statement of the demand, the name of the employer and the name of the person employing the claimant, if known, with a statement of the pertinent terms and conditions of the employee benefit plan and the time when such contributions are due and were to have been paid, and shall serve or mail a copy thereof to said employer within such time. [1961 c 86 § 2.]

60.76.030 Manner of serving notice. Service of the notice of claim may be made in the same manner as summons in civil actions. [1961 c 86 § 3.]

60.76.040 Manner of enforcing lien—Costs. The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed when said lien is upon real property, or within the same time and in the same manner as chattel liens are enforced when the lien is upon personal property. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, a reasonable attorney's fee in the superior court, court of appeals, and supreme court, and court costs. [1971 c 81 § 130; 1961 c 86 § 4.]

60.76.050 Priority of lien. The lien created herein shall be preferred to any encumbrance which may attach after the contribution payments became due and is also preferred to any encumbrance which may have attached previous to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1961 c 86 § 5.]

Chapter 60.80 RCW

LIEN FOR UNRECORDED UTILITY CHARGES

Sections

60.80.005	Definitions.
60.80.010	Seller of real property responsible for satisfying lien—Closing agent's duties and liabilities—Fee.
60.80.020	Seller's duty to inform closing agent—Written waiver—Closing agent's duties—Utility's duties—Payment of final billing.
60.80.900	Effective date—1996 c 43.

60.80.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) Except as otherwise provided in this subsection (1), "charges" include: (a) All lawful charges assessed by a utility operated under chapter 35.21, 35.67, 36.36, 36.89, 36.94, or 57.08 RCW, but not evidenced by a recorded lien, recorded covenant, recorded agreement, or special assessment roll filed with the city or county treasurer or assessor, and not billed and collected with property taxes; and (b) penalties and interest, and reasonable attorneys' fees and other costs of foreclosure if foreclosure proceedings have been commenced.

(2) "Closing agent" means an escrow agent as defined in RCW 18.44.011(6) or a person exempt from licensing requirements under RCW 18.44.021, handling the escrow on the sale of the real property.

(3) "Real estate agent" means a real estate broker, real estate salesperson, associate real estate broker, or person as defined in RCW 18.85.010 (1) through (4).

(4) "Business day" means a day the offices of the county or counties in which the utility in question provides service are open for business. [2004 c 215 § 7; 1996 c 43 § 1.]

60.80.010 Seller of real property responsible for satisfying lien—Closing agent's duties and liabilities—Fee.

(1) Unless otherwise stated and acknowledged in writing by the purchaser, the seller of a fee interest in real property is responsible for satisfying, upon closing, any lien provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, or 36.94.150.

(2) No closing agent may refuse a written request by the seller or purchaser of a fee interest in real property to administer the disbursement of closing funds necessary to satisfy unpaid charges as charges are defined in RCW 60.80.005. Except as otherwise provided in this subsection (2), a closing agent who refuses such a written request is liable to the purchaser for unpaid charges for utility services covered by the request. A closing agent is not liable if the closing agent's refusal is based on the seller's inaccurate or incomplete identification of utilities providing service to the property, or if a utility fails to provide an estimated or actual final billing, or written extension of the per diem rate, as required by RCW 60.80.020, or if disbursement of closing funds necessary to satisfy the unpaid charges would violate RCW 18.44.400.

(3) A closing agent may charge a fee for performing the services required of the closing agent by this chapter, which fee may be in addition to other fees or settlement charges collected in the course of ordinary settlement practices. [2004 c 215 § 8; 1996 c 43 § 2.]

60.80.020 Seller's duty to inform closing agent—Written waiver—Closing agent's duties—Utility's duties—Payment of final billing.

(1) Unless the seller and purchaser waive, in writing, the services of a closing agent in administering the disbursement of closing funds necessary to satisfy unpaid charges as charges are defined in RCW 60.80.005, the seller shall, as a provision in a written agreement for the purchase and sale of real estate, inform the closing agent for the sale of the names and addresses of all utilities, including special districts, providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, or 57.08 RCW. The provision of the information in a written agreement for the purchase and sale of real estate constitutes a written request to the closing agent to administer disbursement of closing funds necessary to satisfy unpaid charges.

Unless the seller and purchaser have waived the services of a closing agent as provided in this subsection, the closing agent shall submit a written request for a final billing to each utility identified by the seller as providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, or 57.08 RCW. Either the seller or purchaser may submit a written request for a final billing to each utility identified by the seller as providing service to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, or 57.08 RCW.

The written request must identify the property by both legal description and address. The closing agent, seller, or

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purchaser may submit a written request to a utility by facsimile. In requesting final billings for utility services, the closing agent may rely upon information provided by the seller, and a closing agent or a real estate agent who is not the seller is not liable for inaccurate or incomplete information.

(2) After receiving a written request for a final billing for utility services to real property to be sold, a utility operated under chapter 35.21, 35.67, 36.36, 36.89, 36.94, or 57.08 RCW shall provide the requesting party with a written estimated or actual final billing as provided in this section. If the utility is unable to provide a written estimated or actual final billing or written extension of the per diem rate, due to insufficient information to identify the account, the utility shall notify the requesting party in writing that the information is insufficient to identify the account.

The utility shall provide the written estimated or actual final billing, or statement that the information in the request is insufficient to identify the account, to the requesting party within seven business days of receipt of the written request if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger. A utility may provide a written estimated or actual final billing to the requesting party by facsimile.

(a) The final billing must include all outstanding charges and, in addition to the estimated or actual final amount owing as of the stated closing date, must state the average per diem rate for the utility or utilities involved, including taxes and other charges, which shall apply for up to thirty days beyond the stated closing date if the closing date is delayed.

(b) If closing is delayed beyond thirty days, a new estimated or actual final billing must be requested in writing. In lieu of furnishing a written revised final billing, the utility may extend, in writing, the number of days for which the per diem charge applies. The utility shall respond within seven business days of receipt of the written request for a new estimated or actual final billing if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger.

(c) If a utility fails to provide a written estimated or actual final billing, written extension of the per diem rate, or statement that the information in the request is insufficient to identify the account, within seven business days of receipt of a written request if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger, an unrecorded lien provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, or 36.94.150 for charges incurred prior to the closing date is extinguished, and the utility may not recover the charges from the purchaser of the property.

(d) A closing agent shall inform the seller and purchaser of all applicable estimated and actual final billings furnished by utilities.

In performing his or her duties under this chapter, a closing agent may rely upon information provided by utilities and is not liable if information provided by utilities is inaccurate or incomplete.

(3) If closing occurs no later than the last date for which per diem charges may be applied, full payment of the estimated or actual final billing plus per diem charges extin-

guishes a lien of the utility provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, or 36.94.150 for charges incurred prior to the closing date.

(4)(a) Except as otherwise provided in this subsection (4)(a), this section does not limit the right of a utility to recover from the purchaser of the property unpaid utility charges incurred prior to closing, if the utility did not receive a written request for a final billing or if the utility complied with subsection (2) of this section.

A utility may not recover from a purchaser unpaid utility charges incurred prior to closing in excess of an estimated final billing.

(b) This section does not limit the right of a utility to recover unpaid utility charges incurred prior to closing, including unpaid utility charges in excess of an estimated final billing, from the seller of the property, or from the person or persons who incurred the charges.

(c) If an estimated final billing is in excess of the actual final billing, unless otherwise directed in writing by the seller and purchaser, a utility shall refund any overcharge to the seller of the property by sending the refund in the seller's name to the last address provided by the seller. A utility shall refund the overcharge within fourteen business days of the date the utility receives payment for the final billing, unless a county treasurer acts in an ex officio capacity as the treasurer of a utility, in which case the utility shall refund the overcharge within thirty business days of the date the utility receives payment for the final billing. [2004 c 215 § 9; 1996 c 43 § 3.]

60.80.900 Effective date—1996 c 43. This act shall take effect January 1, 1997. [1996 c 43 § 4.]

Chapter 60.84 RCW

LIEN ON DIES, MOLDS, FORMS, AND PATTERNS

Sections

- 60.84.005 Definitions.
- 60.84.010 Plastic fabricator, molder, and person conducting a plastic fabricating business has a lien—May retain possession—Notice to customer—Foreclosure by notice and sale.

60.84.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Customer" means an individual or entity that contracts with, causes, or caused a plastic fabricator to use a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product.

(2) "Plastic fabricator," "fabricator," or "molder" means an individual or entity, including but not limited to a tool or die maker, that contracts to or uses a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product for a customer. [1996 c 235 § 3.]

60.84.010 Plastic fabricator, molder, and person conducting a plastic fabricating business has a lien—May retain possession—Notice to customer—Foreclosure by notice and sale. (1) A plastic fabricator, molder, and person conducting a plastic fabricating business has a lien, dependent on possession, on a die, mold, form, or pattern belonging

to the customer for the amount owing from the customer for plastic fabrication work and for the value of materials used in the work. The fabricator may retain possession of the die, mold, form, or pattern until the charges are paid. This lien does not have priority over any security interest in the die, mold, form, or pattern that is perfected at the time the fabricator acquires the lien.

(2) Before a lien is enforced, the fabricator must cause written notice to be delivered personally or by registered or certified mail to the last known address of the customer. The notice must state that the fabricator will exercise its lien right because of nonpayment. The notice must also state the amount of money owed and demand payment. The fabricator's name, address, and phone number must be included in the notice.

(3) If the fabricator is not paid the total due within sixty days after the notice has been received by the customer, the fabricator may foreclose the lien by notice and sale as provided in this section, if the die, mold, form, or pattern is in the fabricator's possession. The fabricator must send notice of intended sale, by registered or certified mail with return receipt requested, to the last known address of the customer. The notice must include: A description of the die, mold, form, or pattern to be sold; a statement of intent to sell the die, mold, form, or pattern at public sale; the date, time, and place of the sale; and an itemized statement of moneys owing.

If there is no return receipt or if the postal service returns the notice as undeliverable, the fabricator shall publish notice of intention to sell the die, mold, form, or pattern at public sale in a newspaper of general circulation in the county where the die, mold, form, or pattern is physically located. The publication must include: A description of the die, mold, form, or pattern; the name, address, and phone number of the customer; the name, address, and phone number of the fabricator; and the date, time, and place of the sale.

The fabricator is entitled to the amount owing plus the costs of holding, preparing for sale, and selling the die, mold, form, or pattern. The fabricator is also entitled to reasonable attorneys' fees incurred.

(4) If the sale proceeds exceed the amount owing, the excess must be paid to subsequent lien holders. Any remainder must be remitted to the customer.

(5) A public sale may not be held under this section if it is in violation of a right of a customer under federal patent or copyright law. [1996 c 235 § 4.]

Title 61

MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

Chapters

- 61.10 Mortgage insurance.**
- 61.12 Foreclosure of real estate mortgages and personal property liens.**
- 61.16 Assignment and satisfaction of real estate and chattel mortgages.**
- 61.24 Deeds of trust.**
- 61.30 Real estate contract forfeitures.**
- 61.34 Equity skimming.**

Banks, real estate holdings: RCW 30.04.210.

Consumer loan act: Chapter 31.04 RCW.

Corporate powers of banks and trust companies: RCW 30.08.140, 30.08.150.

Credit unions: Chapter 31.12 RCW.

Excise tax on real estate sales: Chapter 82.45 RCW.

Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.

Fraudulent conveyances: Chapter 19.40 RCW.

Insurance companies, investments: Chapter 48.13 RCW.

Interest, usury: Chapter 19.52 RCW.

Joint tenancies: Chapter 64.28 RCW.

Liens: Title 60 RCW.

Motor vehicles, certificates of ownership: Chapter 46.12 RCW.

Mutual savings banks

investments: Chapter 32.20 RCW.

powers and duties: Chapters 32.08, 32.12, 32.16 RCW.

Negotiable instruments: Title 62A RCW.

Possession of real property to collect mortgaged, pledged or assigned rents and profits: RCW 7.28.230.

Property taxes: Title 84 RCW.

Real estate brokers and salespersons: Chapter 18.85 RCW.

Real property and conveyances: Title 64 RCW.

Recording master form instruments and mortgages or deeds of trust incorporating master form provisions: RCW 65.08.160.

Recording mortgages: Title 65 RCW.

Retail installment sales of goods and services: Chapter 63.14 RCW.

Savings and loan associations: Title 33 RCW.

Statute of frauds: Chapter 19.36 RCW.

Chapter 61.10 RCW MORTGAGE INSURANCE

Sections

- 61.10.010 Definitions.
- 61.10.020 Condition of residential mortgage transaction—Disclosures—Notices—Harm to borrower—Compliance with federal requirements.
- 61.10.030 Termination of insurance during term of indebtedness—Exception—Required conditions—Application to residential mortgage transactions—Compliance with federal requirements.
- 61.10.040 Not required when loan is less than eighty percent of value—Compliance with federal requirements.
- 61.10.900 Severability—1998 c 255.
- 61.10.901 Effective date—1998 c 255.

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61.10.010 Definitions. As used in this chapter:

(1) "Institutional third party" means the federal national mortgage association, the federal home loan mortgage corporation, the government national mortgage association, and other substantially similar institutions, whether public or private, provided the institutions establish and adhere to rules applicable to the right of cancellation of mortgage insurance, which are the same or substantially the same as those utilized by the institutions named in this subsection.

(2) "Mortgage insurance" means insurance, including mortgage guarantee insurance, against financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid in a residential mortgage transaction.

(3) "Residential mortgage transaction" means entering into a loan for personal, family, household, or purchase money purposes that is secured by a deed of trust or mortgage on owner-occupied, one-to-four unit, residential real property located in the state of Washington. [1998 c 255 § 1.]

61.10.020 Condition of residential mortgage transaction—Disclosures—Notices—Harm to borrower—Compliance with federal requirements. (1) If a borrower is required to obtain and maintain mortgage insurance as a condition of entering into a residential mortgage transaction, the lender shall disclose to the borrower whether and under what conditions the borrower has the right to cancel the mortgage insurance in the future. This disclosure shall include:

(a) Any identifying loan or insurance information, or other information, necessary to permit the borrower to communicate with the servicer or lender concerning the private mortgage insurance;

(b) The conditions that are required to be satisfied before the mortgage insurance may be canceled; and

(c) The procedures required to be followed by the borrower to cancel the mortgage insurance.

The disclosure required in this subsection shall be made in writing at the time the transaction is entered into.

(2) For residential mortgage transactions with mortgage insurance, the lender, or the person servicing the residential mortgage transaction if it is not the lender, annually shall provide the borrower with:

(a) A notice containing the same information as required to be disclosed under subsection (1) of this section; or

(b) A statement indicating that the borrower may be able to cancel the mortgage insurance and that the borrower may contact the lender or loan servicer at a designated address and phone number to find out whether the insurance can be canceled and the conditions and procedures to effect cancellation.

The notice or statement required by this subsection shall be provided in writing in a clear and conspicuous manner in or with each annual statement of account.

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(3) The notices and statements required in this section shall be provided without cost to the borrower.

(4) Any borrower in a residential mortgage transaction who is harmed by a violation of this section may obtain injunctive relief, may recover from the party who caused such harm by failure to comply with this section up to three times the amount of mortgage insurance premiums wrongly collected, and may recover reasonable attorneys' fees and costs of such action.

(5) This section does not apply to any mortgage funded with bond proceeds issued under an indenture requiring mortgage insurance for the life of the loan or to loans insured by the federal housing administration or the veterans administration.

(6) Subsection (1) of this section applies to residential mortgage transactions entered into on or after July 1, 1998. Subsection (2) of this section applies to any residential mortgage transaction existing on July 1, 1998, or entered into on or after July 1, 1998.

(7) A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, prescribing mortgage insurance disclosures and notifications shall be deemed in compliance with this section. [1998 c 255 § 2.]

61.10.030 Termination of insurance during term of indebtedness—Exception—Required conditions—Application to residential mortgage transactions—Compliance with federal requirements. (1) Except when a statute, regulation, rule, or written guideline promulgated by an institutional third party applicable to a residential mortgage transaction purchased in whole or in part by an institutional third party specifically prohibits cancellation during the term of indebtedness, the lender or servicer of a residential mortgage transaction may not charge or collect future payments from a borrower for mortgage insurance, and the borrower is not obligated to make such payments, if all of the following conditions are satisfied:

(a) The borrower makes a written request to terminate the obligation to make future payments for mortgage insurance;

(b) The residential mortgage transaction is at least two years old;

(c) The outstanding principal balance of the residential loan is not greater than eighty percent of the current fair market value of the property and is:

(i) For loans made for the purchase of the property, less than eighty percent of the lesser of the sales price or the appraised value at the time the transaction is entered into; or

(ii) For all other residential mortgage transactions, less than eighty percent of the appraised value at the time the residential loan transaction was entered into.

The lender or servicer may request that a current appraisal be done to verify the outstanding principal balance is less than eighty percent of the current fair market value of the property; unless otherwise agreed to in writing, the lender or servicer selects the appraiser and splits the cost with the borrower;

(d) The borrower's scheduled payment of monthly installments or principal, interest, and any escrow obligations is current at the time the borrower requests termination of his

or her obligation to continue to pay for mortgage insurance, those installments have not been more than thirty days late in the last twelve months, and the borrower has not been assessed more than one late penalty over the past twelve months;

(e) A notice of default has not been recorded against the property as the result of a nonmonetary default in the previous twelve months.

(2) This section applies to residential mortgage transactions entered into on or after July 1, 1998.

(3) This section does not apply to:

(a) Any residential mortgage transaction that is funded in whole or in part pursuant to authority granted by statute, regulation, or rule that, as a condition of that funding, prohibits or limits termination of payments for mortgage insurance during the term of the indebtedness; or

(b) Any mortgage funded with bond proceeds issued under an indenture requiring mortgage insurance for the life of the loan.

(4) If the residential mortgage transaction will be or has been sold in whole or in part to an institutional third party, adherence to the institutional third party's standards for termination of future payments for mortgage insurance shall be deemed in compliance with this section.

(5) A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, governing the cancellation of mortgage insurance shall be deemed in compliance with this section. [1998 c 255 § 3.]

61.10.040 Not required when loan is less than eighty percent of value—Compliance with federal requirements. On or after July 1, 1998, no borrower entering into a residential mortgage transaction in which the principal amount of the loan is less than eighty percent of the fair market value of the property shall be required to obtain mortgage insurance. Fair market value for a purchase money loan is the lesser of the sales price or the appraised value. This section shall not apply to residential mortgage transactions in an amount in excess of the maximum limits established by institutional third parties where the borrower and the lender have agreed in writing to mortgage insurance.

A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, governing the requirement of obtaining mortgage insurance shall be deemed in compliance with this section. [1998 c 255 § 4.]

61.10.900 Severability—1998 c 255. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 255 § 5.]

61.10.901 Effective date—1998 c 255. This act takes effect July 1, 1998. [1998 c 255 § 6.]

Chapter 61.12 RCW

FORECLOSURE OF REAL ESTATE MORTGAGES
AND PERSONAL PROPERTY LIENS

Sections

61.12.010	Encumbrances shall be by deed.
61.12.020	Mortgage—Form—Contents—Effect.
61.12.030	Removal of property from mortgaged premises—Penalty.
61.12.040	Foreclosure—Venue.
61.12.050	When remedy confined to mortgaged property.
61.12.060	Judgment—Order of sale—Satisfaction—Upset price.
61.12.061	Exception as to mortgages held by the United States.
61.12.070	Decree to direct deficiency—Waiver in complaint.
61.12.080	Deficiency judgment—How enforced.
61.12.090	Execution on decree—Procedure.
61.12.093	Abandoned improved real estate—Purchaser takes free of redemption rights.
61.12.094	Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service.
61.12.095	Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes.
61.12.100	Levy for deficiency under same execution.
61.12.110	Notice of sale on deficiency.
61.12.120	Concurrent actions prohibited.
61.12.130	Payment of sums due—Stay of proceedings.
61.12.140	Sale in parcels to pay installments due.
61.12.150	Sale of whole property—Disposition of proceeds.
61.12.170	Recording.

Community realty, encumbering: RCW 26.16.040.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Decedent's estate, liability for mortgage lien: RCW 11.04.270.

Foreclosure by organizations not admitted to transact business in state: Chapter 23B.18 RCW.

Mortgagee cannot maintain action for possession: RCW 7.28.230.

Mortgaging of decedents' estates: Chapter 11.56 RCW.

Notice and sale summary foreclosure of personal property liens: Chapter 60.10 RCW.

Partition, sales on credit: RCW 7.52.290, 7.52.420.

Possession of real estate to collect mortgaged rents and profits: RCW 7.28.230.

Sales under execution and redemption: Chapter 6.21 RCW.

61.12.010 Encumbrances shall be by deed. See RCW 64.04.010.

61.12.020 Mortgage—Form—Contents—Effect. Mortgages of land may be made in substantially the following form: The mortgagor (here insert name or names) mortgages to (here insert name or names) to secure the payment of (here insert the nature and amount of indebtedness, showing when due, rate of interest, and whether evidenced by note, bond or other instrument or not) the following described real estate (here insert description) situated in the county of, state of Washington.

Dated this day of, 19. . .

Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition. [1929 c 33 § 12; RRS § 10555. Prior: 1888 c 26 § 1; 1886 p 179 § 6.]

61.12.030 Removal of property from mortgaged premises—Penalty. (1) When any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner,

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mortgagor, lessee, or occupant of such real estate to destroy or remove or to cause to be destroyed or removed from the real estate any fixtures, buildings, or permanent improvements including a manufactured home whose title has been eliminated under chapter 65.20 RCW, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his, her, or their written consent for such removal or destruction.

(2) Any person willfully violating this section is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. [2003 c 53 § 288; 1989 c 343 § 21; 1899 c 75 § 1; RRS § 2709, part. FORMER PART OF SECTION: 1899 c 75 § 2 now codified as RCW 61.12.031.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—Effective date—1989 c 343: See RCW 65.20.940 and 65.20.950.

61.12.040 Foreclosure—Venue. When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the superior court of the county where the land, or some part thereof, lies, to foreclose the equity of redemption contained in the mortgage. [Code 1881 § 609; 1877 p 127 § 614; 1869 p 145 § 563; 1854 p 207 § 408; RRS § 1116.]

Real property, actions concerning to be brought where property is located: RCW 4.12.010.

61.12.050 When remedy confined to mortgaged property. When there is no express agreement in the mortgage nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged. [Code 1881 § 610; 1877 p 127 § 615; 1869 p 146 § 564; 1854 p 207 § 409; RRS § 1117.]

61.12.060 Judgment—Order of sale—Satisfaction—Upset price. In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment. The court, in ordering the sale, may in its discretion, take judicial notice of economic conditions, and after a proper hearing, fix a minimum or upset price to which the mortgaged premises must be bid or sold before confirmation of the sale.

The court may, upon application for the confirmation of a sale, if it has not theretofore fixed an upset price, conduct a hearing, establish the value of the property, and, as a condition to confirmation, require that the fair value of the property be credited upon the foreclosure judgment. If an upset price has been established, the plaintiff may be required to credit this amount upon the judgment as a condition to confirmation. If the fair value as found by the court, when applied to the mortgage debt, discharges it, no deficiency judgment shall be granted. [1935 c 125 § 1; Code 1881 § 611; 1877 p

127 § 616; 1869 p 146 § 565; 1854 p 207 § 410; RRS § 1118. FORMER PART OF SECTION: 1935 c 125 § 1 1/2 now codified as RCW 61.12.061.]

Confirmation of sale of land: RCW 6.21.110.

61.12.061 Exception as to mortgages held by the United States. The provisions of *this act shall not apply to any mortgage while such mortgage is held by the United States or by any agency, department, bureau, board or commission thereof as security or pledge of the maker, its successors or assigns. [1935 c 125 § 1 1/2; RRS § 1118-1. Formerly RCW 61.12.060, part.]

*Reviser's note: "this act" appears in 1935 c 125 § 1 1/2; section 1 of the 1935 act amends Code 1881 § 611; the 1935 act is codified as RCW 61.12.060 and 61.12.061.

61.12.070 Decree to direct deficiency—Waiver in complaint. When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor: PROVIDED, HOWEVER, That in all cases where the mortgagee or other owner of such mortgage has expressly waived any right to a deficiency judgment in the complaint, as provided by RCW 6.23.020, there shall be no such judgment for deficiency, and the remedy of the mortgagee or other owner of the mortgage shall be confined to the sale of the property mortgaged. [1961 c 196 § 4; Code 1881 § 612; 1877 p 127 § 617; 1869 p 146 § 566; 1854 p 208 § 411; RRS § 1119.]

61.12.080 Deficiency judgment—How enforced. Judgments over for any deficiency remaining unsatisfied after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor as other judgments, and the collections thereof enforced in the same manner. [Code 1881 § 622; 1877 p 129 § 625; 1869 p 148 § 575; RRS § 1120.]

Enforcement of judgments: Title 6 RCW.

61.12.090 Execution on decree—Procedure. A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall endorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell such property, or so much thereof as may be necessary to satisfy the judgment, interest and costs upon giving the notice prescribed in RCW 6.21.030. [1988 c 231 § 36; 1899 c 53 § 1; RRS § 1121. Cf. Code 1881 § 613; 1869 p 146 § 567; 1854 p 208 § 412.]

Severability—1988 c 231: See note following RCW 6.01.050.

Property exempt from execution and attachment: RCW 6.15.010.

61.12.093 Abandoned improved real estate—Purchaser takes free of redemption rights. In actions to fore-

close mortgages on real property improved by structure or structures, if the court finds that the mortgagor or his successor in interest has abandoned said property for six months or more, the purchaser at the sheriff's sale shall take title in and to such property free from all redemption rights as provided for in RCW 6.23.010 et seq. upon confirmation of the sheriff's sale by the court. Lack of occupancy by, or by authority of, the mortgagor or his successor in interest for a continuous period of six months or more prior to the date of the decree of foreclosure, coupled with failure to make payment upon the mortgage obligation within the said six month period, will be prima facie evidence of abandonment. [1965 c 80 § 1; 1963 c 34 § 1.]

Deed to issue upon request immediately after confirmation of sale: RCW 6.21.120.

61.12.094 Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service. When proceeding under RCW 61.12.093 through 61.12.095 no deficiency judgment shall be allowed. No mortgagee shall deprive any mortgagor, his successors in interest, or any redemptioner of redemption rights by default decree without alleging such intention in the complaint: PROVIDED, HOWEVER, That such complaint need not be served upon any person who acquired the status of such successor in interest or redemptioner after the recording of lis pendens in such foreclosure action. [1965 c 80 § 2; 1963 c 34 § 2.]

61.12.095 Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes. RCW 61.12.093 and 61.12.094 shall not apply to property used primarily for agricultural purposes. [1965 c 80 § 3; 1963 c 34 § 3.]

61.12.100 Levy for deficiency under same execution. In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor may be made under the same execution. In such sales it shall only be necessary to advertise notice for two weeks in a newspaper published in the county where the said property is located, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in such county. [Code 1881 § 620; 1877 p 129 § 623; 1873 p 151 § 571; 1869 p 148 § 573; RRS § 1123.]

61.12.110 Notice of sale on deficiency. When sales of other property not embraced in the mortgage or decree of sale are made under the execution to satisfy any deficiency remaining due upon judgment, two weeks' publication of notice of such sale shall be sufficient. Such notice shall be published in a newspaper printed in the county where the property is situated, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in said county. [Code 1881 § 621; 1877 p 129 § 624; 1869 p 148 § 574; RRS § 1124.]

Notice of sales under execution: RCW 6.21.020.

61.12.120 Concurrent actions prohibited. The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure. [Code 1881 § 614; 1877 p 128 § 619; 1869 p 146 § 568; 1854 p 208 § 413; RRS § 1125.]

61.12.130 Payment of sums due—Stay of proceedings. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into the court the principal and interest due, with costs, at any time before the final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue. [Code 1881 § 615; 1877 p 128 § 620; 1869 p 147 § 569; 1854 p 208 § 414; RRS § 1126.]

61.12.140 Sale in parcels to pay installments due. In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the court shall direct so much only of the premises to be sold, as will be sufficient to pay the amount then due on the mortgage with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected. [Code 1881 § 616; 1877 p 128 § 620 (2d of 2 sections with same number); 1869 p 147 § 570; 1854 p 208 § 415; RRS § 1127.]

61.12.150 Sale of whole property—Disposition of proceeds. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue does not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs and assigns. [Code 1881 § 617; 1877 p 128 § 621; 1869 p 147 § 571; 1854 p 208 § 416; RRS § 1128.]

61.12.170 Recording. See chapter 65.08 RCW.

Chapter 61.16 RCW

ASSIGNMENT AND SATISFACTION OF REAL ESTATE AND CHATTEL MORTGAGES

Sections

61.16.010	Assignments, how made—Satisfaction by assignee.
61.16.020	Mortgages, how satisfied of record.
61.16.030	Failure to acknowledge satisfaction of mortgage—Damages—Order.

Effect of recording assignment of mortgage: RCW 65.08.120.

(2004 Ed.)

61.16.010 Assignments, how made—Satisfaction by assignee. Any person to whom any real estate mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record. [1995 c 62 § 13; 1897 c 23 § 1; RRS § 10616.]

Validating—1897 c 23: "All satisfactions of mortgages heretofore made by the assignees thereof, where the assignment was in writing, signed by the mortgagee or assignee, and where the same was recorded in the office of the auditor of the county wherein the mortgage was recorded, are hereby validated, and such satisfactions of mortgages so made shall have the same effect as if made by the mortgagees in such mortgages." [1897 c 23 § 2.]

61.16.020 Mortgages, how satisfied of record. Whenever the amount due on any mortgage is paid, the mortgagee or the mortgagee's legal representatives or assigns shall, at the request of any person interested in the property mortgaged, execute an instrument in writing referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction. [1995 c 62 § 14; 1985 c 44 § 13; 1901 c 52 § 1; 1886 p 116 § 1; RRS § 10614.]

61.16.030 Failure to acknowledge satisfaction of mortgage—Damages—Order. If the mortgagee fails to acknowledge satisfaction of the mortgage as provided in RCW 61.16.020 sixty days from the date of such request or demand, the mortgagee shall forfeit and pay to the mortgagor damages and a reasonable attorneys' fee, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to immediately record the order. [1999 c 233 § 8; 1995 c 62 § 15; 1984 c 14 § 1; 1886 p 117 § 2; RRS § 10615.]

Effective date—1999 c 233: See note following RCW 4.28.320.

Chapter 61.24 RCW

DEEDS OF TRUST

Sections

61.24.005	Definitions.
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61.24.030	Requisites to trustee's sale.
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61.24.070	Trustee's sale, who may bid at—If beneficiary is purchaser—If purchaser is not beneficiary.
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61.24.090	Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment—Payments tendered to trustee.
61.24.100	Deficiency judgments—Foreclosure—Trustee's sale—Application of chapter.
61.24.110	Reconveyance by trustee.
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61.24.130	Restraint of sale by trustee—Conditions—Notice.
61.24.135	Consumer protection act—Unfair or deceptive acts or practices.
61.24.140	Assignment of rents—Collecting payment of rent.

Possession of real property by trustee of deed of trust to collect rents and profits: RCW 7.28.230.

61.24.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

(2) "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

(3) "Affiliate of beneficiary" means any entity which controls, is controlled by, or is under common control with a beneficiary.

(4) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

(5) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

(6) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the obligations secured by a deed of trust in any written agreement other than the deed of trust.

(7) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

(8) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter.

(9) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

(10) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

(11) "Person" means any natural person, or legal or governmental entity. [1998 c 295 § 1.]

61.24.010 Trustee, qualifications—Successor trustee.

(1) The trustee of a deed of trust under this chapter shall be:

(a) Any domestic corporation incorporated under Title 23B, 30, 31, 32, or 33 RCW of which at least one officer is a Washington resident; or

(b) Any title insurance company authorized to insure title to real property under the laws of this state, or its agents; or

(c) Any attorney who is an active member of the Washington state bar association at the time the attorney is named trustee; or

(d) Any professional corporation incorporated under chapter 18.100 RCW, any professional limited liability company formed under chapter 25.15 RCW, any general partnership, including limited liability partnerships, formed under chapter 25.04 RCW, all of whose shareholders, members, or partners, respectively, are either licensed attorneys or entities, provided all of the owners of those entities are licensed attorneys, or any domestic corporation wholly owned by any of the entities under this subsection (1)(d); or

(e) Any agency or instrumentality of the United States government; or

(f) Any national bank, savings bank, or savings and loan association chartered under the laws of the United States.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee. [1998 c 295 § 2; 1991 c 72 § 58; 1987 c 352 § 1; 1981 c 161 § 1; 1975 1st ex.s. c 129 § 1; 1965 c 74 § 1.]

61.24.020 Deeds subject to all mortgage laws—Foreclosure—Recording and indexing—Trustee and beneficiary, separate entities, exception.

Except as provided in this chapter, a deed of trust is subject to all laws relating to mortgages on real property. A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be foreclosed by trustee's sale. The county auditor shall record the deed as a mortgage and shall index the name of the grantor as mortgagor and the names of the trustee and beneficiary as mortgagee. No person, corporation or association may be both trustee and beneficiary under the same deed of trust: PROVIDED, That any agency of the United States government may be both trustee and beneficiary under the same deed of trust. A deed of trust conveying real property that is used principally for agricultural purposes may be foreclosed as a

mortgage. Pursuant to *RCW 62A.9-501(4), when a deed of trust encumbers both real and personal property, the trustee is authorized to sell all or any portion of the grantor's interest in that real and personal property at a trustee's sale. [1998 c 295 § 3; 1985 c 193 § 2; 1975 1st ex.s. c 129 § 2; 1965 c 74 § 2.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Application—1985 c 193: "This act shall apply to foreclosures commenced, by the giving of a notice of default pursuant to RCW 61.24.030(6), after July 28, 1985." [1985 c 193 § 5.]

61.24.025 Application of federal servicemembers civil relief act to deeds of trust. All of the rights, duties, and privileges conveyed under the federal servicemembers civil relief act, P.L. 108-189, are applicable to deeds of trust under Washington law. [2004 c 161 § 5.]

Effective date—2004 c 161: See note following RCW 28B.10.270.

61.24.030 Requisites to trustee's sale. It shall be requisite to a trustee's sale:

- (1) That the deed of trust contains a power of sale;
- (2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural purposes; provided, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;
- (3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;
- (4) That no action commenced by the beneficiary of the deed of trust is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured: PROVIDED, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was granted to secure a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;
- (5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated;
- (6) That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must have a street address in this state where personal service of process may be made; and
- (7) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known addresses by both first class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:

(a) A description of the property which is then subject to the deed of trust;

(b) Each county in which the deed of trust is recorded and the document number given to the deed of trust upon recording by each county auditor or recording officer;

(c) That the beneficiary has declared the borrower or grantor to be in default, and a concise statement of the default alleged;

(d) An itemized account of the amount or amounts in arrears if the default alleged is failure to make payments;

(e) An itemized account of all other specific charges, costs, or fees that the borrower, grantor, or any guarantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;

(f) The total of (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;

(g) That failure to cure the alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal, and publication of a notice of sale, and that the property described in (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future;

(h) That the effect of the recordation, transmittal, and publication of a notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the grantor's property for sale;

(i) That the effect of the sale of the grantor's property by the trustee will be to deprive the grantor of all their interest in the property described in (a) of this subsection; and

(j) That the borrower, grantor, and any guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground. [1998 c 295 § 4; 1990 c 111 § 1; 1987 c 352 § 2; 1985 c 193 § 3; 1975 1st ex.s. c 129 § 3; 1965 c 74 § 3.]

Application—1985 c 193: See note following RCW 61.24.020.

61.24.040 Foreclosure and sale—Notice of sale. A deed of trust foreclosed under this chapter shall be foreclosed as follows:

(1) At least ninety days before the sale, the trustee shall:

(a) Record a notice in the form described in RCW 61.24.040(1)(f) in the office of the auditor in each county in which the deed of trust is recorded;

(b) To the extent the trustee elects to foreclose its lien or interest, or the beneficiary elects to preserve its right to seek a deficiency judgment against a borrower or grantor under RCW 61.24.100(3)(a), and if their addresses are stated in a recorded instrument evidencing their interest, lien, or claim of lien, or an amendment thereto, or are otherwise known to the trustee, cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the following persons or their legal representatives, if any, at such address:

(i) The borrower and grantor;

(ii) The beneficiary of any deed of trust or mortgagee of any mortgage, or any person who has a lien or claim of lien

against the property, that was recorded subsequent to the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iii) The vendee in any real estate contract, the lessee in any lease, or the holder of any conveyances of any interest or estate in any portion or all of the property described in such notice, if that contract, lease, or conveyance of such interest or estate, or a memorandum or other notice thereof, was recorded after the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iv) The last holder of record of any other lien against or interest in the property that is subject to a subordination to the deed of trust being foreclosed that was recorded before the recordation of the notice of sale;

(v) The last holder of record of the lien of any judgment subordinate to the deed of trust being foreclosed; and

(vi) The occupants of property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, whether or not the occupant's rental agreement is recorded, which notice may be a single notice addressed to "occupants" for each unit known to the trustee or beneficiary;

(c) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the plaintiff or the plaintiff's attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded;

(d) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person's most recently recorded request for notice;

(e) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property;

(f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the day of,, at the hour of o'clock M. at [street address and location if inside a building] in the City of, State of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of, State of Washington, to-wit:

[If any personal property is to be included in the trustee's sale, include a description that reasonably identifies such personal property]

which is subject to that certain Deed of Trust dated,, recorded,, under Auditor's File No., records of County, Washington, from, as Grantor, to, as Trustee, to secure an obligation in favor of, as Beneficiary, the beneficial interest in which was assigned by, under an Assignment recorded under Auditor's File No. [Include recording information for all counties if the Deed of Trust is recorded in more than one county.]

II.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

[If there is another action pending to foreclose other security for all or part of the same debt, qualify the statement and identify the action.]

III.

The default(s) for which this foreclosure is made is/are as follows:

[If default is for other than payment of money, set forth the particulars]

Failure to pay when due the following amounts which are now in arrears:

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal \$, together with interest as provided in the note or other instrument secured from the day of,, and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the day of, The default(s) referred to in paragraph III must be cured by the day of, (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before the day of, (11 days before the sale date), the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after the day

of, . . . (11 days before the sale date), and before the sale by the Borrower, Grantor, any Guarantor, or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following addresses:

.....
.....
.....

by both first class and certified mail on the day of, . . . , proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served on the day of, . . . , with said written notice of default or the written notice of default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

[Add Part X to this notice if applicable under RCW 61.24.040(9)]

.....
....., Trustee
..... }
..... } Address
..... }
..... } Phone

[Acknowledgment]

(2) In addition to providing the borrower and grantor the notice of sale described in RCW 61.24.040(1)(f), the trustee shall include with the copy of the notice which is mailed to the grantor, a statement to the grantor in substantially the following form:

(2004 Ed.)

NOTICE OF FORECLOSURE
Pursuant to the Revised Code of Washington,
Chapter 61.24 RCW

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to, the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the day of, . . .

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by the day of, . . . [11 days before the sale date]. To date, these arrears and costs are as follows:

Table with 3 columns: Description, Currently due to reinstate on , Estimated amount that will be due to reinstate on (11 days before the date set for sale). Rows include Delinquent payments, Late charges, Attorneys' fees, Trustee's fee, Trustee's expenses, Title report, Recording fees, Service/Posting of Notices, Postage/Copying expense, Publication, Telephone charges, Inspection fees, and TOTALS.

As to the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
.....
.....
.....
.....
.....

You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the day of, . . . [11 days before the sale date], by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to:, whose address is, telephone () AFTER THE DAY OF, YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense.

The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at:

NAME:

ADDRESS:

TELEPHONE NUMBER:

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold. The effect of such sale will be to deprive you and

all those who hold by, through or under you of all interest in the property;

(3) In addition, the trustee shall cause a copy of the notice of sale described in RCW 61.24.040(1)(f) (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the thirty-fifth and twenty-eighth day before the date of sale, and once on or between the fourteenth and seventh day before the date of sale;

(4) On the date and at the time designated in the notice of sale, the trustee or its authorized agent shall sell the property at public auction to the highest bidder. The trustee may sell the property in gross or in parcels as the trustee shall deem most advantageous;

(5) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in any of the counties where the property is located. The sale shall be on Friday, or if Friday is a legal holiday on the following Monday, and during the hours set by statute for the conduct of sales of real estate at execution;

(6) The trustee may for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by a public proclamation at the time and place fixed for sale in the notice of sale or, alternatively, by giving notice of the time and place of the postponed sale in the manner and to the persons specified in RCW 61.24.040(1) (b), (c), (d), and (e) and publishing a copy of such notice once in the newspaper(s) described in RCW 61.24.040(3), more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;

(7) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value, except that these recitals shall not affect the lien or interest of any person entitled to notice under RCW 61.24.040(1), if the trustee fails to give the required notice to such person. In such case, the lien or interest of such omitted person shall not be affected by the sale and such omitted person shall be treated as if such person was the holder of the same lien or interest and was omitted as a party defendant in a judicial foreclosure proceeding;

(8) The sale as authorized under this chapter shall not take place less than one hundred ninety days from the date of default in any of the obligations secured.

(9) If the trustee elects to foreclose the interest of any occupant or tenant of property comprised solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, the following notice shall be included as Part X of the Notice of Trustee's Sale:

X.
NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the

grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants and tenants. After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act, chapter 59.12 RCW.

(10) Only one copy of all notices required by this chapter need be given to a person who is both the borrower and the grantor. All notices required by this chapter that are given to a general partnership are deemed given to each of its general partners, unless otherwise agreed by the parties. [1998 c 295 § 5; 1989 c 361 § 1; 1987 c 352 § 3; 1985 c 193 § 4; 1981 c 161 § 3; 1975 1st ex.s. c 129 § 4; 1967 c 30 § 1; 1965 c 74 § 4.]

Application—1985 c 193: See note following RCW 61.24.020.

61.24.042 Notice to guarantor—Contents—Failure to provide. The beneficiary may give the notices of default, trustee's sale, and foreclosure referred to in RCW 61.24.030(7) and 61.24.040 to any one or more of the guarantors of a commercial loan at the time they are given to the grantor. In addition to the information contained in the notices provided to the grantor, these notices shall state that (1) the guarantor may be liable for a deficiency judgment to the extent the sale price obtained at the trustee's sale is less than the debt secured by the deed of trust; (2) the guarantor has the same rights to reinstate the debt, cure the default, or repay the debt as is given to the grantor in order to avoid the trustee's sale; (3) the guarantor will have no right to redeem the property after the trustee's sale; (4) subject to such longer periods as are provided in the Washington deed of trust act, chapter 61.24 RCW, any action brought to enforce a guaranty must be commenced within one year after the trustee's sale, or the last trustee's sale under any deed of trust granted to secure the same debt; and (5) in any action for a deficiency, the guarantor will have the right to establish the fair value of the property as of the date of the trustee's sale, less prior liens and encumbrances, and to limit its liability for a deficiency to the difference between the debt and the greater of such fair value or the sale price paid at the trustee's sale, plus interest and costs. The failure of the beneficiary to provide any guarantor the notice referred to in this section does not invalidate either the notices given to the borrower or the grantor, or the trustee's sale. [1998 c 295 § 6.]

61.24.045 Requests for notice of sale. Any person desiring a copy of any notice of sale described in RCW 61.24.040(1)(f) under any deed of trust, other than a person entitled to receive such a notice under RCW 61.24.040(1) (b) or (c), must, after the recordation of such deed of trust and before the recordation of the notice of sale, cause to be filed for record, in the office of the auditor of any county in which the deed of trust is recorded, a duly acknowledged request for a copy of any notice of sale. The request shall be signed and acknowledged by the person to be notified or such person's agent, attorney, or representative; shall set forth the name, mailing address, and telephone number, if any, of the person or persons to be notified; shall identify the deed of trust by stating the names of the parties thereto, the date the deed of trust was recorded, the legal description of the property

encumbered by the deed of trust, and the auditor's file number under which the deed of trust is recorded; and shall be in substantially the following form:

REQUEST FOR NOTICE

Request is hereby made that a copy of any notice of sale described in RCW 61.24.040(1)(f) under that certain Deed of Trust dated, 19. . . ., recorded on, 19. . . ., under auditor's file No., records of County, Washington, from, as Grantor, to, as Trustee, to secure an obligation in favor of, as Beneficiary, and affecting the following described real property:

(Legal Description)

be sent by both first class and either registered or certified mail, return receipt requested, to at

Dated this day of, 19. . . .

.....
Signature

(Acknowledgment)

A request for notice under this section shall not affect title to, or be deemed notice to any person that any person has any right, title, interest in, lien or charge upon, the property described in the request for notice. [1985 c 193 § 1.]

Application—1985 c 193: See note following RCW 61.24.020.

61.24.050 Interest conveyed by trustee's deed—Sale is final if acceptance is properly recorded—Redemption precluded after sale. When delivered to the purchaser, the trustee's deed shall convey all of the right, title, and interest in the real and personal property sold at the trustee's sale which the grantor had or had the power to convey at the time of the execution of the deed of trust, and such as the grantor may have thereafter acquired. If the trustee accepts a bid, then the trustee's sale is final as of the date and time of such acceptance if the trustee's deed is recorded within fifteen days thereafter. After a trustee's sale, no person shall have any right, by statute or otherwise, to redeem the property sold at the trustee's sale. [1998 c 295 § 7; 1965 c 74 § 5.]

61.24.060 Rights and remedies of trustee's sale purchaser. The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the grantor under the deed of trust and anyone having an interest junior to the deed of trust, including occupants and tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW. [1998 c 295 § 8; 1967 c 30 § 2; 1965 c 74 § 6.]

61.24.070 Trustee's sale, who may bid at—If beneficiary is purchaser—If purchaser is not beneficiary. (1) The trustee may not bid at the trustee's sale. Any other person, including the beneficiary, may bid at the trustee's sale.

(2) The trustee shall, at the request of the beneficiary, credit toward the beneficiary's bid all or any part of the monetary obligations secured by the deed of trust. If the benefi-

ciary is the purchaser, any amount bid by the beneficiary in excess of the amount so credited shall be paid to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof. If the purchaser is not the beneficiary, the entire bid shall be paid to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof. [1998 c 295 § 9; 1965 c 74 § 7.]

61.24.080 Disposition of proceeds of sale—Notices—Surplus funds. The trustee shall apply the proceeds of the sale as follows:

(1) To the expense of sale, including a reasonable charge by the trustee and by his or her attorney: PROVIDED, That the aggregate of the charges by the trustee and his or her attorney, for their services in the sale, shall not exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney fee, had the trust deed been foreclosed as a mortgage in a noncontested action in that court;

(2) To the obligation secured by the deed of trust; and

(3) The surplus, if any, less the clerk's filing fee, shall be deposited, together with written notice of the amount of the surplus, a copy of the notice of trustee's sale, and an affidavit of mailing as provided in this subsection, with the clerk of the superior court of the county in which the sale took place. The trustee shall mail copies of the notice of the surplus, the notice of trustee's sale, and the affidavit of mailing to each party to whom the notice of trustee's sale was sent pursuant to RCW 61.24.040(1). The clerk shall index such funds under the name of the grantor as set out in the recorded notice. Upon compliance with this subsection, the trustee shall be discharged from all further responsibilities for the surplus. Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to the surplus in the order of priority that it had attached to the property. A party seeking disbursement of the surplus funds shall file a motion requesting disbursement in the superior court for the county in which the surplus funds are deposited. Notice of the motion shall be personally served upon, or mailed in the manner specified in RCW 61.24.040(1)(b), to all parties to whom the trustee mailed notice of the surplus, and any other party who has entered an appearance in the proceeding, not less than twenty days prior to the hearing of the motion. The clerk shall not disburse such surplus except upon order of the superior court of such county. [1998 c 295 § 10; 1981 c 161 § 5; 1967 c 30 § 3; 1965 c 74 § 8.]

61.24.090 Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment—Payments tendered to trustee. (1) At any time prior to the eleventh day before the date set by the trustee for the sale in the recorded notice of sale, or in the event the trustee continues the sale pursuant to RCW 61.24.040(6), at any time prior to the eleventh day before the actual sale, the borrower, grantor, any guarantor, any beneficiary under a subordinate deed of trust, or any person having a subordinate lien or encumbrance of record on the trust property or any part thereof, shall be entitled to cause

a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice, which in the case of a default by failure to pay, shall be by paying to the trustee:

(a) The entire amount then due under the terms of the deed of trust and the obligation secured thereby, other than such portion of the principal as would not then be due had no default occurred, and

(b) The expenses actually incurred by the trustee enforcing the terms of the note and deed of trust, including a reasonable trustee's fee, together with the trustee's reasonable attorney's fees, together with costs of recording the notice of discontinuance of notice of trustee's sale.

(2) Any person entitled to cause a discontinuance of the sale proceedings shall have the right, before or after reinstatement, to request any court, excluding a small claims court, for disputes within the jurisdictional limits of that court, to determine the reasonableness of any fees demanded or paid as a condition to reinstatement. The court shall make such determination as it deems appropriate, which may include an award to the prevailing party of its costs and reasonable attorneys' fees, and render judgment accordingly. An action to determine fees shall not forestall any sale or affect its validity.

(3) Upon receipt of such payment the proceedings shall be discontinued, the deed of trust shall be reinstated and the obligation shall remain as though no acceleration had taken place.

(4) In the case of a default which is occasioned by other than failure to make payments, the person or persons causing the said default shall pay the expenses incurred by the trustee and the trustee's fees as set forth in subsection (1)(b) of this section.

(5) Any person having a subordinate lien of record on the trust property and who has cured the default or defaults pursuant to this section shall thereafter have included in his lien all payments made to cure any defaults, including interest thereon at eight percent per annum, payments made for trustees' costs and fees incurred as authorized, and reasonable attorney's fees and costs incurred resulting from any judicial action commenced to enforce his or her rights to advances under this section.

(6) If the default is cured and the obligation and the deed of trust reinstated in the manner provided, the trustee shall properly execute, acknowledge, and cause to be recorded a notice of discontinuance of trustee's sale under that deed of trust. A notice of discontinuance of trustee's sale when so executed and acknowledged is entitled to be recorded and shall be sufficient if it sets forth a record of the deed of trust and the auditor's file number under which the deed of trust is recorded, and a reference to the notice of sale and the auditor's file number under which the notice of sale is recorded, and a notice that the sale is discontinued.

(7) Any payments required under this section as a condition precedent to reinstatement of the deed of trust shall be tendered to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof. [1998 c 295 § 11; 1987 c 352 § 4; 1981 c 161 § 6; 1975 1st ex.s. c 129 § 5; 1967 c 30 § 4; 1965 c 74 § 9.]

61.24.100 Deficiency judgments—Foreclosure—Trustee's sale—Application of chapter. (1) Except to the extent permitted in this section for deeds of trust securing commercial loans, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.

(2)(a) Nothing in this chapter precludes an action against any person liable on the obligations secured by a deed of trust or any guarantor prior to a notice of trustee's sale being given pursuant to this chapter or after the discontinuance of the trustee's sale.

(b) No action under (a) of this subsection precludes the beneficiary from commencing a judicial foreclosure or trustee's sale under the deed of trust after the completion or dismissal of that action.

(3) This chapter does not preclude any one or more of the following after a trustee's sale under a deed of trust securing a commercial loan executed after June 11, 1998:

(a)(i) To the extent the fair value of the property sold at the trustee's sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee's sale, an action for a deficiency judgment against the borrower or grantor, if such person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

(ii) This subsection (3)(a) does not apply to any property that is occupied by the borrower as its principal residence as of the date of the trustee's sale;

(b) Any judicial or nonjudicial foreclosures of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure the obligation that was secured by the deed of trust foreclosed; or

(c) Subject to this section, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042.

(4) Any action referred to in subsection (3)(a) and (c) of this section shall be commenced within one year after the date of the trustee's sale, or a later date to which the liable party otherwise agrees in writing with the beneficiary after the notice of foreclosure is given, plus any period during which the action is prohibited by a bankruptcy, insolvency, moratorium, or other similar debtor protection statute. If there occurs more than one trustee's sale under a deed of trust securing a commercial loan or if trustee's sales are made pursuant to two or more deeds of trust securing the same commercial loan, the one-year limitation in this section begins on the date of the last of those trustee's sales.

(5) In any action against a guarantor following a trustee's sale under a deed of trust securing a commercial loan, the guarantor may request the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator may in its discretion determine, the fair value of the property sold at the sale and the deficiency judgment against the

guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee's sale, less the fair value of the property sold at the trustee's sale or the sale price paid at the trustee's sale, whichever is greater, plus interest on the amount of the deficiency from the date of the trustee's sale at the rate provided in the guaranty, the deed of trust, or in any other contracts evidencing the debt secured by the deed of trust, as applicable, and any costs, expenses, and fees that are provided for in any contract evidencing the guarantor's liability for such a judgment. If any other security is sold to satisfy the same debt prior to the entry of a deficiency judgment against the guarantor, the fair value of that security, as calculated in the manner applicable to the property sold at the trustee's sale, shall be added to the fair value of the property sold at the trustee's sale as of the date that additional security is foreclosed. This section is in lieu of any right any guarantor would otherwise have to establish an upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

(6) A guarantor granting a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee's sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor's principal residence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee's sale accepted by the sheriff or trustee prior to the application of the bid to the guarantor's obligation.

(7) A beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.

(8) This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure.

(9) Any contract, note, deed of trust, or guaranty may, by its express language, prohibit the recovery of any portion or all of a deficiency after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee's sale.

(10) A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

(11) Unless the guarantor otherwise agrees, a trustee's sale shall not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor.

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee's sale under a deed of trust securing a commercial loan or any guaranty of such a loan executed prior to June 11, 1998, shall be determined in accordance with the laws existing prior to June 11, 1998. [1998 c 295 § 12; 1990 c 111 § 2; 1965 c 74 § 10.]

61.24.110 Reconveyance by trustee. The trustee shall reconvey all or any part of the property encumbered by the deed of trust to the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto. [1998 c 295 § 13; 1981 c 161 § 7; 1965 c 74 § 11.]

61.24.120 Other foreclosure provisions preserved. This chapter shall not supersede nor repeal any other provision now made by law for the foreclosure of security interests in real property. [1965 c 74 § 12.]

61.24.130 Restraint of sale by trustee—Conditions—Notice. (1) Nothing contained in this chapter shall prejudice the right of the borrower, grantor, any guarantor, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper ground, a trustee's sale. The court shall require as a condition of granting the restraining order or injunction that the applicant pay to the clerk of the court the sums that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed:

(a) In the case of default in making the periodic payment of principal, interest, and reserves, such sums shall be the periodic payment of principal, interest, and reserves paid to the clerk of the court every thirty days.

(b) In the case of default in making payment of an obligation then fully payable by its terms, such sums shall be the amount of interest accruing monthly on said obligation at the nondefault rate, paid to the clerk of the court every thirty days.

In the case of default in performance of any nonmonetary obligation secured by the deed of trust, the court shall impose such conditions as it deems just.

In addition, the court may condition granting the restraining order or injunction upon the giving of security by the applicant, in such form and amount as the court deems proper, for the payment of such costs and damages, including attorneys' fees, as may be later found by the court to have been incurred or suffered by any party by reason of the restraining order or injunction. The court may consider, upon proper showing, the grantor's equity in the property in determining the amount of said security.

(2) No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

(3) If the restraining order or injunction is dissolved after the date of the trustee's sale set forth in the notice as provided in RCW 61.24.040(1)(f), the court granting such restraining order or injunction, or before whom the order or injunction is returnable, shall, at the request of the trustee, set a new sale

date which shall be not less than forty-five days from the date of the order dissolving the restraining order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(4) If a trustee's sale has been stayed as a result of the filing of a petition in federal bankruptcy court and an order is entered in federal bankruptcy court granting relief from the stay or closing or dismissing the case, or discharging the debtor with the effect of removing the stay, the trustee may set a new sale date which shall not be less than forty-five days after the date of the bankruptcy court's order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(5) Subsections (3) and (4) of this section are permissive only and do not prohibit the trustee from proceeding with a trustee's sale following termination of any injunction or stay on any date to which such sale has been properly continued in accordance with RCW 61.24.040(6). [1998 c 295 § 14; 1987 c 352 § 5; 1981 c 161 § 8; 1975 1st ex.s. c 129 § 6; 1965 c 74 § 13.]

61.24.135 Consumer protection act—Unfair or deceptive acts or practices. It is an unfair or deceptive act or practice under the consumer protection act, chapter 19.86 RCW, for any person, acting alone or in concert with others, to offer, or offer to accept or accept from another, any consideration of any type not to bid, or to reduce a bid, at a sale of property conducted pursuant to a power of sale in a deed of trust. However, it is not an unfair or deceptive act or practice for any person, including a trustee, to state that a property subject to a recorded notice of trustee's sale or subject to a sale conducted pursuant to this chapter is being sold in an "as-is" condition, or for the beneficiary to arrange to provide financing for a particular bidder or to reach any good faith agreement with the borrower, grantor, any guarantor, or any junior lienholder. [1998 c 295 § 15.]

61.24.140 Assignment of rents—Collecting payment of rent. The beneficiary shall not enforce or attempt to enforce an assignment of rents by demanding or collecting rent from a tenant occupying property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, without first giving the tenant either a court order authorizing payment of rent to the

beneficiary or a written consent by the tenant's landlord to the payment. It is a defense to an eviction based on nonpayment of rent that the tenant paid the rent due to the beneficiary pursuant to a court order or a landlord's written consent. [1998 c 295 § 16.]

Chapter 61.30 RCW

REAL ESTATE CONTRACT FORFEITURES

Sections

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61.30.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Contract" or "real estate contract" means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price. "Contract" or "real estate contract" does not include earnest money agreements and options to purchase.

(2) "Cure the default" or "cure" means to perform the obligations under the contract which are described in the notice of intent to forfeit and which are in default, to pay the costs and attorneys' fees prescribed in the contract, and, subject to RCW 61.30.090(1), to make all payments of money required of the purchaser by the contract which first become due after the notice of intent to forfeit is given and are due when cure is tendered.

(3) "Declaration of forfeiture" means the notice described in RCW 61.30.070(2).

(4) "Forfeit" or "forfeiture" means to cancel the purchaser's rights under a real estate contract and to terminate all right, title, and interest in the property of the purchaser and of persons claiming by or through the purchaser, all to the extent provided in this chapter, because of a breach of one or more of the purchaser's obligations under the contract. A judicial foreclosure of a real estate contract as a mortgage shall not be considered a forfeiture under this chapter.

(5) "Notice of intent to forfeit" means the notice described in RCW 61.30.070(1).

(6) "Property" means that portion of the real property which is the subject of a real estate contract, legal title to which has not been conveyed to the purchaser.

(7) "Purchaser" means the person denominated in a real estate contract as the purchaser of the property or an interest therein or, if applicable, the purchaser's successors or assigns in interest to all or any part of the property, whether by voluntary or involuntary transfer or transfer by operation of law. If the purchaser's interest in the property is subject to a proceeding in probate, a receivership, a guardianship, or a proceeding under the federal bankruptcy laws, "purchaser" means the personal representative, the receiver, the guardian, the trustee in bankruptcy, or the debtor in possession, as applicable. However, "purchaser" does not include an assignee or any other person whose only interest or claim is in the nature of a lien or other security interest.

(8) "Required notices" means the notice of intent to forfeit and the declaration of forfeiture.

(9) "Seller" means the person denominated in a real estate contract as the seller of the property or an interest therein or, if applicable, the seller's successors or assigns in interest to all or any part of the property or the contract, whether by voluntary or involuntary transfer or transfer by operation of law. If the seller's interest in the property is subject to a proceeding in probate, a receivership, a guardianship, or a proceeding under the federal bankruptcy laws, "seller" means the personal representative, the receiver, the guardian, the trustee in bankruptcy, or the debtor in possession, as applicable. However, "seller" does not include an assignee or any other person whose only interest or claim is in the nature of a lien or other security interest and does not include an assignee who has not been conveyed legal title to any portion of the property.

(10) "Time for cure" means the time provided in RCW 61.30.070(1)(e) as it may be extended as provided in this chapter or any longer period agreed to by the seller. [1988 c 86 § 1; 1985 c 237 § 1.]

61.30.020 Forfeiture or foreclosure—Notices—Other remedies not limited. (1) A purchaser's rights under a real estate contract shall not be forfeited except as provided in this chapter. Forfeiture shall be accomplished by giving and recording the required notices as specified in this chapter. This chapter shall not be construed as prohibiting or limiting any remedy which is not governed or restricted by this chapter and which is otherwise available to the seller or the purchaser. At the seller's option, a real estate contract may be foreclosed in the manner and subject to the law applicable to the foreclosure of a mortgage in this state.

(2) The seller's commencement of an action to foreclose the contract as a mortgage shall not constitute an election of remedies so as to bar the seller from forfeiting the contract under this chapter for the same or different breach. Similarly, the seller's commencement of a forfeiture under this chapter shall not constitute an election of remedies so as to bar the seller from foreclosing the contract as a mortgage. However, the seller shall not maintain concurrently an action to foreclose the contract and a forfeiture under this chapter whether for the same or different breaches. If, after giving or recording a notice of intent to forfeit, the seller elects to foreclose the contract as a mortgage, the seller shall record a notice

cancelling the notice of intent to forfeit which refers to the notice of intent by its recording number. Not later than ten days after the notice of cancellation is recorded, the seller shall mail or serve copies of the notice of cancellation to each person who was mailed or served the notice of intent to forfeit, and shall post it in a conspicuous place on the property if the notice of intent was posted. The seller need not publish the notice of cancellation. [1988 c 86 § 2; 1985 c 237 § 2.]

61.30.030 Conditions to forfeiture. It shall be a condition to forfeiture of a real estate contract that:

(1) The contract being forfeited, or a memorandum thereof, is recorded in each county in which any of the property is located;

(2) A breach has occurred in one or more of the purchaser's obligations under the contract and the contract provides that as a result of such breach the seller is entitled to forfeit the contract; and

(3) Except for petitions for the appointment of a receiver, no arbitration or judicial action is pending on a claim made by the seller against the purchaser on any obligation secured by the contract. [1988 c 86 § 3; 1985 c 237 § 3.]

61.30.040 Notices—Persons required to be notified—Recording. (1) The required notices shall be given to each purchaser last known to the seller or the seller's agent or attorney giving the notice and to each person who, at the time the notice of intent to forfeit is recorded, is the last holder of record of a purchaser's interest. Failure to comply with this subsection in any material respect shall render any purported forfeiture based upon the required notices void.

(2) The required notices shall also be given to each of the following persons whose interest the seller desires to forfeit if the default is not cured:

(a) The holders and claimants of record at the time the notice of intent to forfeit is recorded of any interests in or liens upon all or any portion of the property derived through the purchaser or which are otherwise subordinate to the seller's interest in the property; and

(b) All persons occupying the property at the time the notice of intent to forfeit is recorded and whose identities are reasonably discoverable by the seller.

Any forfeiture based upon the required notices shall be void as to each person described in this subsection (2) to whom the notices are not given in accordance with this chapter in any material respect.

(3) The required notices shall also be given to each person who at the time the notice of intent to forfeit is recorded has recorded in each county in which any of the property is located a request to receive the required notices, which request (a) identifies the contract being forfeited by reference to its date, the original parties thereto, and a legal description of the property; (b) contains the name and address for notice of the person making the request; and (c) is executed and acknowledged by the requesting person.

(4) Except as otherwise provided in the contract or other agreement with the seller and except as otherwise provided in this section, the seller shall not be required to give any required notice to any person whose interest in the property is not of record or if such interest is first acquired after the time

the notice of intent to forfeit is recorded. Subject to subsection (5) of this section, all such persons hold their interest subject to the potential forfeiture described in the recorded notice of intent to forfeit and shall be bound by any forfeiture made pursuant thereto as permitted in this chapter as if the required notices were given to them.

(5) Before the commencement of the time for cure, the notice of intent to forfeit shall be recorded in each county in which any of the property is located. The notice of intent to forfeit shall become ineffective for all purposes one year after the expiration of the time for cure stated in such notice or in any recorded extension thereof executed by the seller or the seller's agent or attorney unless, prior to the end of that year, the declaration of forfeiture based on such notice or a lis pendens incident to an action under this chapter is recorded. The time for cure may not be extended in increments of more than one year each, and extensions stated to be for more than one year or for an unstated or indefinite period shall be deemed to be for one year for the purposes of this subsection. Recording a lis pendens when a notice of intent to forfeit is effective shall cause such notice to continue in effect until the later of one year after the expiration of the time for cure or thirty days after final disposition of the action evidenced by the lis pendens.

(6) The declaration of forfeiture shall be recorded in each county in which any of the property is located after the time for cure has expired without the default having been cured. [1988 c 86 § 4; 1985 c 237 § 4.]

61.30.050 Notices—Form—Method of service. (1) The required notices shall be given in writing. The notice of intent to forfeit shall be signed by the seller or by the seller's agent or attorney. The declaration of forfeiture shall be signed and sworn to by the seller. The seller may execute the declaration of forfeiture through an agent under a power of attorney which is of record at the time the declaration of forfeiture is recorded, but in so doing the seller shall be subject to liability under RCW 61.30.150 to the same extent as if the seller had personally signed and sworn to the declaration.

(2) The required notices shall be given:

(a) In any manner provided in the contract or other agreement with the seller; and

(b) By either personal service in the manner required for civil actions in any county in which any of the property is located or by mailing a copy to the person for whom it is intended, postage prepaid, by certified or registered mail with return receipt requested and by regular first class mail, addressed to the person at the person's address last known to the seller or the seller's agent or attorney giving the notice. For the purposes of this subsection, the seller or the seller's agent or attorney giving the notice may rely upon the address stated in any recorded document which entitles a person to receive the required notices unless the seller or the seller's agent or attorney giving the notice knows such address to be incorrect.

If the address or identity of a person for whom the required notices are intended is not known to or reasonably discoverable at the time the notice is given by the seller or the seller's agent or attorney giving the notice, the required notices shall be given to such person by posting a copy in a conspicuous place on the property and publishing a copy

thereof. The notice shall be directed to the attention of all persons for whom the notice is intended, including the names of the persons, if so known or reasonably discoverable. The publication shall be made in a newspaper approved pursuant to RCW 65.16.040 and published in each county in which any of the property is located or, if no approved newspaper is published in the county, in an adjoining county, and if no approved newspaper is published in the county or adjoining county, then in an approved newspaper published in the capital of the state. The notice of intent to forfeit shall be published once a week for two consecutive weeks. The declaration of forfeiture shall be published once. [1988 c 86 § 5; 1985 c 237 § 5.]

61.30.060 Notice of intent to forfeit—Declaration of forfeiture—Time limitations. The notice of intent to forfeit shall be given not later than ten days after it is recorded. The declaration of forfeiture shall be given not later than three days after it is recorded. Either required notice may be given before it is recorded, but the declaration of forfeiture may not be given before the time for cure has expired. Notices which are served or mailed are given for the purposes of this section when served or mailed. Notices which must be posted and published as provided in RCW 61.30.050(2)(b) are given for the purposes of this section when both posted and first published. [1988 c 86 § 6; 1985 c 237 § 6.]

61.30.070 Notice of intent to forfeit—Declaration of forfeiture—Contents. (1) The notice of intent to forfeit shall contain the following:

- (a) The name, address, and telephone number of the seller and, if any, the seller's agent or attorney giving the notice;
- (b) A description of the contract, including the names of the original parties to the contract, the date of the contract, and the recording number of the contract or memorandum thereof;
- (c) A legal description of the property;
- (d) A description of each default under the contract on which the notice is based;
- (e) A statement that the contract will be forfeited if all defaults are not cured by a date stated in the notice which is not less than ninety days after the notice of intent to forfeit is recorded or any longer period specified in the contract or other agreement with the seller;
- (f) A statement of the effect of forfeiture, including, to the extent applicable that: (i) All right, title, and interest in the property of the purchaser and, to the extent elected by the seller, of all persons claiming through the purchaser or whose interests are otherwise subordinate to the seller's interest in the property shall be terminated; (ii) the purchaser's rights under the contract shall be canceled; (iii) all sums previously paid under the contract shall belong to and be retained by the seller or other person to whom paid and entitled thereto; (iv) all of the purchaser's rights in all improvements made to the property and in unharvested crops and timber thereon shall belong to the seller; and (v) the purchaser and all other persons occupying the property whose interests are forfeited shall be required to surrender possession of the property,

improvements, and unharvested crops and timber to the seller ten days after the declaration of forfeiture is recorded;

(g) An itemized statement or, to the extent not known at the time the notice of intent to forfeit is given or recorded, a reasonable estimate of all payments of money in default and, for defaults not involving the failure to pay money, a statement of the action required to cure the default;

(h) An itemized statement of all other payments, charges, fees, and costs, if any, or, to the extent not known at the time the notice of intent is given or recorded, a reasonable estimate thereof, that are or may be required to cure the defaults;

(i) A statement that the person to whom the notice is given may have the right to contest the forfeiture, or to seek an extension of time to cure the default if the default does not involve a failure to pay money, or both, by commencing a court action by filing and serving the summons and complaint before the declaration of forfeiture is recorded;

(j) A statement that the person to whom the notice is given may have the right to request a court to order a public sale of the property; that such public sale will be ordered only if the court finds that the fair market value of the property substantially exceeds the debt owed under the contract and any other liens having priority over the seller's interest in the property; that the excess, if any, of the highest bid at the sale over the debt owed under the contract will be applied to the liens eliminated by the sale and the balance, if any, paid to the purchaser; that the court will require the person who requests the sale to deposit the anticipated sale costs with the clerk of the court; and that any action to obtain an order for public sale must be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded;

(k) A statement that the seller is not required to give any person any other notice of default before the declaration which completes the forfeiture is given, or, if the contract or other agreement requires such notice, the identification of such notice and a statement of to whom, when, and how it is required to be given; and

(1) Any additional information required by the contract or other agreement with the seller.

(2) If the default is not cured before the time for cure has expired, the seller may forfeit the contract by giving and recording a declaration of forfeiture which contains the following:

(a) The name, address, and telephone number of the seller;

(b) A description of the contract, including the names of the original parties to the contract, the date of the contract, and the recording number of the contract or memorandum thereof;

(c) A legal description of the property;

(d) To the extent applicable, a statement that all the purchaser's rights under the contract are canceled and all right, title, and interest in the property of the purchaser and of all persons claiming an interest in all or any portion of the property through the purchaser or which is otherwise subordinate to the seller's interest in the property are terminated except to the extent otherwise stated in the declaration of forfeiture as to persons or claims named, identified, or described;

(e) To the extent applicable, a statement that all persons whose rights in the property have been terminated and who are in or come into possession of any portion of the property

(including improvements and unharvested crops and timber) are required to surrender such possession to the seller not later than a specified date, which shall not be less than ten days after the declaration of forfeiture is recorded or such longer period provided in the contract or other agreement with the seller;

(f) A statement that the forfeiture was conducted in compliance with all requirements of this chapter in all material respects and applicable provisions of the contract;

(g) A statement that the purchaser and any person claiming any interest in the purchaser's rights under the contract or in the property who are given the notice of intent to forfeit and the declaration of forfeiture have the right to commence a court action to set the forfeiture aside by filing and serving the summons and complaint within sixty days after the date the declaration of forfeiture is recorded if the seller did not have the right to forfeit the contract or fails to comply with this chapter in any material respect; and

(h) Any additional information required by the contract or other agreement with the seller.

(3) The seller may include in either or both required notices any additional information the seller elects to include which is consistent with this chapter and with the contract or other agreement with the seller. [1988 c 86 § 7; 1985 c 237 § 7.]

61.30.080 Failure to give required notices. (1) If the seller fails to give any required notice within the time required by this chapter, the seller may record and give a subsequent notice of intent to forfeit or declaration of forfeiture, as applicable. Any such subsequent notice shall (a) include revised dates and information to the extent necessary to conform to this chapter as if the superseded notice had not been given or recorded; (b) state that it supersedes the notice being replaced; and (c) render void the previous notice which it replaces.

(2) If the seller fails to give the notice of intent to forfeit to all persons whose interests the seller desires to forfeit or to record such notice as required by this chapter, and if the declaration of forfeiture has not been given or recorded, the seller may give and record a new set of notices as required by this chapter. However, the new notices shall contain a statement that they supersede and replace the earlier notices and shall provide a new time for cure.

(3) If the seller fails to give any required notice to all persons whose interests the seller desires to forfeit or to record such notice as required by this chapter, and if the declaration of forfeiture has been given or recorded, the seller may apply for a court order setting aside the forfeiture previously made, and to the extent such order is entered, the seller may proceed as if no forfeiture had been commenced. However, no such order may be obtained without joinder and service upon the persons who were given the required notices and all other persons whose interests the seller desires to forfeit. [1988 c 86 § 8; 1985 c 237 § 8.]

61.30.090 Acceleration of payments—Cure of default. (1) Even if the contract contains a provision allowing the seller, because of a default in the purchaser's obligations under the contract, to accelerate the due date of some or

all payments to be made or other obligations to be performed by the purchaser under the contract, the seller may not require payment of the accelerated payments or performance of the accelerated obligations as a condition to curing the default in order to avoid forfeiture except to the extent the payments or performance would be due without the acceleration. This subsection shall not apply to an acceleration because of a transfer, encumbrance, or conveyance of any or all of the purchaser's interest in any portion or all of the property if the contract being forfeited contains a provision accelerating the unpaid balance because of such transfer, encumbrance, or conveyance and such provision is enforceable under applicable law.

(2) All persons described in RCW 61.30.040 (1) and (2), regardless of whether given the notice of intent to forfeit, and any guarantor of or any surety for the purchaser's performance may cure the default. These persons may cure the default at any time before expiration of the time for cure and may act alone or in any combination. Any person having a lien of record against the property which would be eliminated in whole or in part by the forfeiture and who cures the purchaser's default pursuant to this section shall have included in its lien all payments made to effect such cure, including interest thereon at the rate specified in or otherwise applicable to the obligations secured by such lien.

(3) The seller may, but shall not be required to, accept tender of cure after the expiration of the time for cure and before the declaration of forfeiture is recorded. The seller may accept a partial cure. If the tender of such partial cure to the seller or the seller's agent or attorney is not accompanied by a written statement of the person making the tender acknowledging that such payment or other action does not fully cure the default, the seller shall notify such person in writing of the insufficiency and the amount or character thereof, which notice shall include an offer to refund any partial tender of money paid to the seller or the seller's agent or attorney upon written request. The notice of insufficiency may state that, by statute, such request must be made by a specified date, which date may not be less than ninety days after the notice of insufficiency is served or mailed. The request must be made in writing and delivered or mailed to the seller or the person who gave the notice of insufficiency or the notice of intent to forfeit and, if the notice of insufficiency properly specifies a date by which such request must be made, by the date so specified. The seller shall refund such amount promptly following receipt of such written request, if timely made, and the seller shall be liable to the person to whom such amount is due for that person's reasonable attorneys' fees and other costs incurred in an action brought to recover such amount in which such refund or any portion thereof is found to have been improperly withheld. If the seller's written notice of insufficiency is not given to the person making the tender at least ten days before the expiration of the time for cure, then regardless of whether the tender is accepted the time for cure shall be extended for ten days from the date the seller's written notice of insufficiency is given. The seller shall not be required to extend the time for cure more than once even though more than one insufficient tender is made.

(4) Except as provided in this subsection, a timely tender of cure shall reinstate the contract. If a default that entitles the

seller to forfeit the contract is not described in a notice of intent to forfeit previously given and the seller gives a notice of intent to forfeit concerning that default, timely cure of a default described in a previous notice of intent to forfeit shall not limit the effect of the subsequent notice.

(5) If the default is cured and a fulfillment deed is not given to the purchaser, the seller or the seller's agent or attorney shall sign, acknowledge, record, and deliver or mail to the purchaser and, if different, the person who made the tender a written statement that the contract is no longer subject to forfeiture under the notice of intent to forfeit previously given, referring to the notice of intent to forfeit by its recording number. A seller who fails within thirty days of written demand to give and record the statement required by this subsection, if such demand specifies the penalties in this subsection, is liable to the person who cured the default for the greater of five hundred dollars or actual damages, if any, and for reasonable attorneys' fees and other costs incurred in an action to recover such amount or damages.

(6) Any person curing or intending to cure any default shall have the right to request any court of competent jurisdiction to determine the reasonableness of any attorneys' fees which are included in the amount required to cure, and in making such determination the court may award the prevailing party its reasonable attorneys' fees and other costs incurred in the action. An action under this subsection shall not forestall any forfeiture or affect its validity. [1988 c 86 § 9; 1985 c 237 § 9.]

61.30.100 Effect of forfeiture. (1) The recorded and sworn declaration of forfeiture shall be prima facie evidence of the extent of the forfeiture and compliance with this chapter and, except as otherwise provided in RCW 61.30.040 (1) and (2), conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

(2) Except as otherwise provided in this chapter or the contract or other agreement with the seller, forfeiture of a contract under this chapter shall have the following effects:

(a) The purchaser, and all persons claiming through the purchaser or whose interests are otherwise subordinate to the seller's interest in the property who were given the required notices pursuant to this chapter, shall have no further rights in the contract or the property and no person shall have any right, by statute or otherwise, to redeem the property;

(b) All sums previously paid under the contract by or on behalf of the purchaser shall belong to and be retained by the seller or other person to whom paid; and

(c) All of the purchaser's rights in all improvements made to the property and in unharvested crops and timber thereon at the time the declaration of forfeiture is recorded shall be forfeited to the seller.

(3) The seller shall be entitled to possession of the property ten days after the declaration of forfeiture is recorded or any longer period provided in the contract or any other agreement with the seller. The seller may proceed under chapter 59.12 RCW to obtain such possession. Any person in possession who fails to surrender possession when required shall be liable to the seller for actual damages caused by such failure and for reasonable attorneys' fees and costs of the action.

(4) After the declaration of forfeiture is recorded, the seller shall have no claim against and the purchaser shall not

be liable to the seller for any portion of the purchase price unpaid or for any other breach of the purchaser's obligations under the contract, except for damages caused by waste to the property to the extent such waste results in the fair market value of the property on the date the declaration of forfeiture is recorded being less than the unpaid monetary obligations under the contract and all liens or contracts having priority over the seller's interest in the property. [1988 c 86 § 10; 1985 c 237 § 10.]

61.30.110 Forfeiture may be restrained or enjoined.

(1) The forfeiture may be restrained or enjoined or the time for cure may be extended by court order only as provided in this section. A certified copy of any restraining order or injunction may be recorded in each county in which any part of the property is located.

(2) Any person entitled to cure the default may bring or join in an action under this section. No other person may bring such an action without leave of court first given for good cause shown. Any such action shall be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's agent or attorney, if any, who gave the notice of intent to forfeit. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located. A court may preliminarily enjoin the giving and recording of the declaration of forfeiture upon a prima facie showing of the grounds set forth in this section for a permanent injunction. If the court issues an order restraining or enjoining the forfeiture then until such order expires or is vacated or the court otherwise permits the seller to proceed with the forfeiture, the declaration of forfeiture shall not be given or recorded. However, the commencement of the action shall not of itself extend the time for cure.

(3) The forfeiture may be permanently enjoined only when the person bringing the action proves that there is no default as claimed in the notice of intent to forfeit or that the purchaser has a claim against the seller which releases, discharges, or excuses the default claimed in the notice of intent to forfeit, including by offset, or that there exists any material noncompliance with this chapter. The time for cure may be extended only when the default alleged is other than the failure to pay money, the nature of the default is such that it cannot practically be cured within the time stated in the notice of intent to forfeit, action has been taken and is diligently being pursued which would cure the default, and any person entitled to cure is ready, willing, and able to timely perform all of the purchaser's other contract obligations. [1988 c 86 § 11; 1985 c 237 § 11.]

61.30.120 Sale of property in lieu of forfeiture. (1)

Except for a sale ordered incident to foreclosure of the contract as a mortgage, a public sale of the property in lieu of the forfeiture may be ordered by the court only as provided in this section. Any person entitled to cure the default may bring or join in an action seeking an order of public sale in lieu of forfeiture. No other person may bring such an action without leave of court first given for good cause shown.

(2) An action under this section shall be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's agent or attorney, if any, who gave the notice of intent to forfeit. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located. After the commencement of an action under this section and before its dismissal, the denial of a request for a public sale, or the vacation or expiration of an order for a public sale, the declaration of forfeiture shall not be given or recorded. However, commencement of the action shall not of itself extend the time for cure.

(3) If the court finds the then fair market value of the property substantially exceeds the unpaid and unperformed obligations secured by the contract and any other liens having priority over the seller's interest in the property, the court may require the property to be sold after the expiration of the time for cure in whole or in parcels to pay the costs of the sale and satisfy the amount the seller is entitled to be paid from the sale proceeds. Such sale shall be for cash to the highest bidder at a public sale by the sheriff at a courthouse of the county in which the property or any contiguous or noncontiguous portion thereof is located. The order requiring a public sale of the property shall specify the amount which the seller is entitled to be paid from the sale proceeds, which shall include all sums unpaid under the contract, irrespective of the due dates thereof, and such other costs and expenses to which the seller is entitled as a result of the purchaser's default under the contract, subject to any offsets or damages to which the purchaser is entitled. The order shall require any person requesting the sale to deposit with the clerk of the court, or such other person as the court may direct, the amount the court finds will be necessary to pay all of the costs and expenses of advertising and conducting the sale, including the notices to be given under subsections (4) and (5) of this section. The court shall require such deposit to be made within seven days, and if not so made the court shall vacate its order of sale. Except as provided in subsections (6) and (8) of this section, the sale shall eliminate the interests of the persons given the notice of intent to forfeit to the same extent that such interests would have been eliminated had the seller's forfeiture been effected pursuant to such notice.

(4) The sheriff shall endorse upon the order the time and date when the sheriff receives it and shall forthwith post and publish the notice of sale specified in this subsection and sell the property, or so much thereof as may be necessary to discharge the amount the seller is entitled to be paid as specified in the court's order of sale. The notice of sale shall be printed or typed and contain the following information:

(a) A statement that the court has directed the sheriff to sell the property described in the notice of sale and the amount the seller is entitled to be paid from the sale proceeds as specified in the court's order;

(b) The caption, cause number, and court in which the order was entered;

(c) A legal description of the property to be sold, including the street address if any;

(d) The date and recording number of the contract;

(e) The scheduled date, time, and place of the sale;

(f) If the time for cure has not expired, the date it will expire and that the purchaser and other persons authorized to cure have the right to avoid the sale ordered by the court by curing the defaults specified in the notice of intent to forfeit before the time for cure expires;

(g) The right of the purchaser to avoid the sale ordered by the court by paying to the sheriff, at any time before the sale, in cash, the amount which the seller would be entitled to be paid from the proceeds of the sale, as specified in the court's order; and

(h) A statement that unless otherwise provided in the contract between seller and purchaser or other agreement with the seller, no person shall have any right to redeem the property sold at the sale.

The notice of sale shall be given by posting a copy thereof for a period of not less than four weeks prior to the date of sale in three public places in each county in which the property or any portion thereof is located, one of which shall be at the front door of the courthouse for the superior court of each such county, and one of which shall be placed in a conspicuous place on the property. Additionally, the notice of sale shall be published once a week for two consecutive weeks in the newspaper or newspapers prescribed for published notices in RCW 61.30.050(2)(b). The sale shall be scheduled to be held not more than seven days after the expiration of (i) the periods during which the notice of sale is required to be posted and published or (ii) the time for cure, whichever is later; however, the seller may, but shall not be required to, permit the sale to be scheduled for a later date. Upon the completion of the sale, the sheriff shall deliver a sheriff's deed to the property sold to the successful bidder.

(5) Within seven days following the date the notice of sale is posted on the property, the seller shall, by the means described in RCW 61.30.050(2), give a copy of the notice of sale to all persons who were given the notice of intent to forfeit, except the seller need not post or publish the notice of sale.

(6) Any person may bid at the sale. If the purchaser is the successful bidder, the sale shall not affect any interest in the property which is subordinate to the contract. If the seller is the successful bidder, the seller may offset against the price bid the amount the seller is entitled to be paid as specified in the court's order. Proceeds of such sale shall be first applied to any costs and expenses of sale incurred by the sheriff and the seller in excess of the deposit referred to in subsection (3) of this section, and next to the amount the seller is entitled to be paid as specified in the court's order. Any proceeds in excess of the amount necessary to pay such costs, expenses and amount, less the clerk's filing fee, shall be deposited with the clerk of the superior court of the county in which the sale took place, unless such surplus is less than the clerk's filing fee, in which event such excess shall be paid to the purchaser. The clerk shall index such funds under the name of the purchaser. Interests in or liens or claims of liens against the property eliminated by the sale shall attach to such surplus in the order of priority that they had attached to the property. The clerk shall not disburse the surplus except upon order of the superior court of such county, which order shall not be entered less than ten days following the deposit of the funds with the clerk.

(7) In addition to the right to cure the default within the time for cure, the purchaser shall have the right to satisfy its obligations under the contract and avoid any public sale ordered by the court by paying to the sheriff, at any time before the sale, in cash, the amount which the seller would be entitled to be paid from the proceeds of the sale as specified in the court's order plus the amount of any costs and expenses of the sale incurred by the sheriff and the seller in excess of the deposit referred to in subsection (3) of this section. If the purchaser satisfies its obligations as provided in this subsection, the seller shall deliver its fulfillment deed to the purchaser.

(8) Unless otherwise provided in the contract or other agreement with the seller, after the public sale provided in this section no person shall have any right, by statute or otherwise, to redeem the property and, subject to the rights of persons unaffected by the sale, the purchaser at the public sale shall be entitled to possession of the property ten days after the date of the sale and may proceed under chapter 59.12 RCW to obtain such possession.

(9) A public sale effected under this section shall satisfy the obligations secured by the contract, regardless of the sale price or fair value, and no deficiency decree or other judgment may thereafter be obtained on such obligations. [1988 c 86 § 12; 1985 c 237 § 12.]

61.30.130 Forfeiture may proceed upon expiration of judicial order—Court may award attorneys' fees or impose conditions—Venue. (1) If an order restraining or enjoining the forfeiture or an order of sale under RCW 61.30.120 expires or is dissolved or vacated at least ten days before expiration of the time for cure, the seller may proceed with the forfeiture under this chapter if the default is not cured at the end of the time for cure. If any such order expires or is dissolved or vacated or such other final disposition is made at any time later than stated in the first sentence of this subsection, the seller may proceed with the forfeiture under this chapter if the default is not cured, except the time for cure shall be extended for ten days after the final disposition or the expiration of, or entry of the order dissolving or vacating, the order.

(2) In actions under RCW 61.30.110 and 61.30.120, the court may award reasonable attorneys' fees and costs of the action to the prevailing party, except for such fees and costs incurred by a person requesting a public sale of the property.

(3) In actions under RCW 61.30.110 and 61.30.120, on the seller's motion the court may (a) require the person commencing the action to provide a bond or other security against all or a portion of the seller's damages and (b) impose other conditions, the failure of which may be cause for entry of an order dismissing the action and dissolving or vacating any restraining order, injunction, or other order previously entered.

(4) Actions under RCW 61.30.110, 61.30.120, or 61.30.140 shall be brought in the superior court of the county where the property is located or, if the property is located in more than one county, then in any of such counties, regardless of whether the property is contiguous or noncontiguous. [1988 c 86 § 13; 1985 c 237 § 13.]

61.30.140 Action to set aside forfeiture. (1) An action to set aside a forfeiture not otherwise void under RCW 61.30.040(1) may be commenced only after the declaration of forfeiture has been recorded and only as provided in this section, and regardless of whether an action was previously commenced under RCW 61.30.110.

(2) An action to set aside the forfeiture permitted by this section may be commenced only by a person entitled to be given the required notices under RCW 61.30.040 (1) and (2). For all persons given the required notices in accordance with this chapter, such an action shall be commenced by filing and serving the summons and complaint not later than sixty days after the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's attorney in fact, if any, who signed the declaration of forfeiture. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located.

(3) The court may require that all payments specified in the notice of intent shall be paid to the clerk of the court as a condition to maintaining an action to set aside the forfeiture. All payments falling due during the pendency of the action shall be paid to the clerk of the court when due. These payments shall be calculated without regard to any acceleration provision in the contract (except an acceleration because of a transfer, encumbrance, or conveyance of the purchaser's interest in the property when otherwise enforceable) and without regard to the seller's contention the contract has been duly forfeited and shall not include the seller's costs and fees of the forfeiture. The court may make orders regarding the investment or disbursement of these funds and may authorize payments to third parties instead of the clerk of the court.

(4) The forfeiture shall not be set aside unless (a) the rights of bona fide purchasers for value and of bona fide encumbrancers for value of the property would not thereby be adversely affected and (b) the person bringing the action establishes that the seller was not entitled to forfeit the contract at the time the seller purported to do so or that the seller did not materially comply with the requirements of this chapter.

(5) If the purchaser or other person commencing the action establishes a right to set aside the forfeiture, the court shall award the purchaser or other person commencing the action actual damages, if any, and may award the purchaser or other person its reasonable attorneys' fees and costs of the action. If the court finds that the forfeiture was conducted in compliance with this chapter, the court shall award the seller actual damages, if any, and may award the seller its reasonable attorneys' fees and costs of the action.

(6) The seller is entitled to possession of the property and to the rents, issues, and profits thereof during the pendency of an action to set aside the forfeiture: PROVIDED, That the court may provide that possession of the property be delivered to or retained by the purchaser or some other person and may make other provisions for the rents, issues, and profits. [1988 c 86 § 14; 1985 c 237 § 14.]

61.30.150 False swearing—Penalty—Failure to comply with chapter—Liability. (1) Whoever knowingly swears falsely to any statement required by this chapter to be

sworn is guilty of perjury and shall be liable for the statutory penalties therefor.

(2) A seller who records a declaration of forfeiture with actual knowledge or reason to know of a material failure to comply with any requirement of this chapter is liable to any person whose interest in the property or the contract, or both, has been forfeited without material compliance with this chapter for actual damages and actual attorneys' fees and costs of the action and, in the court's discretion, exemplary damages. [1988 c 86 § 15; 1985 c 237 § 15.]

61.30.160 Priority of actions under chapter. An action brought under RCW 61.30.110, 61.30.120, or 61.30.140 shall take precedence over all other civil actions except those described in RCW 59.12.130. [1985 c 237 § 16.]

61.30.900 Short title. This chapter may be known and cited as the real estate contract forfeiture act. [1985 c 237 § 17.]

61.30.905 Severability—1985 c 237. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 237 § 19.]

61.30.910 Effective date—Application—1985 c 237. This act shall take effect January 1, 1986, and shall apply to all real estate contract forfeitures initiated on or after that date, regardless of when the real estate contract was made. [1985 c 237 § 21.]

61.30.911 Application—1988 c 86. This act applies to all real estate contract forfeitures initiated on or after June 9, 1988, regardless of when the real estate contract was made. [1988 c 86 § 16.]

Chapter 61.34 RCW EQUITY SKIMMING

Sections

61.34.010	Legislative findings.
61.34.020	Definitions.
61.34.030	Criminal penalty.
61.34.040	Application of consumer protection act.
61.34.900	Severability—1988 c 33.

61.34.010 Legislative findings. The legislature finds that persons are engaging in patterns of conduct which defraud innocent homeowners of their equity interest or other value in residential dwellings under the guise of a purchase of the owner's residence but which is in fact a device to convert the owner's equity interest or other value in the residence to an equity skimmer, who fails to make payments, diverts the equity or other value to the skimmer's benefit, and leaves the innocent homeowner with a resulting financial loss or debt.

The legislature further finds this activity of equity skimming to be contrary to the public policy of this state and therefore establishes the crime of equity skimming to address this form of real estate fraud and abuse. [1988 c 33 § 1.]

61.34.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Pattern of equity skimming" means engaging in a least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.

(2) "Dwelling" means a single, duplex, triplex, or four-unit family residential building.

(3) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.

(4) An "act of equity skimming" occurs when:

(a)(i) A person purchases a dwelling with the representation that the purchaser will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust, or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; and

(ii) The person fails to make payments on such mortgages, deeds of trust, or real estate contracts as the payments become due, within two years subsequent to the purchase; and

(iii) The person diverts value from the dwelling by either (A) applying or authorizing the application of rents from the dwelling for the person's own benefit or use, or (B) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use, or (C) removing or obtaining appliances, fixtures, furnishings, or parts of such dwellings or appurtenances for the person's own benefit or use without replacing the removed items with items of equal or greater value; or

(b)(i) The person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and

(ii) The person obtains a superior priority loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and

(iii) The person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and

(iv) The person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use. [1988 c 33 § 4.]

61.34.030 Criminal penalty. Any person who wilfully engages in a pattern of equity skimming is guilty of a class B felony under RCW 9A.20.021. Equity skimming shall be classified as a level II offense under chapter 9.94A RCW, and each act of equity skimming found beyond a reasonable doubt or admitted by the defendant upon a plea of guilty to be included in the pattern of equity skimming, shall be a separate current offense for the purpose of determining the sen-

tence range for each current offense pursuant to RCW 9.94A.589(1)(a). [1988 c 33 § 2.]

61.34.040 Application of consumer protection act. In addition to the criminal penalties provided in RCW 61.34.030, the legislature finds and declares that equity skimming substantially affects the public interest. The commission by any person of an act of equity skimming or a pattern of equity skimming is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. [1988 c 33 § 3.]

61.34.900 Severability—1988 c 33. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 33 § 6.]

Title 62A

UNIFORM COMMERCIAL CODE

Articles

- 1 General provisions.**
- 2 Sales.**
- 2A Leases.**
- 3 Negotiable instruments.**
- 4 Bank deposits and collections.**
- 4A Funds transfers.**
- 5 Letters of credit.**
- 7 Warehouse receipts, bills of lading and other documents of title.**
- 8 Investment securities.**
- 9A Secured transactions; sales of accounts, contract rights and chattel paper.**
- 10 Effective date and repealer.**
- 11 Effective date and transition provisions.**

Reviser's note: The Uniform Commercial Code was enacted by 1965 ex.s. c 157 and became effective at midnight on June 30, 1967. The 1972 amendments to the Uniform Commercial Code recommended by the National Conference of Commissioners on Uniform State Laws were enacted by 1981 c 41 and become effective at midnight on June 30, 1982.

The style of the numbers assigned in the Commercial Code differs from the standard RCW numbering system. The purpose of this variance is to enable ready comparison with the laws and annotations of other states which have adopted the Uniform Commercial Code and to conform to the recommendations of the National Conference of Commissioners on Uniform State Laws.

As enacted and amended by the Washington Legislature, the Uniform Commercial Code is divided into eleven Articles, which are subdivided into a number of Parts. The first section in Article 1, Part 1 of the Commercial Code is numbered 1-101, the second section in Article 1, Part 1 is numbered 1-102, the first section in Article 1, Part 2 is numbered 1-201, the first section in Article 2, Part 1 is numbered 2-101, etc.

We have assigned Title 62A RCW for the Uniform Commercial Code but have retained its uniform numbering; thus in this title, section 1-101 of the Commercial Code becomes RCW 62A.1-101; section 1-102 becomes RCW 62A.1-102; section 1-201 becomes RCW 62A.1-201; section 2-101 becomes RCW 62A.2-101, and so on.

Cashing checks, drafts, and state warrants for state officers and employees—Discretionary—Conditions—Procedure upon dishonor: RCW 43.08.180.

Immunity from implied warranties and civil liability relating to blood, plasma, and blood derivative—Scope—Effective date: RCW 70.54.120.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Motor vehicle certificate of ownership, transfer, perfection of security interest, etc.: Chapter 46.12 RCW.
express warranties: Chapter 19.118 RCW.

Uniform legislation commission: Chapter 43.56 RCW.

Article 1 GENERAL PROVISIONS

Sections

PART 1 SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

- 62A.1-101 Short title.
- 62A.1-102 Purposes; rules of construction; variation by agreement.

(2004 Ed.)

- 62A.1-103 Supplementary general principles of law applicable.
- 62A.1-104 Construction against implicit repeal.
- 62A.1-105 Territorial application of the title; parties' power to choose applicable law.
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PART 2 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

- 62A.1-201 General definitions.
- 62A.1-202 Prima facie evidence by third party documents.
- 62A.1-203 Obligation of good faith.
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- 62A.1-205 Course of dealing and usage of trade.
- 62A.1-206 Statute of frauds for kinds of personal property not otherwise covered.
- 62A.1-207 Performance or acceptance under reservation of rights.
- 62A.1-208 Option to accelerate at will.

62A.1-101 Short title. This Title shall be known and may be cited as Uniform Commercial Code. [1965 ex.s. c 157 § 1-101.]

62A.1-102 Purposes; rules of construction; variation by agreement. (1) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Title are (a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this Title may be varied by agreement, except as otherwise provided in this Title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Title of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Title unless the context otherwise requires (a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. [1965 ex.s. c 157 § 1-102. Cf. former RCW sections: (i) RCW 22.04.580; 1913 c 99 § 57; RRS § 3643. (ii) RCW 23.80.190; 1939 c 100 § 19; RRS § 3803-119. (iii) RCW 63.04.745; 1925 ex.s. c 142 § 74; RRS § 5836-74; formerly RCW 63.04.770. (iv) RCW

81.32.521; 1961 c 14 § 81.32.521; prior: 1915 c 159 § 52; RRS § 3698; formerly RCW 81.32.610.]

Code to be liberally construed: RCW 1.12.010.

Number and gender—Interpretation: RCW 1.12.050.

62A.1-103 Supplementary general principles of law applicable. Unless displaced by the particular provisions of this Title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. [1965 ex.s. c 157 § 1-103. Cf. former RCW sections: (i) RCW 22.04.570; 1913 c 99 § 56; RRS § 3642. (ii) RCW 23.80.180; 1939 c 100 § 18; RRS § 3803-118; formerly RCW 23.20.190. (iii) RCW 62.01.196; 1955 c 35 § 196; RRS § 3586. (iv) RCW 63.04.030; 1925 ex.s. c 142 § 2; RRS § 5836-2. (v) RCW 81.32.511; 1961 c 14 § 81.32.511; prior: 1915 c 159 § 51; RRS § 3697; formerly RCW 81.32.600.]

Application of common law: RCW 4.04.010.

62A.1-104 Construction against implicit repeal. This Title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [1965 ex.s. c 157 § 1-104.]

62A.1-105 Territorial application of the title; parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-106.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Governing law in the Article on Funds Transfers. RCW 62A.4A-507.

Letters of Credit. RCW 62A.5-116.

Applicability of the Article on Investment Securities. RCW 62A.8-110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. RCW 62A.9A-301 through 62A.9A-307. [2001 c 32 § 8; 2000 c 250 § 9A-801; 1997 c 56 § 19; 1995 c 48 § 54. Prior: 1993 c 395 § 6-102; 1993 c 230 § 2A-601; 1981 c 41 § 1; 1965 ex.s. c 157 § 1-105.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Effective date—2000 c 250: See RCW 62A.9A-701.

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1993 c 230: See RCW 62A.11-110.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.1-106 Remedies to be liberally administered. (1) The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect. [1965 ex.s. c 157 § 1-106. Cf. former: RCW 63.04.730; 1925 ex.s. c 142 § 72; RRS § 5836-72.]

62A.1-107 Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1965 ex.s. c 157 § 1-107. Cf. former RCW sections: (i) RCW 62.01.119(3); 1955 c 35 § 62.01.119; prior: 1899 c 149 § 119; RRS § 3509. (ii) RCW 62.01.120(2); 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510. (iii) RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

62A.1-108 Severability. If any provision or clause of this Title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable. [1965 ex.s. c 157 § 1-108. Cf. former RCW 62.98.030; 1955 c 35 § 62.98.030.]

62A.1-109 Section captions. Section captions are parts of this Title. [1965 ex.s. c 157 § 1-109. Cf. former RCW 62.98.020; 1955 c 35 § 62.98.020.]

Reviser's note: Sections in this title that were amended or added after the original enactment of this title by chapter 157, Laws of 1965 ex. sess. may have section captions supplied by the code reviser as authorized under RCW 1.08.015(2)(l).

62A.1-110 Art dealers and artists—Contracts—Duties, etc. Chapter 18.110 RCW shall control over any conflicting provision of this title. [1981 c 33 § 7.]

62A.1-201 General definitions. Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or

course of performance as provided in this Title (RCW 62A.1-205, RCW 62A.2-208, and RCW 62A.2A-207). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 62A.2 RCW may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when

(a) he or she has actual knowledge of it; or

(b) he or she has received a notice or notification of it; or

(c) from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not

such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his or her attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation, except for lease-purchase agreements under chapter 63.19 RCW. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9A. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9A. Except as otherwise provided in RCW 62A.2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a

"security interest" by complying with Article 9A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest."

Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) The lessee has an option to renew the lease or to become the owner of the goods;

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed;

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed; or

(f) The amount of rental payments may or will be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the goods.

For purposes of this subsection (37):

(a) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(b) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(c) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.	(4)	RCW: (i) 30.52.010 (ii) 62.01.191
	(5)	RCW 62.01.191
	(6)	RCW 81.32.011 ¹
	(7)	None
	(8)	None
	(9)	RCW 61.20.010
	(10)	None
(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.	(11)	RCW: (i) 63.04.040 (ii) 63.04.720
	(12)	None
	(13)	RCW 63.04.755(1)
	(14)	RCW: (i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
	(15)	RCW 63.04.755(1)
(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.	(16)	RCW 63.04.755(1)
(40) "Surety" includes guarantor.	(17)	RCW: (i) 22.04.585(1) (ii) 63.04.060 (iii) 63.04.070 (iv) 63.04.755(1)
(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.	(18)	None
(42) "Term" means that portion of an agreement which relates to a particular matter.	(19)	RCW: (i) 22.04.585(2) (ii) 23.80.220(2) (iii) 63.04.755(2) (iv) 81.32.531(2)
(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.	(20)	RCW: (i) 22.04.585(1) (ii) 62.01.191 (iii) 81.32.531(1)
(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-210, and RCW 62A.4-211) a person gives "value" for rights if he or she acquires them	(21)	None
(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or	(22)	None
(b) as security for or in total or partial satisfaction of a preexisting claim; or	(23)	RCW 63.04.755(3)
(c) by accepting delivery pursuant to a pre-existing contract for purchase; or	(24)	RCW 62.01.006(5)
(d) generally, in return for any consideration sufficient to support a simple contract.	(25)	RCW 62.01.056
(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.	(26)	None
(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form. [2001 c 32 § 9; 2000 c 250 § 9A-802; 1996 c 77 § 1. Prior: 1993 c 230 § 2A-602; 1993 c 229 § 1; 1992 c 134 § 14; 1990 c 228 § 1; 1986 c 35 § 53; 1981 c 41 § 2; 1965 ex.s. c 157 § 1-201.]	(27)	None
	(28)	RCW: (i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
	(29)	None
	(30)	RCW: (i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
	(31)	None
Reviser's note: This table indicates the latest comparable former Washington sources of the material contained in the various subsections of RCW 62A.1-201. Complete histories of the former sections are carried in the Revised Code of Washington Disposition Tables.	(32)	RCW: (i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 63.04.755(1) (v) 81.32.531(1)
HEREIN SUBD.	COMPARE FORMER	
(1)	RCW: (i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)	(33) RCW: (i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 63.04.755(1) (v) 81.32.531(1)
(2)	None	
(3)	None	

(34)	None
(35)	None
(36)	None
(37)	RCW 61.20.010
(38)	None
(39)	None
(40)	None
(41)	None
(42)	None
(43)	None
(44)	RCW: (i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.025 (v) 62.01.026 (vi) 62.01.027 (vii) 62.01.191 (viii) 63.04.755(1) (ix) 81.32.531(1)
(45)	RCW: (i) 22.04.020 (ii) 63.04.755(1)
(46)	RCW 62.01.191

¹The repeal of RCW sections 81.32.010 through 81.32.561 ". . . shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050)." Section 10-102(a)(xvii), chapter 157, Laws of 1965 ex. sess.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1993 c 230: See RCW 62A.11-110.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Short title—Severability—1992 c 134: See RCW 63.19.900 and 63.19.901.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.1-202 Prima facie evidence by third party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. [1965 ex.s. c 157 § 1-202.]

Official documents as evidence: RCW 5.40.020, 5.40.030, 5.40.040.

Uniform Business Records as Evidence Act: Chapter 5.45 RCW.

62A.1-203 Obligation of good faith. Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement. [1965 ex.s. c 157 § 1-203.]

62A.1-204 Time; reasonable time; "seasonably". (1) Whenever this Title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time. [1965 ex.s. c 157 § 1-204.]

62A.1-205 Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter. [1965 ex.s. c 157 § 1-205. Cf. former RCW sections: (i) RCW 63.04.100(1); 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.160(5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (iii) RCW 63.04.190(2); 1925 ex.s. c 142 § 18; RRS § 5836-18. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

62A.1-206 Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (RCW 62A.2-201) nor of securities (RCW 62A.8-113) nor to security agreements (*RCW 62A.9-203). [1995 c 48 § 55; 1965 ex.s. c 157 § 1-206. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Statute of frauds: Chapter 19.36 RCW.

62A.1-207 Performance or acceptance under reservation of rights. (1) A party who, with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

(2) Subsection (1) of this section shall not apply to an accord and satisfaction. [1993 c 229 § 2; 1965 ex.s. c 157 § 1-207.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.1-208 Option to accelerate at will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. [1965 ex.s. c 157 § 1-208. Cf. former RCW 61.08.080; Code 1881 § 1998; 1879 p 106 § 13; RRS § 1111.]

Article 2 SALES

Sections

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62A.2-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Sales. [1965 ex.s. c 157 § 2-101.]

62A.2-102 Scope; certain security and other transactions excluded from this Article. Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers. [1965 ex.s. c 157 § 2-102. Cf. former RCW 63.04.750; 1925 ex.s. c 142 § 75; RRS § 5836-75.]

62A.2-103 Definitions and index of definitions. (1) In this Article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance."	RCW 62A.2-606.
"Banker's credit."	RCW 62A.2-325.
"Between merchants."	RCW 62A.2-104.
"Cancellation."	RCW 62A.2-106(4).
"Commercial unit."	RCW 62A.2-105.
"Confirmed credit."	RCW 62A.2-325.
"Conforming to contract."	RCW 62A.2-106.
"Contract for sale."	RCW 62A.2-106.
"Cover."	RCW 62A.2-712.
"Entrusting."	RCW 62A.2-403.
"Financing agency."	RCW 62A.2-104.
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"Goods."	RCW 62A.2-105.

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"Lot."	RCW 62A.2-105.
"Merchant."	RCW 62A.2-104.
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"Person in position of seller."	RCW 62A.2-707.
"Present sale."	RCW 62A.2-106.
"Sale."	RCW 62A.2-106.
"Sale on approval."	RCW 62A.2-326.
"Sale or return."	RCW 62A.2-326.
"Termination."	RCW 62A.2-106.

(3) The following definitions in other Articles apply to this Article:

"Check."	RCW 62A.3-104.
"Consignee."	RCW 62A.7-102.
"Consignor."	RCW 62A.7-102.
"Consumer goods."	RCW 62A.9A-102.
"Dishonor."	RCW 62A.3-502.
"Draft."	RCW 62A.3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [2000 c 250 § 9A-803; 1965 ex.s. c 157 § 2-103. Cf. former RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

Effective date—2000 c 250: See RCW 62A.9A-701.

62A.2-104 Definitions: "Merchant"; "between merchants"; "financing agency". (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (RCW 62A.2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. [1965 ex.s. c 157 § 2-104. Cf. former RCW sections: (i) RCW 63.04.160(2), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (ii) RCW 63.04.170(c); 1925 ex.s. c 142 § 16; RRS § 5836-16. (iii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71. (v) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440. (vi) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

62A.2-105 Definitions: Transferability; "goods"; "future" goods; "lot"; "commercial unit". (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (RCW 62A.2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole. [1965 ex.s. c 157 § 2-105. Subds. (1), (2), (3), (4), cf. former RCW sections: (i) RCW 63.04.060; 1925 ex.s. c 142 § 5; RRS § 5836-5. (ii) RCW 63.04.070; 1925 ex.s. c 142 § 6; RRS § 5836-6. (iii) RCW 63.04.755; 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

62A.2-106 Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation". (1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (RCW 62A.2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. [1965 ex.s. c 157 § 2-106. Subd. (1) cf. former RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. Subd. (2) cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.450; 1925 ex.s. c 142 § 44; RRS § 5836-44. (iii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-107 Goods to be severed from realty: Record-ing. (1) A contract for the sale of minerals or the like including oil and gas or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. [1981 c 41 § 3; 1965 ex.s. c 157 § 2-107. Cf. former RCW sections: (i) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (ii) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.2-201 Formal requirements; statute of frauds. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (RCW 62A.2-606). [1965 ex.s. c 157 § 2-201. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

Statute of frauds: RCW 19.36.010.

62A.2-202 Final written expression: Parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (RCW 62A.1-205) or by course of performance (RCW 62A.2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [1965 ex.s. c 157 § 2-202.]

62A.2-203 Seals inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such contract or offer. [1965 ex.s. c 157 § 2-203. Cf. former RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

Corporate seals—Effect of absence from instrument: RCW 64.04.105.

62A.2-204 Formation in general. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. [1965 ex.s. c 157 § 2-204. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-205 Firm offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of

consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1965 ex.s. c 157 § 2-205. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-206 Offer and acceptance in formation of contract. (1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1965 ex.s. c 157 § 2-206. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-207 Additional terms in acceptance or confirmation. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Title. [1965 ex.s. c 157 § 2-207. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-208 Course of performance or practical construction. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of

the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (RCW 62A.1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance. [1965 ex.s. c 157 § 2-208.]

62A.2-209 Modification, rescission and waiver. (1) An agreement modifying a contract within this Article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this Article (RCW 62A.2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [1965 ex.s. c 157 § 2-209.]

62A.2-210 Delegation of performance; assignment of rights. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in RCW 62A.9A-406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section

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unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (RCW 62A.2-609).

(7) Notwithstanding subsections (2) and (3) of this section, an assignment that would be a breach but for the provisions of RCW 62A.9A-406 may create reasonable grounds for insecurity with respect to the due performance of the assignor (RCW 62A.2-609). [2000 c 250 § 9A-804; 1965 ex.s. c 157 § 2-210.]

Effective date—2000 c 250: See RCW 62A.9A-701.

62A.2-301 General obligations of parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. [1965 ex.s. c 157 § 2-301. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41.]

62A.2-302 Unconscionable contract or clause. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. [1965 ex.s. c 157 § 2-302.]

62A.2-303 Allocation or division of risks. Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift

the allocation but may also divide the risk or burden. [1965 ex.s. c 157 § 2-303.]

62A.2-304 Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith. [1965 ex.s. c 157 § 2-304. Cf. former RCW 63.04.100(2), (3); 1925 ex.s. c 142 § 9; RRS § 5836-9.]

62A.2-305 Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

- (a) nothing is said as to price; or
- (b) the price is left to be agreed by the parties and they fail to agree; or
- (c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. [1965 ex.s. c 157 § 2-305. Cf. former RCW sections: (i) RCW 63.04.100; 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.110; 1925 ex.s. c 142 § 10; RRS § 5836-10. Subd. (3) cf. former RCW 63.04.120(2); 1925 ex.s. c 142 § 11; RRS § 5836-11.]

62A.2-306 Output, requirements and exclusive dealings. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale. [1965 ex.s. c 157 § 2-306.]

62A.2-307 Delivery in single lot or several lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either

party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot. [1965 ex.s. c 157 § 2-307. Cf. former RCW 63.04.460(1); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-308 Absence of specified place for delivery. Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels. [1965 ex.s. c 157 § 2-308. Subd. (a), (b) cf. former RCW 63.04.440(1); 1925 ex.s. c 142 § 43; RRS § 5836-43.]

62A.2-309 Absence of specific time provisions; notice of termination. (1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. [1965 ex.s. c 157 § 2-309. Cf. former RCW sections: (i) RCW 63.04.440(2); 1925 ex.s. c 142 § 43; RRS § 5836-43. (ii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iii) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (iv) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

62A.2-310 Open time for payment or running of credit; authority to ship under reservation. Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (RCW 62A.2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period. [1965 ex.s. c 157 § 2-310. Cf. former RCW sections: (i) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (ii) RCW 63.04.470(1); 1925 ex.s. c 142 § 46; RRS § 5836-46. (iii) RCW 63.04.480(2); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

62A.2-311 Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of RCW 62A.2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of RCW 62A.2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods. [1965 ex.s. c 157 § 2-311.]

62A.2-312 Warranty of title and against infringement; buyer's obligation against infringement. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. [1965 ex.s. c 157 § 2-312. Cf. former RCW 63.04.140; 1925 ex.s. c 142 § 13; RRS § 5836-13.]

62A.2-313 Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

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(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. [1965 ex.s. c 157 § 2-313. Cf. former RCW sections: (i) RCW 63.04.130; 1925 ex.s. c 142 § 12; RRS § 5836-12. (ii) RCW 63.04.150; 1925 ex.s. c 142 § 14; RRS § 5836-14. (iii) RCW 63.04.170; 1925 ex.s. c 142 § 16; RRS § 5836-16.]

Motor vehicle express warranties: Chapter 19.118 RCW.

62A.2-314 Implied warranty: Merchantability; usage of trade. (1) Unless excluded or modified (RCW 62A.2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (RCW 62A.2-316) other implied warranties may arise from course of dealing or usage of trade. [1965 ex.s. c 157 § 2-314. Cf. former RCW 63.04.160(2); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

62A.2-315 Implied warranty: Fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. [1965 ex.s. c 157 § 2-315. Cf. former RCW 63.04.160(1), (4), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

62A.2-316 Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied

warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and

(d) in sales of livestock, including but not limited to, horses, mules, cattle, sheep, swine, goats, poultry, and rabbits, there are no implied warranties as defined in this article that the livestock are free from sickness or disease: PROVIDED, That the seller has complied with all state and federal laws and regulations that apply to animal health and disease, and the seller is not guilty of fraud, deceit or misrepresentation.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section and the provisions of RCW 62A.2-719, as now or hereafter amended, in any case where goods are purchased primarily for personal, family or household use and not for commercial or business use, disclaimers of the warranty of merchantability or fitness for particular purpose shall not be effective to limit the liability of merchant sellers except insofar as the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (RCW 62A.2-718 and RCW 62A.2-719). [1982 c 199 § 1; 1974 ex.s. c 180 § 1; 1974 ex.s. c 78 § 1; 1965 ex.s. c 157 § 2-316. Subd. (3)(b) cf. former RCW 63.04.160(3); 1925 ex.s. c 142 § 15; RRS § 5836-15. Subd. (3)(c) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-317 Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1965 ex.s. c 157 § 2-317. Cf. former RCW

sections: RCW 63.04.150 through 63.04.170; 1925 ex.s. c 142 §§ 14 through 16; RRS §§ 5836-14 through 5836-16.]

62A.2-318 Third party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. [1965 ex.s. c 157 § 2-318.]

62A.2-319 F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (RCW 62A.2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (RCW 62A.2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (RCW 62A.2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (RCW 62A.2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-319.]

62A.2-320 C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-320.]

62A.2-321 C.I.F. or C.&F.: "Net landed weights"; "payment on arrival"; warranty of condition on arrival. Under a contract containing a term C.I.F. or C.&F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. [1965 ex.s. c 157 § 2-321.]

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62A.2-322 Delivery "ex-ship". (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded. [1965 ex.s. c 157 § 2-322.]

62A.2-323 Form of bill of lading required in overseas shipment; "overseas". (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of RCW 62A.2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. [1965 ex.s. c 157 § 2-323.]

62A.2-324 "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (RCW 62A.2-613). [1965 ex.s. c 157 § 2-324.]

62A.2-325 "Letter of credit" term; "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. [1965 ex.s. c 157 § 2-325.]

62A.2-326 Sale on approval and sale or return; rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (RCW 62A.2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202). [2000 c 250 § 9A-805; 1965 ex.s. c 157 § 2-326. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

Effective date—2000 c 250: See RCW 62A.9A-701.

62A.2-327 Special incidents of sale on approval and sale or return. (1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense. [1965 ex.s. c 157 § 2-327. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-328 Sale by auction. (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion

reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. [1965 ex.s. c 157 § 2-328. Cf. former RCW 63.04.220; 1925 ex.s. c 142 § 21; RRS § 5836-21.]

62A.2-401 Passing of title; reservation for security; limited application of this section. Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (RCW 62A.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (*Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale". [1965 ex.s. c 157 § 2-401. Cf. former RCW sections: RCW 63.04.180 through 63.04.210; 1925 ex.s. c 142 §§ 17 through 20; RRS § 5836-17 through 5836-20.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

62A.2-402 Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (RCW 62A.2-502 and RCW 62A.2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (*Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference. [1965 ex.s. c 157 § 2-402. Subd. (2) cf. former RCW sections: (i) RCW 63.04.270; 1925 ex.s. c 142 § 26; RRS § 5836-26. (ii) RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

62A.2-403 Power to transfer; good faith purchase of goods; "entrusting". (1) A purchaser of goods acquires all title which his or her transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale".

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him or her power to

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transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (*Article 9) and Documents of Title (Article 7). [1993 c 395 § 6-103; 1967 c 114 § 8; 1965 ex.s. c 157 § 2-403. Cf. former RCW sections: (i) RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.04.210(4); 1925 ex.s. c 142 § 20; RRS § 5836-20. (iii) RCW 63.04.240; 1925 ex.s. c 142 § 23; RRS § 5836-23. (iv) RCW 63.04.250; 1925 ex.s. c 142 § 24; RRS § 5836-24. (v) RCW 63.04.260; 1925 ex.s. c 142 § 25; RRS § 5836-25. (vi) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Restoration of stolen property: RCW 10.79.050.

62A.2-501 Insurable interest in goods; manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. [1965 ex.s. c 157 § 2-501. Cf. former RCW sections: (i) RCW 63.04.180; 1925 ex.s. c 142 § 17; RRS § 5836-17. (ii) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-502 Buyer's right to goods on seller's insolvency. (1) Subject to subsections (2) and (3) of this section

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and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) In all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. [2000 c 250 § 9A-806; 1965 ex.s. c 157 § 2-502. Cf. former RCW sections: RCW 63.04.180 through 63.04.200; 1925 ex.s. c 142 §§ 17 through 19; RRS §§ 5836-17 through 5836-19.]

Effective date—2000 c 250: See RCW 62A.9A-701.

62A.2-503 Manner of seller's tender of delivery. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of RCW 62A.2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection. [1965 ex.s. c 157 § 2-503. Cf. former RCW sections: RCW 63.04.120, 63.04.200, 63.04.210, 63.04.440, 63.04.470, and 63.04.520; 1925 ex.s. c 142 §§ 11, 19, 20, 43, 46, and 51; RRS §§ 5836-11, 5836-19, 5836-20, 5836-43, 5836-46, and 5836-51.]

62A.2-504 Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues. [1965 ex.s. c 157 § 2-504. Cf. former RCW 63.04.470; 1925 ex.s. c 142 § 46; RRS § 5836-46.]

62A.2-505 Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of RCW 62A.2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. [1965 ex.s. c 157 § 2-505. Cf. former RCW 63.04.210 (2), (3), (4); 1925 ex.s. c 142 § 20; RRS § 5836-20.]

62A.2-506 Rights of financing agency. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of

the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. [1965 ex.s. c 157 § 2-506.]

62A.2-507 Effect of seller's tender; delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. [1965 ex.s. c 157 § 2-507. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. (iii) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (iv) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-508 Cure by seller of improper tender or delivery; replacement. (1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. [1965 ex.s. c 157 § 2-508.]

62A.2-509 Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (RCW 62A.2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of RCW 62A.2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the

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seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (RCW 62A.2-327) and on effect of breach on risk of loss (RCW 62A.2-510). [1965 ex.s. c 157 § 2-509. Cf. former RCW sections: (i) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19. (ii) RCW 63.04.230; 1925 ex.s. c 142 § 22; RRS § 5836-22.]

62A.2-510 Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. [1965 ex.s. c 157 § 2-510.]

62A.2-511 Tender of payment by buyer; payment by check. (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Title on the effect of an instrument on an obligation (RCW 62A.3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. [1996 c 77 § 2; 1965 ex.s. c 157 § 2-511. Cf. former RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42.]

62A.2-512 Payment by buyer before inspection. (1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Title (RCW 62A.5-109(2)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his or her remedies. [1997 c 56 § 20; 1965 ex.s. c 157 § 2-512. Cf. former RCW sections: (i) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49.]

Applicability—Savings—Transition provisions—1997 c 56: See RCW 62A.5-1013 and 62A.5-1015.

62A.2-513 Buyer's right to inspection of goods. (1) Unless otherwise agreed and subject to subsection (3), where

goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of RCW 62A.2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. [1965 ex.s. c 157 § 2-513. Cf. former RCW 63.04.480 (2), (3); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

62A.2-514 When documents deliverable on acceptance; when on payment. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. [1965 ex.s. c 157 § 2-514. Cf. former RCW 81.32.411; 1961 c 14 § 81.32.411; prior: 1915 c 159 § 41; RRS § 3687; formerly RCW 81.32.500.]

62A.2-515 Preserving evidence of goods in dispute. In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment. [1965 ex.s. c 157 § 2-515.]

62A.2-601 Buyer's rights on improper delivery. Subject to the provisions of this Article on breach in installment contracts (RCW 62A.2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (RCW 62A.2-718 and RCW 62A.2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest. [1965 ex.s. c 157 § 2-601. Cf. former RCW sections: (i)

RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (iii) RCW 63.04.700(1); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-602 Manner and effect of rightful rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (RCW 62A.2-603 and RCW 62A.2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of RCW 62A.2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (RCW 62A.2-703). [1965 ex.s. c 157 § 2-602. Cf. former RCW sections: (i) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8. (ii) RCW 63.04.510; 1925 ex.s. c 142 § 50; RRS § 5836-50.]

62A.2-603 Merchant buyer's duties as to rightfully rejected goods.

(1) Subject to any security interest in the buyer (subsection (3) of RCW 62A.2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. [1965 ex.s. c 157 § 2-603.]

62A.2-604 Buyer's options as to salvage of rightfully rejected goods.

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section.

Such action is not acceptance or conversion. [1965 ex.s. c 157 § 2-604.]

62A.2-605 Waiver of buyer's objections by failure to particularize. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. [1965 ex.s. c 157 § 2-605.]

62A.2-606 What constitutes acceptance of goods. (1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of RCW 62A.2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1965 ex.s. c 157 § 2-606. Cf. former RCW sections: (i) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

62A.2-607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(2004 Ed.)

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of RCW 62A.2-312). [1965 ex.s. c 157 § 2-607. Subd. (1) cf. former RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. Subd. (2), (3) cf. former RCW sections: (i) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49. (ii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-608 Revocation of acceptance in whole or in part. (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. [1965 ex.s. c 157 § 2-608. Cf. former RCW 63.04.700 (1)(d), (3), (4), (5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-609 Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. [1965 ex.s. c 157 § 2-609. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(b); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-610 Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (RCW 62A.2-703 or RCW 62A.2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (RCW 62A.2-704). [1965 ex.s. c 157 § 2-610. Cf. former RCW section: (i) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.660; 1925 ex.s. c 142 § 65; RRS § 5836-65.]

62A.2-611 Retraction of anticipatory repudiation.

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (RCW 62A.2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1965 ex.s. c 157 § 2-611.]

62A.2-612 "Installment contract"; breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments. [1965 ex.s. c 157 § 2-612. Cf. former RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-613 Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (RCW 62A.2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller. [1965 ex.s. c 157 § 2-613. Cf. former RCW sections: (i) RCW 63.04.080; 1925 ex.s. c 142 § 7; RRS § 5836-7. (ii) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8.]

62A.2-614 Substituted performance. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. [1965 ex.s. c 157 § 2-614.]

62A.2-615 Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his

option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer. [1965 ex.s. c 157 § 2-615.]

62A.2-616 Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (RCW 62A.2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected. [1965 ex.s. c 157 § 2-616.]

62A.2-701 Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article. [1965 ex.s. c 157 § 2-701.]

62A.2-702 Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (RCW 62A.2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (RCW 62A.2-403). Successful reclamation of goods excludes all other remedies with respect to them. [1981 c 41 § 4; 1965 ex.s. c 157 § 2-702. Subd. (1) cf. former RCW sections: (i) RCW 63.04.540(1)(b); 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(c); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.580; 1925 ex.s. c 142 § 57; RRS § 5836-57. Subd. (3) cf. former RCW 63.04.755(3); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.2-703 Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (RCW 62A.2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (RCW 62A.2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (RCW 62A.2-706);

(e) recover damages for non-acceptance (RCW 62A.2-708) or in a proper case the price (RCW 62A.2-709);

(f) cancel. [1965 ex.s. c 157 § 2-703. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.620(1); 1925 ex.s. c 142 § 61; RRS § 5836-61.]

62A.2-704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. [1965 ex.s. c 157 § 2-704. Cf. former RCW sections: (i) RCW 63.04.640(3); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.650(4); 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-705 Seller's stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (RCW 62A.2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1965 ex.s. c 157 § 2-705. Cf. former RCW sections: (i) RCW 22.04.100; 1913 c 99 § 9; RRS § 3595; prior: 1891 c 134 § 7. (ii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iii) RCW 22.04.500; 1913 c 99 § 49; RRS § 3635. (iv) RCW 63.04.580 through 63.04.600; 1925 ex.s. c 142 §§ 57 through 59; RRS §§ 5836-57 through 5836-59. (v) RCW 81.32.121, 81.32.141, and 81.32.421; 1961 c 14 §§ 81.32.121, 81.32.141, and 81.32.421; prior: 1915 c 159 §§ 12, 14, and 42; RRS §§ 3658, 3660, and 3688; formerly RCW 81.32.130, 81.32.160 and 81.32.510.]

62A.2-706 Seller's resale including contract for resale. (1) Under the conditions stated in RCW 62A.2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (RCW 62A.2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of RCW 62A.2-711). [1967 c 114 § 13; 1965 ex.s. c 157 § 2-706. Cf. former RCW 63.04.610; 1925 ex.s. c 142 § 60; RRS § 5836-60.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.2-707 "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (RCW 62A.2-705) and resell (RCW 62A.2-706) and recover incidental damages (RCW 62A.2-710). [1965 ex.s. c 157 § 2-707. Cf. former RCW 63.04.530(2); 1925 ex.s. c 142 § 52; RRS § 5836-52.]

62A.2-708 Seller's damages for non-acceptance or repudiation. (1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (RCW 62A.2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. [1965 ex.s. c 157 § 2-708. Cf. former RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-709 Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the con-

tract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (RCW 62A.2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section. [1965 ex.s. c 157 § 2-709. Cf. former RCW 63.04.640; 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-710 Seller's incidental damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach. [1965 ex.s. c 157 § 2-710. Cf. former RCW sections: (i) RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

62A.2-711 Buyer's remedies in general; buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (RCW 62A.2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (RCW 62A.2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this Article (RCW 62A.2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this Article (RCW 62A.2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-711. Subd. (3) cf. former RCW 63.04.700(5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-712 "Cover"; buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages

as hereinafter defined (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. [1965 ex.s. c 157 § 2-712.]

62A.2-713 Buyer's damages for non-delivery or repudiation. (1) Subject to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. [1965 ex.s. c 157 § 2-713. Cf. former RCW 63.04.680(3); 1925 ex.s. c 142 § 67; RRS § 5836-67.]

62A.2-714 Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of RCW 62A.2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered. [1965 ex.s. c 157 § 2-714. Cf. former RCW 63.04.700 (6), (7); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-715 Buyer's incidental and consequential damages. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty. [1965 ex.s. c 157 § 2-715. Subd. (2) cf. former RCW sections: (i) RCW 63.04.700(7); 1925 ex.s. c 142 § 69; RRS § 5836-69. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

62A.2-716 Buyer's right to specific performance or replevin. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver. [2000 c 250 § 9A-807; 1965 ex.s. c 157 § 2-716. Cf. former RCW 63.04.690; 1925 ex.s. c 142 § 68; RRS § 5836-68.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Replevin: Chapter 7.64 RCW.

62A.2-717 Deduction of damages from the price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. [1965 ex.s. c 157 § 2-717. Cf. former RCW 63.04.700(1)(a); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-718 Liquidation or limitation of damages; deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-718.]

62A.2-719 Contractual modification or limitation of remedy. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.

(3) Limitation of consequential damages for injury to the person in the case of goods purchased primarily for personal, family or household use or of any services related thereto is invalid unless it is proved that the limitation is not unconscionable. Limitation of remedy to repair or replacement of defective parts or non-conforming goods is invalid in sales of goods primarily for personal, family or household use unless the manufacturer or seller maintains or provides within this state facilities adequate to provide reasonable and expeditious performance of repair or replacement obligations.

Limitation of other consequential damages is valid unless it is established that the limitation is unconscionable. [1974 ex.s. c 180 § 2; 1974 ex.s. c 78 § 2; 1965 ex.s. c 157 § 2-719. Subd. (1)(a) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-720 Effect of "cancellation" or "rescission" on claims for antecedent breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. [1965 ex.s. c 157 § 2-720.]

62A.2-721 Remedies for fraud. Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy. [1965 ex.s. c 157 § 2-721.]

62A.2-722 Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern. [1965 ex.s. c 157 § 2-722.]

62A.2-723 Proof of market price: Time and place.

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (RCW 62A.2-708 or RCW 62A.2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. [1965 ex.s. c 157 § 2-723.]

62A.2-724 Admissibility of market quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. [1965 ex.s. c 157 § 2-724.]

62A.2-725 Statute of limitations in contracts for sale.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(2004 Ed.)

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Title becomes effective. [1965 ex.s. c 157 § 2-725.]

Limitation of actions—Tolling of statute: RCW 4.16.170 through 4.16.240.

**Article 2A
LEASES**

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62A.2A-101 Short title. This Article shall be known and may be cited as the Uniform Commercial Code—Leases. [1993 c 230 § 2A-101.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-102 Scope. This Article applies to any transaction, regardless of form, that creates a lease. [1993 c 230 § 2A-102.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-103 Definitions and index of definitions. (1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash, or by exchange of other property, or on secured or unsecured credit, and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and

division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) Only in the case of a consumer lease, either:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract; or

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (RCW 62A.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances includ-

ing course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash, or by exchange of other property, or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Accessions." RCW 62A.2A-310(1).

"Construction mortgage." RCW 62A.2A-309(1)(d).

"Encumbrance." RCW 62A.2A-309(1)(e).

"Fixtures." RCW 62A.2A-309(1)(a).

"Fixture filing." RCW 62A.2A-309(1)(b).

"Purchase money lease." RCW 62A.2A-309(1)(c).

(3) The following definitions in other Articles apply to this Article:

"Account." RCW 62A.9A-102(a)(2).

"Between merchants." RCW 62A.2-104(3).

"Buyer." RCW 62A.2-103(1)(a).

"Chattel paper." RCW 62A.9A-102(a)(11).

"Consumer goods." RCW 62A.9A-102(a)(23).

"Document." RCW 62A.9A-102(a)(30).

"Entrusting." RCW 62A.2-403(3).

"General intangible." RCW 62A.9A-102(a)(42).

"Good faith." RCW 62A.2-103(1)(b).

"Instrument." RCW 62A.9A-102(a)(47).

"Merchant." RCW 62A.2-104(1).

"Mortgage." RCW 62A.9A-102(a)(55).

"Pursuant to commitment." RCW 62A.9A-102(a)(68).

"Receipt." RCW 62A.2-103(1)(c).

"Sale." RCW 62A.2-106(1).

"Sale on approval." RCW 62A.2-326.

"Sale or return." RCW 62A.2-326.

"Seller." RCW 62A.2-103(1)(d).

(4) In addition, Article 62A.1 RCW contains general definitions and principles of construction and interpretation applicable throughout this Article. [2000 c 250 § 9A-808; 1993 c 230 § 2A-103.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-104 Leases subject to other law. (1) A lease, although subject to this Article, is also subject to any applicable:

(a) Certificate of title statute of this state (chapters 46.12 and 88.02 RCW);

(b) Certificate of title statute of another jurisdiction (RCW 62A.2A-105); or

(c) Consumer protection statute of this state.

(2) In case of conflict between this Article, other than RCW 62A.2A-105, 62A.2A-304(3), and 62A.2A-305(3), and a statute referred to in subsection (1) of this section, the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein. [1993 c 230 § 2A-104.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-105 Territorial application of article to goods covered by certificate of title. Subject to the provisions of RCW 62A.2A-304(3) and 62A.2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b)

four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction. [1993 c 230 § 2A-105.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-106 Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lessee executes the lease, the choice is not enforceable.

(2) If the judicial forum or the forum for dispute resolution chosen by the parties to a consumer lease is a jurisdiction other than a jurisdiction (a) in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter, (b) in which the goods are to be used, or (c) in which the lease is executed by the lessee, the choice is not enforceable. [1993 c 230 § 2A-106.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-107 Waiver or renunciation of claim or right after default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1993 c 230 § 2A-107.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-108 Unconscionability. (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If a party claims that, or it appears to the court that, the lease contract or a clause within the contract may be unconscionable, the court shall allow a reasonable opportunity to present evidence as to the lease or clause's commercial setting, purpose, and effect to aid the court in making the determination. [1993 c 230 § 2A-108.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-201 Statute of frauds. (1) A lease contract is not enforceable by way of action or defense unless:

(a) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars; or

(b) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b) of this section, whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) of this section beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

(a) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) A reasonable lease term. [1993 c 230 § 2A-201.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-202 Final written expression: Parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) By course of dealing or usage of trade or by course of performance; and

(2) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [1993 c 230 § 2A-202.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-203 Seals inoperative. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer. [1993 c 230 § 2A-203.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-204 Formation in general. (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy. [1993 c 230 § 2A-204.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-205 Firm offers. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1993 c 230 § 2A-205.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-206 Offer and acceptance in formation of lease contract. (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1993 c 230 § 2A-206.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-207 Course of performance or practical construction. (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of RCW 62A.2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance. [1993 c 230 § 2A-207.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-208 Modification, rescission, and waiver. (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

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(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) of this section, it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [1993 c 230 § 2A-208.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-209 Lessee under finance lease as beneficiary of supply contract. (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (RCW 62A.2A-209(1)) does not: (i) Modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law. [1993 c 230 § 2A-209.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-210 Express warranties. (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warranty" or

"guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty. [1993 c 230 § 2A-210.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-211 Warranties against interference and against infringement; lessee's obligation against infringement. (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications. [1993 c 230 § 2A-211.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-212 Implied warranty of merchantability.

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

- (a) Pass without objection in the trade under the description in the lease agreement;
- (b) In the case of fungible goods, are of fair average quality within the description;
- (c) Are fit for the ordinary purposes for which goods of that type are used;
- (d) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;
- (e) Are adequately contained, packaged, and labeled as the lease agreement may require; and
- (f) Conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade. [1993 c 230 § 2A-212.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-213 Implied warranty of fitness for particular purpose. Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose. [1993 c 230 § 2A-213.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-214 Exclusion or modification of warranties.

(1) Words or conduct relevant to the creation of an express

warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of RCW 62A.2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability," be by a writing, and be conspicuous. Subject to subsection (3) of this section, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of this section:

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (RCW 62A.2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person. [1993 c 230 § 2A-214.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-215 Cumulation and conflict of warranties express or implied. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1993 c 230 § 2A-215.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-216 Third party beneficiaries of express and implied warranties. A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any natural person who is in the family or household of the

lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section. [1993 c 230 § 2A-216.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-217 Identification. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(c) When the young are conceived, if the lease contract is for a lease of unborn young of animals. [1993 c 230 § 2A-217.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-218 Insurance and proceeds. (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2) of this section, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance. [1993 c 230 § 2A-218.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-219 Risk of loss. (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this Article on the effect of default on risk of loss (RCW 62A.2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier:

(i) And it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) If it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (2)(a) or (b) of this section, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery. [1993 c 230 § 2A-219.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-220 Effect of default on risk of loss. (1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time. [1993 c 230 § 2A-220.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-221 Casualty to identified goods. If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier, before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or RCW 62A.2A-219, then:

(a) If the loss is total, the lease contract is avoided; and

(b) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor. [1993 c 230 § 2A-221.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-301 Enforceability of lease contract. Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the par-

ties, against purchasers of the goods and against creditors of the parties. [1993 c 230 § 2A-301.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-302 Title to and possession of goods. Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent. [1993 c 230 § 2A-302.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights. (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9A, Secured Transactions, by reason of RCW 62A.9A-109(a)(3).

(2) Except as provided in subsection (3) of this section and RCW 62A.9A-407, a provision in a lease agreement which (a) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (b) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (a) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (b) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4) of this section.

(4) Subject to subsection (3) of this section and RCW 62A.9A-407:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in RCW 62A.2A-501(2);

(b) If subsection (4)(a) of this section is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (A) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (B) a court having jurisdiction may grant

other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous. [2001 c 32 § 10; 2000 c 250 § 9A-809; 1993 c 230 § 2A-303.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-304 Subsequent lease of goods by lessor. (1) Subject to RCW 62A.2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) of this section and RCW 62A.2A-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) The lessor's transferor was deceived as to the identity of the lessor;

(b) The delivery was in exchange for a check which is later dishonored;

(c) It was agreed that the transaction was to be a "cash sale"; or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute. [1993 c 230 § 2A-304.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-305 Sale or sublease of goods by lessee. (1) Subject to the provisions of RCW 62A.2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) of this section and RCW 62A.2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(a) The lessor was deceived as to the identity of the lessee;

(b) The delivery was in exchange for a check which is later dishonored; or

(c) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute. [1993 c 230 § 2A-305.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-306 Priority of certain liens arising by operation of law. (a) **"Possessory lien."** In this section, "possessory lien" has the meaning defined in RCW 62A.9A-333.

(b) **Priority of possessory lien.** A possessory lien on goods subject to a lease contract has priority over any interest of the lessor or the lessee under the lease contract or this Article only if the lien is created by a statute that expressly so provides.

(c) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest. [2001 c 32 § 11; 1993 c 230 § 2A-306.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods. (1) Except as otherwise provided in RCW 62A.2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) of this section and in RCW 62A.2A-306 and 62A.2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in RCW 62A.9A-317, 62A.9A-321, and 62A.9A-323, a lessee takes a leasehold

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interest subject to a security interest held by a creditor of the lessor. [2000 c 250 § 9A-810; 1993 c 230 § 2A-307.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-308 Special rights of creditors. (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this Article impairs the rights of creditors of a lessor if the lease contract (a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and (b) is made under circumstances which under any statute or rule of law apart from this Article would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith. [1993 c 230 § 2A-308.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-309 Lessor's and lessee's rights when goods become fixtures. (1) In this section:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) A "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of RCW 62A.9A-502 (a) and (b);

(c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) of this section but otherwise subject to subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or (b) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of

repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions, Article 62A.9A RCW. [2000 c 250 § 9A-811; 1993 c 230 § 2A-309.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-310 Lessor's and lessee's rights when goods become accessions. (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4) of this section.

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease, or disclaimed an interest in the goods as part of the whole, or the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility.

(4) Unless the accession is leased under tariff No. 74 for residential conversion burners leased by a natural gas utility, the interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions;

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract; or

(c) A creditor with a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under RCW 62A.9A-311(b).

(5) When under subsections (2) or (3) and (4) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (b) if necessary to enforce his or her other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the

whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation. [2000 c 250 § 9A-812; 1993 c 230 § 2A-310.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-311 Priority subject to subordination. Nothing in this Article prevents subordination by agreement by any person entitled to priority. [1993 c 230 § 2A-311.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-401 Insecurity: Adequate assurance of performance. (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he or she has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. [1993 c 230 § 2A-401.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-402 Anticipatory repudiation. If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) Make demand pursuant to RCW 62A.2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) Resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (RCW 62A.2A-524). [1993 c 230 § 2A-402.]

(2004 Ed.)

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-403 Retraction of anticipatory repudiation.

(1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under RCW 62A.2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1993 c 230 § 2A-403.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-404 Substituted performance. (1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substituted performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory. [1993 c 230 § 2A-404.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-405 Excused performance. Subject to RCW 62A.2A-404 on substituted performance, the following rules apply:

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (b) and (c) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in subsection (a) of this section affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify

the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (b) of this section, of the estimated quota thus made available for the lessee. [1993 c 230 § 2A-405.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-406 Procedure on excused performance. (1)

If the lessee receives notification of a material or indefinite delay or an allocation justified under RCW 62A.2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510):

(a) Terminate the lease contract (RCW 62A.2A-505(2));

or

(b) Except in a finance lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under RCW 62A.2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected. [1993 c 230 § 2A-406.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-407 Irrevocable promises: Finance leases.

(1) In the case of a finance lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1) of this section:

(a) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(b) Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods. [1993 c 230 § 2A-407.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-501 Default: Procedure. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self help or any available judicial procedure or non-judicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

(4) Except as otherwise provided in RCW 62A.1-106(1) or this Article or the lease agreement, the rights and remedies

referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part 5 as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part 5 does not apply. [1993 c 230 § 2A-501.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-502 Notice after default. Except as otherwise provided in this Article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement. [1993 c 230 § 2A-502.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-503 Modification or impairment of rights and remedies. (1) Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

(2) Resort to a remedy provided under this Article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Article.

(3) Consequential damages may be liquidated under RCW 62A.2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article. [1993 c 230 § 2A-503.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-504 Liquidation of damages. (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1) of this section, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (RCW 62A.2A-525 or 62A.2A-526), the lessee is entitled to restitu-

tion of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1) of this section; or

(b) In the absence of those terms, twenty percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars.

(4) A lessee's right to restitution under subsection (3) of this section is subject to offset to the extent the lessor establishes:

(a) A right to recover damages under the provisions of this Article other than subsection (1) of this section; and

(b) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract. [1993 c 230 § 2A-504.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-505 Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies. (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy. [1993 c 230 § 2A-505.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-506 Statute of limitations. (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) of this section is so terminated as to leave available a remedy by another action for the same default or

breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Article becomes effective. [1993 c 230 § 2A-506.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-507 Proof of market rent: Time and place.

(1) Damages based on market rent (RCW 62A.2A-519 or 62A.2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in RCW 62A.2A-519 and 62A.2A-528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Article offered by one party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility. [1993 c 230 § 2A-507.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-508 Lessee's remedies. (1) If a lessor fails to deliver the goods in conformity to the lease contract (RCW 62A.2A-509) or repudiates the lease contract (RCW 62A.2A-402), or a lessee rightfully rejects the goods (RCW 62A.2A-509) or justifiably revokes acceptance of the goods (RCW 62A.2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessor is in default under the lease contract and the lessee may:

(a) Cancel the lease contract (RCW 62A.2A-505(1));

(b) Recover so much of the rent and security as has been paid and which is just under the circumstances;

(c) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (RCW 62A.2A-518 and 62A.2A-520), or recover damages for nondelivery (RCW 62A.2A-519 and 62A.2A-520);

(d) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) If the goods have been identified, recover them (RCW 62A.2A-522); or

(b) In a proper case, obtain specific performance or replevy the goods (RCW 62A.2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in RCW 62A.2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (RCW 62A.2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to RCW 62A.2A-527(5).

(6) Subject to the provisions of RCW 62A.2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract. [1993 c 230 § 2A-508.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-509 Lessee's rights on improper delivery; rightful rejection. (1) Subject to the provisions of RCW 62A.2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor. [1993 c 230 § 2A-509.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-510 Installment lease contracts: Rejection and default. (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to

past deliveries or demands performance as to future deliveries. [1993 c 230 § 2A-510.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-511 Merchant lessee's duties as to rightfully rejected goods. (1) Subject to any security interest of a lessee (RCW 62A.2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee, under subsection (1) of this section, or any other lessee (RCW 62A.2A-512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.

(3) In complying with this section or RCW 62A.2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or RCW 62A.2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article. [1993 c 230 § 2A-511.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-512 Lessee's duties as to rightfully rejected goods. (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (RCW 62A.2A-511) and subject to any security interest of a lessee (RCW 62A.2A-508(5)):

(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in RCW 62A.2A-511; but

(c) The lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) of this section is not acceptance or conversion. [1993 c 230 § 2A-512.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-513 Cure by lessor of improper tender or delivery; replacement. (1) If any tender or delivery by the

lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee. [1993 c 230 § 2A-513.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-514 Waiver of lessee's objections. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (RCW 62A.2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents. [1993 c 230 § 2A-514.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-515 Acceptance of goods. (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) The lessee fails to make an effective rejection of the goods (RCW 62A.2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1993 c 230 § 2A-515.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-516 Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (RCW 62A.2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (RCW 62A.2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (RCW 62A.2A-211). [1993 c 230 § 2A-516.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-517 Revocation of acceptance of goods. (1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them. [1993 c 230 § 2A-517.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-518 Cover; substitute goods. (1) After a default by a lessor under the lease contract of the type described in (RCW 62A.2A-508(1)), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and RCW 62A.2A-519 governs. [1993 c 230 § 2A-518.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-519 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3)), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (RCW 62A.2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in

any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty. [1993 c 230 § 2A-519.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-520 Lessee's incidental and consequential damages. (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty. [1993 c 230 § 2A-520.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-521 Lessee's right to specific performance or replevin. (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing. [1993 c 230 § 2A-521.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-522 Lessee's right to goods on lessor's insolvency. (1) Subject to subsection (2) of this section and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (RCW 62A.2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract. [1993 c 230 § 2A-522.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-523 Lessor's remedies. (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (RCW 62A.2A-510), the lessee is in default under the lease contract and the lessor may:

- (a) Cancel the lease contract (RCW 62A.2A-505(1));
- (b) Proceed respecting goods not identified to the lease contract (RCW 62A.2A-524);
- (c) Withhold delivery of the goods and take possession of goods previously delivered (RCW 62A.2A-525);
- (d) Stop delivery of the goods by any bailee (RCW 62A.2A-526);
- (e) Dispose of the goods and recover damages (RCW 62A.2A-527), or retain the goods and recover damages (RCW 62A.2A-528), or in a proper case recover rent (RCW 62A.2A-529);
- (f) Exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

- (a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2) of this section; or
- (b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2) of this section. [1993 c 230 § 2A-523.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-524 Lessor's right to identify goods to lease contract. (1) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor may:

- (a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and
- (b) Dispose of goods (RCW 62A.2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or sal-

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vage value or proceed in any other reasonable manner. [1993 c 230 § 2A-524.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-525 Lessor's right to possession of goods. (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (RCW 62A.2A-527).

(3) The lessor may proceed under subsection (2) of this section without judicial process if it can be done without breach of the peace or the lessor may proceed by action. [1993 c 230 § 2A-525.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-526 Lessor's stoppage of delivery in transit or otherwise. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:

- (a) Receipt of the goods by the lessee;
- (b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1993 c 230 § 2A-526.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-527 Lessor's rights to dispose of goods. (1) After a default by a lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (RCW 62A.2A-525 or 62A.2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or

otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and RCW 62A.2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (RCW 62A.2A-508(5)). [1993 c 230 § 2A-527.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (RCW 62A.2A-504) or otherwise determined pursuant to agreement of the parties (RCW 62A.1-102(3) and 62A.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under RCW 62A.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in RCW 62A.2A-523 (1) or (3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under subsection (1)(i) of this section of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a posi-

tion as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under RCW 62A.2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition. [1993 c 230 § 2A-528.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-529 Lessor's action for the rent. (1) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2) of this section, the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (RCW 62A.2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default; and

(b) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under RCW 62A.2A-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1) of this section. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by RCW 62A.2A-527 or 62A.2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to RCW 62A.2A-527 or 62A.2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in RCW 62A.2A-523 (1) or (3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under RCW 62A.2A-527 and 62A.2A-528. [1993 c 230 § 2A-529.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-530 Lessor's incidental damages. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default. [1993 c 230 § 2A-530.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-531 Standing to sue third parties for injury to goods. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

- (i) Has a security interest in the goods;
- (ii) Has an insurable interest in the goods; or
- (iii) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern. [1993 c 230 § 2A-531.]

Effective date—1993 c 230: See RCW 62A.11-110.

62A.2A-532 Lessor's rights to residual interest. In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee. [1993 c 230 § 2A-532.]

Effective date—1993 c 230: See RCW 62A.11-110.

Article 3

NEGOTIABLE INSTRUMENTS

(Formerly: Commercial paper)

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62A.3-101 Short title. This Article may be cited as Uniform Commercial Code—Negotiable Instruments. [1993 c 229 § 3; 1965 ex.s. c 157 § 3-101.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-102 Subject matter. (a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.

(b) If there is conflict between this Article and Article 4 or 9A, Articles 4 and 9A govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency. [2001 c 32 § 12; 1993 c 229 § 4; 1965 ex.s. c 157 § 3-102. Cf. former RCW sections: (i) RCW 62.01.001(5); 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392. (ii) RCW 62.01.128; 1955 c 35 § 62.01.128; prior: 1899 c 149 § 128; RRS § 3518. (iii) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-103 Definitions. (a) In this Article:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.3-409
"Accommodated party"	RCW 62A.3-419
"Accommodation party"	RCW 62A.3-419
"Alteration"	RCW 62A.3-407
"Anomalous indorsement"	RCW 62A.3-205
"Blank indorsement"	RCW 62A.3-205
"Cashier's check"	RCW 62A.3-104
"Certificate of deposit"	RCW 62A.3-104
"Certified check"	RCW 62A.3-409
"Check"	RCW 62A.3-104
"Consideration"	RCW 62A.3-303
"Draft"	RCW 62A.3-104
"Holder in due course"	RCW 62A.3-302
"Incomplete instrument"	RCW 62A.3-115
"Indorsement"	RCW 62A.3-204
"Indorser"	RCW 62A.3-204
"Instrument"	RCW 62A.3-104
"Issue"	RCW 62A.3-105
"Issuer"	RCW 62A.3-105
"Negotiable instrument"	RCW 62A.3-104
"Negotiation"	RCW 62A.3-201
"Note"	RCW 62A.3-104
"Payable at a definite time"	RCW 62A.3-108
"Payable on demand"	RCW 62A.3-108
"Payable to bearer"	RCW 62A.3-109
"Payable to order"	RCW 62A.3-109
"Payment"	RCW 62A.3-602
"Person entitled to enforce"	RCW 62A.3-301
"Presentment"	RCW 62A.3-501
"Reacquisition"	RCW 62A.3-207
"Special indorsement"	RCW 62A.3-205
"Teller's check"	RCW 62A.3-104
"Transfer of instrument"	RCW 62A.3-203
"Traveler's check"	RCW 62A.3-104
"Value"	RCW 62A.3-303

(c) The following definitions in other Articles apply to this Article:

"Bank"	RCW 62A.4-105
"Banking day"	RCW 62A.4-104
"Clearing house"	RCW 62A.4-104
"Collecting bank"	RCW 62A.4-105
"Depository bank"	RCW 62A.4-105
"Documentary draft"	RCW 62A.4-104
"Intermediary bank"	RCW 62A.4-105
"Item"	RCW 62A.4-104
"Payor bank"	RCW 62A.4-105
"Suspends payments"	RCW 62A.4-104

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1993 c 229 § 5; 1965 ex.s. c 157 § 3-103.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-104 Negotiable instrument. (a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except subsection (a)(1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank. [1993 c 229 § 6; 1965 ex.s. c 157 § 3-104. Cf. former RCW sections: RCW 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; 1955 c 35 §§ 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; prior: 1899 c 149 §§ 1, 5, 10, 126, 184, and 185; RRS §§ 3392, 3396, 3401, 3516, 3574, and 3575.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-105 Issue of instrument. (a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is

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conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument. [1993 c 229 § 7; 1965 ex.s. c 157 § 3-105. Cf. former RCW 62.01.003; 1955 c 35 § 62.01.003; prior: 1899 c 149 § 3; RRS § 3394.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-106 Unconditional promise or order. (a) Except as provided in this section, for the purposes of RCW 62A.3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of RCW 62A.3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of RCW 62A.3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument. [1993 c 229 § 8; 1989 c 13 § 1; 1965 ex.s. c 157 § 3-106. Cf. former RCW sections: (i) RCW 62.01.002; 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-107 Instrument payable in foreign money. Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid. [1993 c 229 § 9; 1965 ex.s. c 157 § 3-107. Cf. former RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-108 Payable on demand or at definite time. (a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date. [1993 c 229 § 10; 1965 ex.s. c 157 § 3-108. Cf. former RCW 62.01.007; 1955 c 35 § 62.01.007; prior: 1899 c 149 § 7; RRS § 3398.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-109 Payable to bearer or to order. (a) A promise or order is payable to bearer if it:

(1) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) Does not state a payee; or

(3) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to RCW 62A.3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to RCW 62A.3-205(b). [1993 c 229 § 11; 1989 c 13 § 2; 1965 ex.s. c 157 § 3-109. Cf. former RCW sections: (i) RCW 62.01.002(3); 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.004; 1955 c 35 § 62.01.004; prior: 1899 c 149 § 4; RRS § 3395. (iii) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-110 Identification of person to whom instrument is payable. (a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the

instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively. [1993 c 229 § 12; 1965 ex.s. c 157 § 3-110. Cf. former RCW 62.01.008; 1955 c 35 § 62.01.008; prior: 1899 c 149 § 8; RRS § 3399.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-111 Place of payment. Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker. [1993 c 229 § 13; 1965 ex.s. c 157 § 3-111. Cf.

former RCW 62.01.009; 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-112 Interest. (a) Unless otherwise provided in the instrument or in RCW 19.52.010, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, then except as otherwise provided in RCW 19.52.010, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues. [1996 c 77 § 3; 1993 c 229 § 14; 1965 ex.s. c 157 § 3-112. Cf. former RCW sections: (i) 62.01.005; 1955 c 35 § 62.01.005; prior: 1899 c 149 § 5; RRS § 3396. (ii) RCW 62.01.006; 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-113 Date of instrument. (a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in RCW 62A.4-401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder. [1993 c 229 § 15; 1965 ex.s. c 157 § 3-113. Cf. former RCW 62.01.006(4); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-114 Contradictory terms of instrument. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers. [1993 c 229 § 16; 1965 ex.s. c 157 § 3-114. Cf. former RCW sections: (i) RCW 62.01.006(1); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397. (ii) RCW 62.01.011; 1955 c 35 § 62.01.011; prior: 1899 c 149 § 11; RRS § 3402. (iii) RCW 62.01.012; 1955 c 35 § 62.01.012; prior: 1899 c 149 § 12; RRS § 3403. (iv) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-115 Incomplete instrument. (a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

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(b) Subject to subsection (c), if an incomplete instrument is an instrument under RCW 62A.3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under RCW 62A.3-104, but, after completion, the requirements of RCW 62A.3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under RCW 62A.3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority. [1993 c 229 § 17; 1965 ex.s. c 157 § 3-115. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (iii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-116 Joint and several liability; contribution.

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in RCW 62A.3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged. [1993 c 229 § 18; 1965 ex.s. c 157 § 3-116. Cf. former RCW 62.01.041; 1955 c 35 § 62.01.041; prior: 1899 c 149 § 41; RRS § 3432.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-117 Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation. [1993 c 229 § 19; 1965 ex.s. c 157 § 3-117. Cf. former RCW 62.01.042; 1955 c 35 § 62.01.042; prior: 1899 c 149 § 42; RRS § 3433.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-118 Statute of limitations. (a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within six years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the cause of action accrues. [1995 c 74 § 1; 1993 c 229 § 20; 1965 ex.s. c 157 § 3-118. Cf. former RCW sections: (i) RCW 62.01.017; 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.068; 1955 c 35 § 62.01.068; prior: 1899 c 149 § 68; RRS § 3459. (iii) RCW 62.01.130; 1955 c 35 § 62.01.130; prior: 1899 c 149 § 130; RRS § 3520.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-119 Notice of right to defend action. In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and

(ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend. [1993 c 229 § 21; 1965 ex.s. c 157 § 3-119.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-201 Negotiation. (a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone. [1993 c 229 § 22; 1965 ex.s. c 157 § 3-201. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-202 Negotiation subject to rescission. (a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy. [1993 c 229 § 23; 1965 ex.s. c 157 § 3-202. Cf. former RCW sections: (i) RCW 62.01.030; 1955 c 35 § 62.01.030; prior: 1899 c 149 § 30; RRS § 3421. (ii) RCW 62.01.031; 1955 c 35 § 62.01.031; prior: 1899 c 149 § 31; RRS § 3422. (iii) RCW 62.01.032; 1955 c 35 § 62.01.032; prior: 1899 c 149 § 32; RRS § 3423.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-203 Transfer of instrument; rights acquired by transfer. (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified

indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee. [1993 c 229 § 24; 1965 ex.s. c 157 § 3-203. Cf. former RCW 62.01.043; 1955 c 35 § 62.01.043; prior: 1899 c 149 § 43; RRS § 3434.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-204 Indorsement. (a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection. [1993 c 229 § 25; 1965 ex.s. c 157 § 3-204. Cf. former RCW sections: (i) RCW 62.01.009(5); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400. (ii) RCW 62.01.033 through 62.01.036; 1955 c 35 §§ 62.01.033 through 62.01.036; prior: 1899 c 149 §§ 33 through 36; RRS §§ 3424 through 3427. (iii) RCW 62.01.040; 1955 c 35 § 62.01.040; prior: 1899 c 149 § 40; RRS § 3431.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-205 Special indorsement; blank indorsement; anomalous indorsement. (a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in RCW 62A.3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by

writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated. [1993 c 229 § 26; 1965 ex.s. c 157 § 3-205. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-206 Restrictive indorsement. (a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in RCW 62A.4-201(b), or (ii) in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depository bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in subsection (c)(3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in RCW 62A.3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section. [1993 c 229 § 27; 1965 ex.s. c 157 § 3-206. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.037; 1955 c 35 § 62.01.037; prior: 1899 c 149 § 37; RRS § 3428. (iii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430. (iv) RCW 62.01.047; 1955 c 35 § 62.01.047; prior: 1899 c 149 § 47; RRS § 3438.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-207 Reacquisition. Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder. [1993 c 229 § 28; 1965 ex.s. c 157 § 3-207. Cf. former RCW sections: (i) RCW 62.01.022; 1955 c 35 § 62.01.022; prior: 1899 c 149 § 22; RRS § 3413. (ii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iii) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-301 Person entitled to enforce instrument. "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument. [1993 c 229 § 29; 1965 ex.s. c 157 § 3-301. Cf. former RCW 62.01.051; 1955 c 35 § 62.01.051; prior: 1899 c 149 § 51; RRS § 3442.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-302 Holder in due course. (a) Subject to subsection (c) and RCW 62A.3-106(d), "holder in due course" means the holder of an instrument if:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or

alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in RCW 62A.3-306, and (vi) without notice that any party has a defense or claim in recoupment described in RCW 62A.3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under RCW 62A.3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions. [1993 c 229 § 30; 1965 ex.s. c 157 § 3-302. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-303 Value and consideration. (a) An instrument is issued or transferred for value if:

(1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration. [1993 c 229 § 31; 1965 ex.s. c 157 § 3-303. Cf. former RCW sections: (i) RCW 62.01.025 through 62.01.027; 1955 c 35 §§ 62.01.025 through 62.01.027; prior: 1899 c 149 §§ 25 through 27; RRS §§ 3416 through 3418. (ii) RCW 62.01.054; 1955 c 35 § 62.01.054; prior: 1899 c 149 § 54; RRS § 3445.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-304 Overdue instrument. (a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, 90 days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal. [1993 c 229 § 32; 1965 ex.s. c 157 § 3-304. Cf. former RCW sections: (i) RCW 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; 1955 c 35 §§ 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; prior: 1899 c 149 §§ 45, 52, 53, 55, and 56; RRS §§ 3436, 3443, 3444, 3446, and 3447. (ii) RCW 62.01.0195; 1955 c 35 §

62.01.0195; prior: 1927 c 296 § 1; 1925 ex.s. c 54 § 1; RRS § 3410-1.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-305 Defenses and claims in recoupment. (a) Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (RCW 62A.3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity. [1993 c 229 § 33; 1965 ex.s. c 157 § 3-305. Cf. former RCW sections: (i) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (ii) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (iii) RCW 62.01.057; 1955 c 35 § 62.01.057; prior: 1899 c 149 § 57; RRS § 3448.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-306 Claims to an instrument. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument. [1993 c 229 § 34; 1965 ex.s. c 157 § 3-306. Cf. former RCW sections: (i) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (ii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iv) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-307 Notice of breach of fiduciary duty. (a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in subsection (a)(1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person. [1993 c 229 § 35; 1965 ex.s. c 157 § 3-307. Cf. former RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-308 Proof of signatures and status as holder in due course. (a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under RCW 62A.3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under RCW 62A.3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim. [1993 c 229 § 36.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-309 Enforcement of lost, destroyed, or stolen instrument. (a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, RCW 62A.3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. [1993 c 229 § 37.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-310 Effect of instrument on obligation for which taken. (a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Dis-

charge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in subsection (b)(4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case. [1993 c 229 § 38.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-311 Accord and satisfaction by use of instrument. (a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of

a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subsection (c)(2) does not apply if the claimant is an organization that sent a statement complying with subsection (c)(1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim. [1993 c 229 § 39.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-312 Lost, destroyed, or stolen cashier's check, teller's check, or certified check. (a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable [amenable] to service of process.

(4) "Obligated bank" means the insurer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the

case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to RCW 62A.4-302(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check under this section. [1993 c 229 § 40.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-401 Signature. (a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under RCW 62A.3-402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing. [1993 c 229 § 41; 1965 ex.s. c 157 § 3-401. Cf. former RCW 62.01.018; 1955 c 35 § 62.01.018; prior: 1899 c 149 § 18; RRS § 3409.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-402 Signature by representative. (a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person. [1993 c 229 § 42; 1965 ex.s. c 157 § 3-402. Cf. former RCW sections: (i) RCW 62.01.017(6); 1955 c 149 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.063; 1955 c 149 § 62.01.063; prior: 1899 c 149 § 63; RRS § 3454.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-403 Unauthorized signature. (a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article. [1993 c 229 § 43; 1965 ex.s. c 157 § 3-403. Cf. former RCW sections: RCW 62.01.019 through 62.01.021; 1955 c 35 §§ 62.01.019 through 62.01.021; prior: 1899 c 149 §§ 19 through 21; RRS §§ 3410 through 3412.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-404 Impostors; fictitious payees. (a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (RCW 62A.3-110 (a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss. [1993 c 229 § 44; 1965 ex.s. c 157 § 3-404. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-405 Employer's responsibility for fraudulent indorsement by employee. (a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to

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the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person. [1993 c 229 § 45; 1965 ex.s. c 157 § 3-405. Cf. former RCW 62.01.009(3); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-406 Negligence contributing to forged signature or alteration of instrument. (a) A person whose failure to exercise ordinary care contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded. [1993 c 229 § 46; 1965 ex.s. c 157 § 3-406.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-407 Alteration. (a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed. [1993 c 229 § 47; 1965 ex.s. c 157 § 3-407. Cf. former RCW sections: (i) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (ii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (iii) RCW 62.01.124; 1955 c 35 § 62.01.124; prior: 1899 c 149 § 124; RRS § 3514. (iv) RCW 62.01.125; 1955 c 35 § 62.01.125; prior: 1899 c 149 § 125; RRS § 3515.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-408 Drawee not liable on unaccepted draft. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it. [1993 c 229 § 48; 1965 ex.s. c 157 § 3-408. Cf. former RCW sections: (i) RCW 62.01.024; 1955 c 35 § 62.01.024; prior: 1899 c 149 § 24; RRS § 3415. (ii) RCW 62.01.025; 1955 c 35 § 62.01.025; prior: 1899 c 149 § 25; RRS § 3416. (iii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-409 Acceptance of draft; certified check. (a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check. [1993 c 229 § 49; 1965 ex.s. c 157 § 3-409. Cf. former RCW sections: (i) RCW 62.01.127; 1955 c 35 § 62.01.127; prior: 1899 c 149 § 127; RRS § 3517. (ii) RCW 62.01.189; 1955 c 35 § 62.01.189; prior: 1899 c 149 § 189; RRS § 3579.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-410 Acceptance varying draft. (a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged. [1993 c 229 § 50; 1965 ex.s. c 157 § 3-410. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.132 through 62.01.138; 1955 c 35 §§ 62.01.132 through 62.01.138; prior: 1899 c 149 §§ 132 through 138; RRS §§ 3522 through 3528. (iii) RCW 62.01.161 through 62.01.170; 1955 c 35 §§ 62.01.161 through 62.01.170; prior: 1899 c 149 §§ 161 through 170; RRS §§ 3551 through 3560. (iv) RCW

62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-411 Refusal to pay cashier's checks, teller's checks, and certified checks. (a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law. [1993 c 229 § 51; 1965 ex.s. c 157 § 3-411. Cf. former RCW sections: (i) RCW 62.01.187; 1955 c 35 § 62.01.187; prior: 1899 c 149 § 187; RRS § 3577. (ii) RCW 62.01.188; 1955 c 35 § 62.01.188; prior: 1899 c 149 § 188; RRS § 3578.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-412 Obligation of issuer of note or cashier's check. The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under RCW 62A.3-415. [1993 c 229 § 52; 1965 ex.s. c 157 § 3-412. Cf. former RCW sections: RCW 62.01.139 through 62.01.142; 1955 c 35 §§ 62.01.139 through 62.01.142; prior: 1899 c 149 §§ 139 through 142; RRS §§ 3529 through 3532.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-413 Obligation of acceptor. (a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an

indorser who paid the draft under RCW 62A.3-414 or 62A.3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course. [1993 c 229 § 53; 1965 ex.s. c 157 § 3-413. Cf. former RCW sections: RCW 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 60 through 62; RRS §§ 3451 through 3453.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-414 Obligation of drawer. (a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under RCW 62A.3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under RCW 62A.3-415 (a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depository bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds. [1993 c 229 § 54; 1965 ex.s. c 157 § 3-414. Cf. former RCW sections: (i) RCW 62.01.038; 1955 c 35 § 62.01.038; prior: 1899 c 149 § 38; RRS § 3429. (ii) RCW 62.01.044; 1955 c 35 § 62.01.044; prior: 1899 c 149 § 44; RRS § 3435. (iii) RCW 62.01.066 through 62.01.068; 1955 c 35 §§ 62.01.066 through 62.01.068; prior: 1899 c 149 §§ 66 through 68; RRS §§ 3457 through 3459.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

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62A.3-415 Obligation of indorser. (a) Subject to subsections (b), (c), (d), and (e) and to RCW 62A.3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in RCW 62A.3-115 and 62A.3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by RCW 62A.3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depository bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged. [1993 c 229 § 55; 1965 ex.s. c 157 § 3-415. Cf. former RCW sections: (i) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (ii) RCW 62.01.029; 1955 c 35 § 62.01.029; prior: 1899 c 149 § 29; RRS § 3420. (iii) RCW 62.01.064; 1955 c 35 § 62.01.064; prior: 1899 c 149 § 64; RRS § 3455.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-416 Transfer warranties. (a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

- (1) The warrantor is a person entitled to enforce the instrument;
- (2) All signatures on the instrument are authentic and authorized;
- (3) The instrument has not been altered;
- (4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and
- (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under

subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 56; 1965 ex.s. c 157 § 3-416.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-417 Presentment warranties. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach

and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 57; 1965 ex.s. c 157 § 3-417. Cf. former RCW sections: (i) RCW 62.01.065; 1955 c 35 § 62.01.065; prior: 1899 c 149 § 65; RRS § 3456. (ii) RCW 62.01.066; 1955 c 35 § 62.01.066; prior: 1899 c 149 § 66; RRS § 3457. (iii) RCW 62.01.069; 1955 c 35 § 62.01.069; prior: 1899 c 149 § 69; RRS § 3460.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-418 Payment or acceptance by mistake. (a) Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to RCW 62A.4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by RCW 62A.3-417 or 62A.4-407.

(d) Notwithstanding RCW 62A.4-213, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument. [1993 c 229 § 58; 1965 ex.s. c 157 § 3-418. Cf. former RCW 62.01.062; 1955 c 35 § 62.01.062; prior: 1899 c 149 § 62; RRS § 3453.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-419 Instruments signed for accommodation. (a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in

which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in RCW 62A.3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party. [1993 c 229 § 59; 1965 ex.s. c 157 § 3-419. Cf. former RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-420 Conversion of instrument. (a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out. [1993 c 229 § 60.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

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62A.3-501 Presentment. (a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearinghouse rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2:00 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour. [1993 c 229 § 61; 1965 ex.s. c 157 § 3-501. Cf. former RCW sections: RCW 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; 1955 c 35 §§ 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; prior: 1899 c 149 §§ 70, 89, 118, 129, 143, 144, 150, 151, 152, 157, 158, and 186; RRS §§ 3461, 3479, 3508, 3519, 3533, 3534, 3540, 3541, 3542, 3547, 3548, and 3576.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-502 Dishonor. (a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

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(3) If the note is not payable on demand and subsection (a)(2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under RCW 62A.4-301 or 62A.4-302, or becomes accountable for the amount of the check under RCW 62A.4-302.

(2) If a draft is payable on demand and subsection (b)(1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b) (2), (3), and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by subsection (b) (2), (3), and (4).

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment; or

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under RCW 62A.3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored. [1993 c 229 § 62; 1965 ex.s. c 157 § 3-502. Cf. former RCW sections: RCW 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; 1955 c 35 §§ 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; prior: 1899 c 149 §§ 7, 70, 89, 144, 150, 152, and 186; RRS §§ 3398, 3461, 3479, 3534, 3540, 3542, and 3576.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-503 Notice of dishonor. (a) The obligation of an indorser stated in RCW 62A.3-415(a) and the obligation of a drawer stated in RCW 62A.3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under RCW 62A.3-504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to RCW 62A.3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs. [1993 c 229 § 63; 1965 ex.s. c 157 § 3-503. Cf. former RCW sections: (i) RCW 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; 1955 c 35 §§ 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; prior: 1899 c 149 §§ 71, 72, 75, 86, 144, 145, 146, 186, and 193; RRS §§ 3462, 3463, 3466, 3476, 3534, 3535, 3536, 3576, and 3583. (ii) RCW 62.01.085; 1955 c 35 § 62.01.085; prior: 1915 c 173 § 1; 1899 c 149 § 85; RRS § 3475 1/2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-504 Excused presentment and notice of dishonor. (a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate. [1993 c 229 § 64; 1965 ex.s. c 157 § 3-504. Cf. former RCW sections: RCW 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; 1955 c 35 §§ 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145;

prior: 1899 c 149 §§ 72, 73, 77, 78, and 145; RRS §§ 3463, 3464, 3468, 3469, and 3535.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-505 Evidence of dishonor. (a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) that purports to be a protest;

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice-consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties. [1993 c 229 § 65; 1965 ex.s. c 157 § 3-505. Cf. former RCW sections: (i) RCW 62.01.072(3); 1955 c 35 § 62.01.072; prior: 1899 c 149 § 72; RRS § 3463. (ii) RCW 62.01.074; 1955 c 35 § 62.01.074; prior: 1899 c 149 § 74; RRS § 3465. (iii) RCW 62.01.133; 1955 c 35 § 62.01.133; prior: 1899 c 149 § 133; RRS § 3523.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-512 Credit cards—As identification—In lieu of deposit. A person may not record the number of a credit card given as identification under *RCW 62A.3-501(a)(2) or given as proof of credit worthiness when payment for goods or services is made by check or draft. Nothing in this section prohibits the recording of the number of a credit card given in lieu of a deposit to secure payment in the event of a default, loss, damage, or other occurrence. [1993 c 229 § 66; 1990 c 203 § 2.]

***Reviser's note:** The reference to RCW 62A.3-501(a)(2) appears erroneous. Reference to RCW 62A.3-501(b)(2) was apparently intended.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim. (a) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment, the payee or person entitled to enforce the check under RCW 62A.3-301 may collect a reasonable handling fee for each instrument. If the check is not paid within fifteen days and after the person entitled to enforce the check or the person's agent sends a notice of dishonor as provided

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by RCW 62A.3-520 to the drawer at the drawer's last known address, and if the instrument does not provide for the payment of interest or collection costs and attorneys' fees, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and cost of collection not to exceed forty dollars or the face amount of the check, whichever is less, payable to the person entitled to enforce the check. In addition, in the event of court action on the check, the court, after notice and the expiration of the fifteen days, shall award reasonable attorneys' fees, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the person enforcing the check. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

(b)(1) Subsequent to the commencement of an action on the check (subsection (a)) but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the face amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court costs, service costs, and statutory attorneys' fees.

(2) Nothing in this section precludes the right to commence action in a court under chapter 12.40 RCW for small claims. [2000 c 215 § 1; 1995 c 187 § 1; 1993 c 229 § 67; 1991 c 168 § 1; 1986 c 128 § 1; 1981 c 254 § 1; 1969 c 62 § 1; 1967 ex.s. c 23 § 1.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Savings—Severability—1967 ex.s. c 23: See notes following RCW 19.52.005.

62A.3-520 Statutory form for notice of dishonor. The notice of dishonor shall be sent by mail to the drawer at the drawer's last known address, and the notice shall be substantially in the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to in the amount of has not been accepted for payment by, which is the drawee bank designated on your check. This check is dated, and it is numbered, No.

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

(1) Costs of collecting the amount of the check, including an attorney's fee which will be set by the court;

(2) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and

(3) Three hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within fifteen days after the date this letter is postmarked.

You are advised to make your payment to at the following address:

[1993 c 229 § 68; 1991 c 168 § 2; 1986 c 128 § 2; 1981 c 254 § 2; 1969 c 62 § 2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-522 Notice of dishonor—Affidavit of service by mail. In addition to sending a notice of dishonor to the drawer of the check under RCW 62A.3-520, the person sending notice shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail must be attached to a copy of the notice of dishonor and must be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

I,, hereby certify that on the day of, 20., a copy of the foregoing Notice was served on by mailing via the United States Postal Service, postage prepaid, at, Washington.

Dated:

(Signature)

The person enforcing the check shall retain the affidavit with the check but shall file a copy of the affidavit with the clerk of the court in which an action on the check is commenced. [2000 c 215 § 2; 1993 c 229 § 69; 1981 c 254 § 3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-525 Consequences for failing to comply with requirements. No interest, collection costs, and attorneys' fees, except handling fees, are recoverable on any dishonored check under the provisions of RCW 62A.3-515 where a person entitled to such recovery or any agent, employee, or assign has demanded:

(1) Interest or collection costs in excess of that provided by RCW 62A.3-515; or

(2) Interest or collection costs prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520; or

(3) Attorneys' fees either without having the fees set by the court, or prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520. [2000 c 215 § 3; 1993 c 229 § 70; 1981 c 254 § 4; 1969 c 62 § 3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-601 Discharge and effect of discharge. (a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge. [1993 c 229 § 71; 1965 ex.s. c 157 § 3-601. Cf. former RCW sections: RCW 62.01.119 through 62.01.121; 1955 c 35 §§ 62.01.119

through 62.01.121; prior: 1899 c 149 §§ 119 through 121; RRS §§ 3509 through 3511.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-602 Payment. (a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under RCW 62A.3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) if:

(1) A claim to the instrument under RCW 62A.3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument. [1993 c 229 § 72; 1965 ex.s. c 157 § 3-602. Cf. former RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-603 Tender of payment. (a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument. [1993 c 229 § 73; 1965 ex.s. c 157 § 3-603. Cf. former RCW sections: (i) RCW 62.01.051, 62.01.088, 62.01.119, and 62.01.121; 1955 c 35 §§ 62.01.051, 62.01.088, 62.01.119, and 62.01.121; prior: 1899 c 149 §§ 51, 88, 119, and 121; RRS §§ 3442, 3478, 3509, and 3511. (ii) RCW 62.01.171 through 62.01.177; 1955 c 35 §§ 62.01.171 through 62.01.177; prior: 1899 c 149 §§ 171 through 177; RRS §§ 3561 through 3567. (iii) Subd. (3) cf. former RCW 30.20.090; 1961 c 280 § 4.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-604 Discharge by cancellation or renunciation. (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement. [1993 c 229 § 74; 1965 ex.s. c 157 § 3-604. Cf. former RCW sections: (i) RCW 62.01.070; 1955 c 35 § 62.01.070; prior: 1899 c 149 § 70; RRS § 3461. (ii) RCW 62.01.120; 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-605 Discharge of indorsers and accommodation parties. (a) In this section, the term "indorser" includes a drawer having the obligation described in RCW 62A.3-414(d).

(b) Discharge, under RCW 62A.3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of

recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f), impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under *Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) unless the person entitled to enforce the instrument knows of the accommodation or has notice under RCW 62A.3-419(c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. [1993 c 229 § 75; 1965 ex.s. c 157 § 3-605. Cf. former RCW sections: RCW 62.01.048, 62.01.119(3), 62.01.120(2), 62.01.122, and 62.01.123; 1955 c 35 §§ 62.01.048, 62.01.119, 62.01.120, 62.01.122, and 62.01.123; prior: 1899 c 149 §§ 48, 119, 120, 122, and 123; RRS §§ 3439, 3509, 3510, 3512, and 3513.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Article 4

BANK DEPOSITS AND COLLECTIONS

Sections

PART 1

GENERAL PROVISIONS AND DEFINITIONS

62A.4-101	Short title.
62A.4-102	Applicability.
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Reviser's note: Powers, duties, and functions of the department of general administration relating to financial institutions were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

62A.4-101 Short title. This Article may be cited as Uniform Commercial Code—Bank Deposits and Collections. [1993 c 229 § 77; 1965 ex.s. c 157 § 4-101.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-102 Applicability. (a) To the extent that items within this Article are also within Articles 3 and 8, they are subject to those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.

(b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. [1993 c 229 § 78; 1965 ex.s. c 157 § 4-102.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-103 Variation by agreement; measure of damages; action constituting ordinary care. (a) The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this Article is not disapproval of other procedures that may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence. [1993 c 229 § 79; 1965 ex.s. c 157 § 4-103. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1931 c 10 § 1; 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-104 Definitions and index of definitions. (a) In this Article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of

its banking functions, except that it shall not include a Saturday, Sunday, or legal holiday;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (RCW 62A.8-102) or instructions for uncertificated securities (RCW 62A.8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in RCW 62A.3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment"	RCW 62A.4-110.
"Bank"	RCW 62A.4-105.
"Collecting bank"	RCW 62A.4-105.
"Depository bank"	RCW 62A.4-105.
"Intermediary bank"	RCW 62A.4-105.
"Payor bank"	RCW 62A.4-105.
"Presenting bank"	RCW 62A.4-105.
"Presentment notice"	RCW 62A.4-110.

(c) The following definitions in other Articles apply to this Article:

"Acceptance"	RCW 62A.3-409.
"Alteration"	RCW 62A.3-407.
"Cashier's check"	RCW 62A.3-104.
"Certificate of deposit"	RCW 62A.3-104.
"Certified check"	RCW 62A.3-409.
"Check"	RCW 62A.3-104.
"Draft"	RCW 62A.3-104.
"Good faith"	RCW 62A.3-103.
"Holder in due course"	RCW 62A.3-302.
"Instrument"	RCW 62A.3-104.
"Notice of dishonor"	RCW 62A.3-503.
"Order"	RCW 62A.3-103.
"Ordinary care"	RCW 62A.3-103.
"Person entitled to enforce"	RCW 62A.3-301.

"Presentment"	RCW 62A.3-501.
"Promise"	RCW 62A.3-103.
"Prove"	RCW 62A.3-103.
"Teller's check"	RCW 62A.3-104.
"Unauthorized signature"	RCW 62A.3-403.

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1995 c 48 § 56; 1993 c 229 § 80; 1981 c 122 § 1; 1965 ex.s. c 157 § 4-104. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Construction—1981 c 122: "Nothing in this 1981 amendatory act shall be construed to preclude any bank from being open to the public for carrying on its banking functions on Saturdays or Sundays." [1981 c 122 § 2.] "this 1981 amendatory act" consists of the 1981 amendment to RCW 62A.4-104.

62A.4-105 "Bank"; "depository bank"; "payor bank"; "intermediary bank"; "collecting bank"; "presenting bank". In this Article:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) "Depository bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "Payor bank" means a bank that is the drawee of a draft;

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depository or payor bank;

(5) "Collecting bank" means a bank handling the item for collection except the payor bank;

(6) "Presenting bank" means a bank presenting an item except a payor bank. [1993 c 229 § 81; 1965 ex.s. c 157 § 4-105. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-106 Payable through or payable at bank; collecting bank. (a) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is "payable at" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a codrawee or a collecting bank, the bank is a collecting bank. [1993 c 229 § 82; 1965 ex.s. c 157 § 4-106. Cf. former RCW sections: (i) RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1. (ii) RCW 30.40.030 through 30.40.050; 1955

c 33 §§ 30.40.030 through 30.40.050; prior: 1939 c 59 §§ 1 through 3; RRS §§ 3252-6 through 3252-8.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-107 Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this Article and under Article 3. [1993 c 229 § 83; 1965 ex.s. c 157 § 4-107.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-108 Time of receipt of items. (a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. [1993 c 229 § 84; 1965 ex.s. c 157 § 4-108.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-109 Delays. (a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this Title for a period not exceeding two additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Title or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require. [1993 c 229 § 85; 1965 ex.s. c 157 § 4-109.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-110 Electronic presentment. (a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this Article means the present-

ment notice unless the context otherwise indicates. [1993 c 229 § 86.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-111 Statute of limitations. An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues. [1993 c 229 § 87.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-201 Status of collecting bank as agent and provisional status of credits; applicability of article; item indorsed "pay any bank". (a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

(1) Returned to the customer initiating collection; or

(2) Specially indorsed by a bank to a person who is not a bank. [1993 c 229 § 88; 1965 ex.s. c 157 § 4-201. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-202 Responsibility for collection or return; when action timely. (a) A collecting bank must exercise ordinary care in:

(1) Presenting an item or sending it for presentment;

(2) Sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

(3) Settling for an item when the bank receives final settlement; and

(4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may consti-

tute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit. [1993 c 229 § 89; 1965 ex.s. c 157 § 4-202. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-203 Effect of instructions. Subject to Article 3 concerning conversion of instruments (RCW 62A.3-420) and restrictive indorsements (RCW 62A.3-206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor. [1993 c 229 § 90; 1965 ex.s. c 157 § 4-203. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-204 Methods of sending and presenting; sending directly to payor bank. (a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

(b) A collecting bank may send:

- (1) An item directly to the payor bank;
- (2) An item to a non-bank payor if authorized by its transferor; and
- (3) An item other than documentary drafts to a non-bank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made. [1993 c 229 § 91; 1965 ex.s. c 157 § 4-204. Cf. former RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-205 Depository bank holder of unindorsed item. If a customer delivers an item to a depository bank for collection:

(a) The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of RCW 62A.3-302, it is a holder in due course; and

(b) The depository bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account. [1993 c 229 § 92; 1965 ex.s. c 157 § 4-205.]

(2004 Ed.)

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-206 Transfer between banks. Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank. [1993 c 229 § 93; 1965 ex.s. c 157 § 4-206.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-207 Transfer warranties. (a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) The warrantor is a person entitled to enforce the item;
- (2) All signatures on the item are authentic and authorized;
- (3) The item has not been altered;
- (4) The item is not subject to a defense or claim in recoupment (RCW 62A.3-305(a)) of any party that can be asserted against the warrantor; and
- (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in RCW 62A.3-115 and 62A.3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 94; 1965 ex.s. c 157 § 4-207. Cf. former RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-208 Presentment warranties. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment,

and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under RCW 62A.3-404 or 62A.3-405 or the drawer is precluded under RCW 62A.3-406 or 62A.4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach. [1993 c 229 § 95; 1965 ex.s. c 157 § 4-208. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-209 Encoding and retention warranties. (a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to

the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach. [1993 c 229 § 96; 1965 ex.s. c 157 § 4-209. Cf. former RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-210 Security interest of collecting bank in items, accompanying documents and proceeds. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9A, but:

(1) No security agreement is necessary to make the security interest enforceable RCW 62A.9A-203(b)(3)(A);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds. [2001 c 32 § 13; 2000 c 250 § 9A-813; 1993 c 229 § 97; 1965 ex.s. c 157 § 4-210.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Effective date—2000 c 250: See RCW 62A.9A-701.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-211 When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, bank has given value to the extent it has a security interest in an item, if the bank otherwise com-

plies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. [1993 c 229 § 98; 1965 ex.s. c 157 § 4-211. Cf. former RCW sections: (i) RCW 30.52.090; 1955 c 33 § 30.52.090; prior: 1929 c 203 § 9; RRS § 3292-9. (ii) RCW 30.52.100; 1955 c 33 § 30.52.100; prior: 1929 c 203 § 10; RRS § 3292-10.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-212 Presentment by notice of item not payable by, through, or at a bank; liability of drawer or indorser.

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under RCW 62A.3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under RCW 62A.3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts. [1993 c 229 § 99; 1965 ex.s. c 157 § 4-212. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-213 Medium and time of settlement by bank.

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement, is:

(i) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to RCW 62A.4A-406(1) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

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(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item. [1993 c 229 § 100; 1965 ex.s. c 157 § 4-213. Cf. former RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-214 Right of charge-back or refund; liability of collecting bank; return of item.

(a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the items, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge-back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depository bank that is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (RCW 62A.4-301).

(d) The right to charge-back is not affected by:

(1) Previous use of a credit given for the item; or

(2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in a foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. [1993 c 229 § 101; 1965 ex.s. c 157 § 4-214. Cf. former RCW 30.52.130; 1955 c 33 § 30.52.130; prior: 1929 c 203 § 13; RRS § 3292-13.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Insolvency—Preferences prohibited: RCW 30.44.110.

62A.4-215 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal. (a) An item is finally paid by a payor bank when the bank has first done any of the following:

- (1) Paid the item in cash;
- (2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or
- (3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(2) If the bank is both the depositary bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit. [1993 c 229 § 102.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-216 Insolvency and preference. (a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or

becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank. [1993 c 229 § 103.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-301 Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank. (a) If a payor bank settles for a demand item (other than a documentary draft) presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

- (1) Returns the item; or
- (2) Sends written notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions. [1993 c 229 § 104; 1965 ex.s. c 157 § 4-301. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-302 Payor bank's responsibility for late return of item. (a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank

either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (RCW 62A.4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank. [1993 c 229 § 105; 1965 ex.s. c 157 § 4-302. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-303 When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified. (a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

- (1) The bank accepts or certifies the item;
- (2) The bank pays the item in cash;
- (3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;
- (4) The bank becomes accountable for the amount of the item under RCW 62A.4-302 dealing with the payor bank's responsibility for late return of items; or
- (5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a) items may be accepted, paid, certified, or charged to the indicated account of its customer in any order. [1993 c 229 § 106; 1965 ex.s. c 157 § 4-303.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-401 When bank may charge customer's account. (a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in RCW 62A.4-403(b) for stop-payment orders, and must be received at such time

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and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in RCW 62A.4-303. A bank may not collect a fee from a customer based on the customer's giving notice to the bank of a postdating. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under RCW 62A.4-402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

- (1) The original terms of the altered item; or
- (2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper. [1993 c 229 § 107; 1965 ex.s. c 157 § 4-401.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-402 Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.

(a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful. [1993 c 229 § 108; 1965 ex.s. c 157 § 4-402.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-403 Customer's right to stop payment; burden of proof of loss.

(a) A customer or any other person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in RCW 62A.4-303. If the signature of more than one person is required to draw on an

account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop-payment order or order to close the account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under RCW 62A.4-402. [1993 c 229 § 109; 1965 ex.s.c 157 § 4-403. Cf. former RCW sections: (i) RCW 30.16.030; 1959 c 106 § 4; 1955 c 33 § 30.16.030; prior: 1923 c 114 §§ 1, part, and 2; RRS §§ 3252-1, part, and 3252-2. (ii) RCW 30.16.040; 1955 c 33 § 30.16.040; prior: 1923 c 114 §§ 1, part, and 3; RRS §§ 3252-1, part, and 3252-3.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-404 Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith. [1965 ex.s.c 157 § 4-404. Cf. former RCW 30.16.050; 1955 c 33 § 30.16.050; prior: 1923 c 114 §§ 1, part, and 5; RRS §§ 3252-1, part, and 3252-5.]

62A.4-405 Death or incompetence of customer. (a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account. [1993 c 229 § 110; 1965 ex.s.c 157 § 4-405. Cf. former RCW 30.20.030; 1955 c 33 § 30.20.030; prior: 1917 c 80 § 43; RRS § 3250.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-406 Customer's duty to discover and report unauthorized signature or alteration. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number,

amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or copies of items with respect to each statement of account sent to the customer. A bank may charge fees for additional items or copies of items in accordance with RCW 30.22.230. Requests for ten items or less shall be processed and completed within ten business days.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer, failed with respect to an item, to comply with the duties imposed on the customer by subsection (c) the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year, and any other customer who does not within sixty days, from the time the statement and items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature or any alteration

on the face or back of the item or does not within one year from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under RCW 62A.4-208 with respect to the unauthorized signature or alteration to which the preclusion applies. [1997 c 53 § 1; 1995 c 107 § 1; 1993 c 229 § 111; 1991 sp.s. c 19 § 1; 1967 c 114 § 1; 1965 ex.s. c 157 § 4-406. Cf. former RCW 30.16.020; 1955 c 33 § 30.16.020; prior: 1917 c 80 § 45; RRS § 3252.]

Effective date—1995 c 107: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 107 § 2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Emergency—Effective date—1967 c 114: "This 1967 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and sections 1 through 11 and 13 through 16 shall take effect on June 30, 1967, and section 12 shall take effect immediately." [1967 c 114 § 17.]

62A.4-407 Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights:

- (1) Of any holder in due course on the item against the drawer or maker;
- (2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and
- (3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose. [1993 c 229 § 112; 1965 ex.s. c 157 § 4-407.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor. A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. [1993 c 229 § 113; 1965 ex.s. c 157 § 4-501.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-502 Presentment of "on arrival" drafts. If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the

arrival of the goods. [1993 c 229 § 114; 1965 ex.s. c 157 § 4-502.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need. Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions. However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses. [1993 c 229 § 115; 1965 ex.s. c 157 § 4-503. Cf. former RCW 62.01.131(3); 1955 c 35 § 62.01.131; prior: 1899 c 149 § 131; RRS § 3521.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.4-504 Privilege of presenting bank to deal with goods; security interest for expenses. (a) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. [1993 c 229 § 116; 1965 ex.s. c 157 § 4-504.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Article 4A

FUNDS TRANSFERS

Sections

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PART 3
EXECUTION OF SENDER'S PAYMENT ORDER
BY RECEIVING BANK

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PART 4
PAYMENT

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62A.4A-403	Payment by sender to receiving bank.
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PART 5
MISCELLANEOUS PROVISIONS

62A.4A-501	Variation by agreement and effect of funds-transfer system rule.
62A.4A-502	Creditor process served on receiving bank; setoff by beneficiary's bank.
62A.4A-503	Injunction or restraining order with respect to funds transfer.
62A.4A-504	Order in which items and payment orders may be charged to account; order of withdrawals from account.
62A.4A-505	Preclusion of objection to debit of customer's account.
62A.4A-506	Rate of interest.
62A.4A-507	Choice of law.

Reviser's note: Powers, duties, and functions of the department of general administration relating to financial institutions were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

62A.4A-101 Short title. This Article may be cited as the Uniform Commercial Code—Funds Transfers. [1991 sp.s. c 21 § 4A-101.]

62A.4A-102 Subject matter. Except as otherwise provided in RCW 62A.4A-108 this Article applies to funds transfers defined in RCW 62A.4A-104. [1991 sp.s. c 21 § 4A-102.]

62A.4A-103 Payment order—Definitions. (1) In this Article:

(a) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition of payment to the beneficiary other than time of payment;

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) "Beneficiary" means the person to be paid by the beneficiary's bank.

(c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) "Receiving bank" means the bank to which the sender's instruction is addressed.

(e) "Sender" means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) of this section is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank. [1991 sp.s. c 21 § 4A-103.]

62A.4A-104 Funds transfer—Definitions. In this Article:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means (a) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (b) the originator if the originator is a bank. [1991 sp.s. c 21 § 4A-104.]

62A.4A-105 Other definitions. (1) In this Article:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of the account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(8)).

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.4A-209
"Beneficiary"	RCW 62A.4A-103
"Beneficiary's bank"	RCW 62A.4A-103
"Executed"	RCW 62A.4A-301
"Execution date"	RCW 62A.4A-301
"Funds transfer"	RCW 62A.4A-104
"Funds-transfer system rule"	RCW 62A.4A-501
"Intermediary bank"	RCW 62A.4A-104
"Originator"	RCW 62A.4A-104
"Originator's bank"	RCW 62A.4A-104
"Payment by beneficiary's bank to beneficiary"	RCW 62A.4A-405
"Payment by originator to beneficiary"	RCW 62A.4A-406
"Payment by sender to receiving bank"	RCW 62A.4A-403
"Payment date"	RCW 62A.4A-401
"Payment order"	RCW 62A.4A-103
"Receiving bank"	RCW 62A.4A-103
"Security procedure"	RCW 62A.4A-201
"Sender"	RCW 62A.4A-103

(3) The following definitions in Article 4 (RCW 62A.4-101 through 62A.4-504) apply to this Article:

"Clearing house"	*section 4-104 of this act
"Item"	*section 4-104 of this act
"Suspends payments"	*section 4-104 of this act

(4) In addition to Article 1 [In addition, Article 1] (RCW 62A.1-101 through 62A.1-208) contains general definitions and principles of construction and interpretation applicable throughout this Article. [1991 sp.s. c 21 § 4A-105.]

***Reviser's note:** The references to "section 4-104 of this act" are incorrect. RCW 62A.4-104 was apparently intended.

62A.4A-106 Time payment order is received. (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in RCW 62A.1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as

received at the opening of the next funds-transfer business day.

(2) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article. [1991 sp.s. c 21 § 4A-106.]

62A.4A-107 Federal reserve regulations and operating circulars. Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this Article to the extent of the inconsistency. [1991 sp.s. c 21 § 4A-107.]

62A.4A-108 Exclusion of consumer transactions governed by federal law. This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, P.L. 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 et seq.) as amended from time to time. [1991 sp.s. c 21 § 4A-108.]

62A.4A-201 Security procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (1) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (2) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure. [1991 sp.s. c 21 § 4A-201.]

62A.4A-202 Authorized and verified payment orders. (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (a) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (b) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the

wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (a) the security procedure was chosen [by] the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (b) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name, and accepted by the bank in compliance with the security procedure chosen by the customer.

(4) The term "sender" in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1) of this section, or it is effective as the order of the customer under subsection (2) of this section.

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and RCW 62A.4A-203(1)(a), rights and obligations arising under this section or RCW 62A.4A-203 may not be varied by agreement. [1991 sp.s. c 21 § 4A-202.]

62A.4A-203 Unenforceability of certain verified payment orders. (1) If an accepted payment order is not, under RCW 62A.4A-201(1), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to RCW 62A.4A-202(2), the following rules apply.

(a) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-203.]

62A.4A-204 Refund of payment and duty of customer to report with respect unauthorized payment order. (1) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (a) not authorized and not effective as the order of the customer under RCW 62A.4A-202, or (b) not enforceable, in whole or in part, against the customer under RCW 62A.4A-203, the bank shall refund any payment of the payment order received from

the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) of this section may be fixed by agreement as stated in RCW 62A.1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement. [1991 sp.s. c 21 § 4A-204.]

62A.4A-205 Erroneous payment orders. (1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (a) erroneously instructed payment to a beneficiary not intended by the sender, (b) erroneously instructed payment in an amount greater than the amount intended by the sender, or (c) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(i) If the sender proves that the sender or a person acting on behalf of the sender pursuant to RCW 62A.4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in (ii) and (iii) of this subsection.

(ii) If the funds transfer is completed on the basis of an erroneous payment order described in (b) or (c) of this subsection, the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(iii) If the funds transfer is completed on the basis of a payment order described in (b) of this subsection, the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If (a) the sender of an erroneous payment order described in subsection (1) of this section is not obliged to pay all or part of the order, and (b) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for

the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-205.]

62A.4A-206 Transmission of payment order through funds-transfer or other communication system. (1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders. [1991 sp.s. c 21 § 4A-206.]

62A.4A-207 Misdescription of beneficiary. (1) Subject to subsection (2) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If (a) a payment order described in subsection (2) of this section is accepted, (b) the originator's payment order described the beneficiary inconsistently by name and number, and (c) the beneficiary's bank pays the person identified by number as permitted by subsection (2)(a) of this section, the following rules apply:

(i) If the originator is a bank, the originator is obliged to pay its order.

(ii) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that

payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a) of this section, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3) of this section, the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover. [1991 sp.s. c 21 § 4A-207.]

62A.4A-208 Misdescription of intermediary bank or beneficiary's bank. (1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a) of this section, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identifica-

tion of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in RCW 62A.4A-302(1)(a). [1991 sp.s. c 21 § 4A-208.]

62A.4A-209 Acceptance of payment order. (1) Subject to subsection (4) of this section, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4) of this section, a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) When the bank (i) pays the beneficiary as stated in RCW 62A.4A-405 (1) or (2) or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) When the bank receives payment of the entire amount of the sender's order pursuant to RCW 62A.4A-403(1) (a) or (b); or

(c) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (2)(b) or (c) of this section if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to RCW 62A.4A-211(2), the bank may recover

from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution. [1991 sp.s. c 21 § 4A-209.]

62A.4A-210 Rejection of payment order. (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (a) any means complying with the agreement is reasonable and (b) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to RCW 62A.4A-211(4) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order. [1991 sp.s. c 21 § 4A-210.]

62A.4A-211 Cancellation and amendment of payment order. (1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to subsection (1) of this section, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorneys' fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b) of this section. [1991 sp.s. c 21 § 4A-211.]

62A.4A-212 Liability and duty of receiving bank regarding unaccepted payment order. If a receiving bank fails to accept a payment order that [it] is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in RCW 62A.4A-209 and liability is limited to that provided in this Article. A receiving bank is not the agent of

the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement. [1991 sp.s. c 21 § 4A-212.]

62A.4A-301 Execution and execution date. (1) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date. [1991 sp.s. c 21 § 4A-301.]

62A.4A-302 Obligations of receiving bank in execution of payment order. (1) Except as provided in subsections (2) through (4) of this section, if the receiving bank accepts a payment order pursuant to RCW 62A.4A-209(1), the bank has the following obligations in executing the order.

(a) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may (a) use any funds-transfer system if use of that system is reasonable in the circumstances, and (b) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it

is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) of this section applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender, (a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner. [1991 sp.s. c 21 § 4A-302.]

62A.4A-303 Erroneous execution of payment order.

(1) A receiving bank that (a) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (b) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(3) if (a) that subsection is otherwise satisfied and (b) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution. [1991 sp.s. c 21 § 4A-303.]

62A.4A-304 Duty of sender to report erroneously executed payment order. If the sender of a payment order that is erroneously executed as stated in RCW 62A.4A-303

receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under RCW 62A.4A-402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section. [1991 sp.s. c 21 § 4A-304.]

62A.4A-305 Liability for late or improper execution or failure to execute payment order. (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of RCW 62A.4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3) of this section, additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of RCW 62A.4A-302 results in (a) noncompletion of the funds transfer, (b) failure to use an intermediary bank designated by the originator, or (c) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (1) of this section, resulting from the improper execution. Except as provided in subsection (3) of this section, additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2) of this section, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(5) Reasonable attorneys' fees are recoverable if demand for compensation under subsection (1) or (2) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) of this section and the agreement does not provide for damages, reasonable attorneys' fees are recoverable if demand for compensation under subsection (4) of this section is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) of this section may not be varied by agreement. [1991 sp.s. c 21 § 4A-305.]

62A.4A-401 Payment date. "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank. [1991 sp.s. c 21 § 4A-401.]

62A.4A-402 Obligation of sender to pay receiving bank. (1) This section is subject to RCW 62A.4A-205 and 62A.4A-207.

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to subsection (5) of this section and to RCW 62A.4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in RCW 62A.4A-204 and 62A.4A-304, interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in this subsection and an intermediary bank is obliged to refund payment as stated in subsection (4) of this section but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in RCW 62A.4A-302(1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4) of this section.

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) of this section or to receive refund under subsection (4) of this section may not be varied by agreement. [1991 sp.s. c 21 § 4A-402.]

62A.4A-403 Payment by sender to receiving bank.

(1) Payment of the sender's obligation under RCW 62A.4A-402 to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused

an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under RCW 62A.4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1) of this section, the time when payment of the sender's obligation under RCW 62A.4A-402 (2) or (3) occurs is governed by applicable principles of law that determine when an obligation is satisfied. [1991 sp.s. c 21 § 4A-403.]

62A.4A-404 Obligation of beneficiary's bank to pay and give notice to beneficiary. (1) Subject to RCW 62A.4A-211(5), 62A.4A-405(4), and 62A.4A-405(5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following

the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorneys' fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (a) [subsection (1) of this section] may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) of this section may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer. [1991 sp.s. c 21 § 4A-404.]

62A.4A-405 Payment by beneficiary's bank to beneficiary. (1) If the beneficiary's bank credits an account of the beneficiary of a payment order payment of the bank's obligation under RCW 62A.4A-404(1) occurs when and to the extent (a) the beneficiary is notified of the right to withdraw the credit, (b) the bank lawfully applies the credit to a debt of the beneficiary, or (c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under RCW 62A.4A-404(1) occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5) of this act [section], if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (a) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (b) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (c) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under RCW 62A.4A-406.

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (a) nets obligations multilaterally among participants, and (b) has in effect a loss-sharing agreement among

participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under RCW 62A.4A-406, and (iv) subject to RCW 62A.4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(3) because the funds transfer has not been completed. [1991 sp.s. c 21 § 4A-405.]

62A.4A-406 Payment by originator to beneficiary; discharge of underlying obligation. (1) Subject to RCW 62A.4A-211(5), 62A.4A-405(4), and 62A.4A-405(5), the originator of a funds transfer pays the beneficiary of the originator's payment order (a) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (b) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(2) If payment under subsection (1) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (a) the payment under subsection (1) of this section was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (b) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (c) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (d) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under RCW 62A.4A-404(1).

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2) of this section, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary. [1991 sp.s. c 21 § 4A-406.]

62A.4A-501 Variation by agreement and effect of funds-transfer system rule. (1) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) "Funds-transfer system rule" means a rule of an association of banks (a) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (b) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with the Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in RCW 62A.4A-404(3), 62A.4A-405(4), and 62A.4A-507(3). [1991 sp.s. c 21 § 4A-501.]

62A.4A-502 Creditor process served on receiving bank; setoff by beneficiary's bank. (1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at the time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at the time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank

served with the creditor process is not obliged to act with respect to the process. [1991 sp.s. c 21 § 4A-502.]

62A.4A-503 Injunction or restraining order with respect to funds transfer. For proper cause and in compliance with applicable law, a court may restrain (1) a person from issuing a payment order to initiate a funds transfer, (2) an originator's bank from executing the payment order of the originator, or (3) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing funds from the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer. [1991 sp.s. c 21 § 4A-503.]

62A.4A-504 Order in which items and payment orders may be charged to account; order of withdrawals from account. (1) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied. [1991 sp.s. c 21 § 4A-504.]

62A.4A-505 Preclusion of objection to debit of customer's account. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer. [1991 sp.s. c 21 § 4A-505.]

62A.4A-506 Rate of interest. (1) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (a) by agreement of the sender and receiving bank, or (b) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1) of this section, the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by three hundred sixty. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any

fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank. [1991 sp.s. c 21 § 4A-506.]

62A.4A-507 Choice of law. (1) The following rules apply unless the affected parties otherwise agree or subsection (3) of this section applies;

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in each paragraph of subsection (1) of this section have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) A funds-transfer system rule may select the law of a particular jurisdiction to govern (a) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (b) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to (a) of this subsection is binding on participating banks. A choice of law made pursuant to (b) of this subsection is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) of this section and a choice-of-law rule under subsection (3) of this section, the agreement under subsection (2) of this section prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue. [1991 sp.s. c 21 § 4A-507.]

Article 5

LETTERS OF CREDIT

Sections

- 62A.5-101 Short title.
- 62A.5-1013 Applicability—Transition provision.
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- 62A.5-102 Definitions.
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- 62A.5-106 Issuance, amendment, cancellation, and duration.
- 62A.5-107 Confirmer, nominated person, and adviser.
- 62A.5-108 Issuer's rights and obligations.
- 62A.5-109 Fraud and forgery.
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- 62A.5-111 Remedies.
- 62A.5-112 Transfer of letter of credit.
- 62A.5-113 Transfer by operation of law.
- 62A.5-114 Assignment of proceeds.
- 62A.5-115 Statute of limitations.
- 62A.5-116 Choice of law and forum.
- 62A.5-117 Subrogation of issuer, applicant, and nominated person.
- 62A.5-118 Security interest of issuer or nominated person.

62A.5-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Letters of Credit. [1965 ex.s. c 157 § 5-101.]

62A.5-1013 Applicability—Transition provision. Chapter 56, Laws of 1997 applies to a letter of credit that is issued on or after July 27, 1997. Chapter 56, Laws of 1997 does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before July 27, 1997. [1997 c 56 § 1.]

62A.5-1015 Savings—Transition provision. A transaction arising out of or associated with a letter of credit that was issued before July 27, 1997, and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by chapter 56, Laws of 1997 as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law. [1997 c 56 § 2.]

62A.5-102 Definitions. (1) The definitions in this section apply throughout this Article unless the context clearly requires otherwise:

(a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(b) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(f) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the

letter of credit, by the standard practice referred to in RCW 62A.5-108(5) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned.

(h) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) Upon payment;

(ii) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(j) "Letter of credit" means a definite undertaking that satisfies the requirements of RCW 62A.5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(k) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(l) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(n) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(2) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or

"Acceptance" RCW 62A.3-409

"Value" RCW 62A.3-303, RCW 62A.4-211.

(3) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article. [1997 c 56 § 3; 1965 ex.s. c 157 § 5-102.]

62A.5-103 Scope. (1) This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

(3) With the exception of this subsection, subsections (1) and (4) of this section, RCW 62A.5-102(1) (i) and (j), 62A.5-106(4), and 62A.5-114(4), and except to the extent prohibited in RCW 62A.1-102(3) and 62A.5-117(4), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary. [1997 c 56 § 4; 1965 ex.s. c 157 § 5-103.]

62A.5-104 Formal requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (1) by a signature or (2) in accordance with the agreement of the parties or the standard practice referred to in RCW 62A.5-108(5). [1997 c 56 § 5; 1965 ex.s. c 157 § 5-104.]

62A.5-105 Consideration. Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation. [1997 c 56 § 6; 1965 ex.s. c 157 § 5-105.]

62A.5-106 Issuance, amendment, cancellation, and duration. (1) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(3) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(4) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued. [1997 c 56 § 7; 1965 ex.s. c 157 § 5-106.]

62A.5-107 Confirmer, nominated person, and adviser. (1) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(3) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (3) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies. [1997 c 56 § 8; 1965 ex.s. c 157 § 5-107.]

62A.5-108 Issuer's rights and obligations. (1) Except as otherwise provided in RCW 62A.5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in RCW 62A.5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(a) To honor;

(b) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

(c) To give notice to the presenter of discrepancies in the presentation.

(3) Except as otherwise provided in subsection (4) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(4) Failure to give the notice specified in subsection (2) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in RCW 62A.5-109(1) or expiration of the letter of credit before presentation.

(5) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(6) An issuer is not responsible for:

(a) The performance or nonperformance of the underlying contract, arrangement, or transaction;

(b) An act or omission of others; or

(c) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5) of this section.

(7) If an undertaking constituting a letter of credit under RCW 62A.5-102(1)(j) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(8) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(9) An issuer that has honored a presentation as permitted or required by this Article:

(a) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(b) Takes the documents free of claims of the beneficiary or presenter;

(c) Is precluded from asserting a right of recourse on a draft under RCW 62A.3-414 and 62A.3-415;

(d) Except as otherwise provided in RCW 62A.5-110 and 62A.5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(e) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged. [1997 c 56 § 9; 1965 ex.s. c 157 § 5-108.]

62A.5-109 Fraud and forgery. (1) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(a) The issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(b) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(2) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(a) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(b) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(c) All of the conditions to entitle a person to the relief under the law of this state have been met; and

(d) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under

its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (1)(a) of this section. [1997 c 56 § 10; 1965 ex.s. c 157 § 5-109.]

62A.5-110 Warranties. (1) If its presentation is honored, the beneficiary warrants:

(a) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in RCW 62A.5-109(1); and

(b) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(2) The warranties in subsection (1) of this section are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those Articles. [1997 c 56 § 11; 1965 ex.s. c 157 § 5-110.]

62A.5-111 Remedies. (1) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(3) If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection (1) or (2) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and (2) of this section.

(4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this Article.

(6) Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated. [1997 c 56 § 12; 1965 ex.s. c 157 § 5-111.]

62A.5-112 Transfer of letter of credit. (1) Except as otherwise provided in RCW 62A.5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(a) The transfer would violate applicable law; or

(b) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in RCW 62A.5-108(5) or is otherwise reasonable under the circumstances. [1997 c 56 § 13; 1965 ex.s. c 157 § 5-112. Cf. former RCW sections: (i) RCW 62.01.136; 1955 c 35 § 62.01.136; prior: 1899 c 149 § 136; RRS § 3526. (ii) RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527. (iii) RCW 62.01.150; 1955 c 35 § 62.01.150; prior: 1899 c 149 § 150; RRS § 3540.]

62A.5-113 Transfer by operation of law. (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (5) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in RCW 62A.5-108(5) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) of this section has the consequences specified in RCW 62A.5-108(9) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of RCW 62A.5-109.

(5) An issuer whose rights of reimbursement are not covered by subsection (4) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (2) of this section.

(6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section. [1997 c 56 § 14; 1965 ex.s. c 157 § 5-113.]

62A.5-114 Assignment of proceeds. (1) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(4) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(5) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(6) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by *Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by *Article 9 or other law. [1997 c 56 § 15; 1995 c 48 § 57; 1986 c 35 § 54; 1965 ex.s. c 157 § 5-114.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.5-115 Statute of limitations. An action to enforce a right or obligation arising under this Article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. [1997 c 56 § 16; 1965 ex.s. c 157 § 5-115.]

62A.5-116 Choice of law and forum. (1) The liability of an issuer, nominated person, or adviser for action or omis-

sion is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in RCW 62A.5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(2) Unless subsection (1) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(3) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (a) this Article would govern the liability of an issuer, nominated person, or adviser under subsection (1) or (2) of this section, (b) the relevant undertaking incorporates rules of custom or practice, and (c) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in RCW 62A.5-103(3).

(4) If there is conflict between this Article and Article 3, 4, 4A, or *9, this Article governs.

(5) The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1) of this section. [1997 c 56 § 17; 1981 c 41 § 5; 1965 ex.s. c 157 § 5-116. Subd. (2)(b) cf. former RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.5-117 Subrogation of issuer, applicant, and nominated person. (1) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the

rights of the beneficiary stated in subsection (1) of this section.

(3) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(a) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(b) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(c) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (1) and (2) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (3) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse. [1997 c 56 § 18; 1965 ex.s. c 157 § 5-117.]

62A.5-118 Security interest of issuer or nominated person. (a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to Article 9, but:

(1) A security agreement is not necessary to make the security interest enforceable under RCW 62A.9A-203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document. [2000 c 250 § 2.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Article 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Sections

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(2004 Ed.)

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PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

62A.7-601	Lost and missing documents.
62A.7-602	Attachment of goods covered by a negotiable document.
62A.7-603	Conflicting claims; interpleader.

62A.7-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Documents of Title. [1965 ex.s. c 157 § 7-101.]

62A.7-102 Definitions and index of definitions. (1) In this Article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person

who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article 1 (RCW 62A.1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are: "Duly negotiate". RCW 62A.7-501.

"Person entitled under the document". RCW 62A.7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale". RCW 62A.2-106.

"Overseas". RCW 62A.2-323.

"Receipt" of goods. RCW 62A.2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 7-102. Cf. former RCW sections: (i) RCW 22.04.585(1); 1913 c 99 § 58; RRS § 3644; formerly RCW 22.04.010. (ii) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (iii) RCW 81.32.011; 1961 c 14 § 81.32.011; prior: 1915 c 159 § 1; RRS § 3647; formerly RCW 81.32.020. (iv) RCW 81.32.531(1); 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-103 Relation of Article to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto. [1965 ex.s. c 157 § 7-103.]

62A.7-104 Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title. (1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. [1965 ex.s. c 157 § 7-

104. Cf. former RCW sections: (i) RCW 22.04.030, 22.04.050, and 22.04.060; 1913 c 99 §§ 2, 4, and 5; RRS §§ 3588, 3590, and 3591; prior: 1891 c 134 §§ 5 and 8. (ii) RCW 22.04.040 and 22.04.080; 1913 c 99 §§ 3, 7; RRS §§ 3589, 3593. (iii) RCW 63.04.280 and 63.04.310; 1925 ex.s. c 142 §§ 27 and 30; RRS §§ 5836-27 and 5836-30. (iv) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (v) RCW 81.32.021 through 81.32.051, and 81.32.081; 1961 c 14 §§ 81.32.021 through 81.32.051, and 81.32.081; prior: 1915 c 159 §§ 2 through 5, and 8; RRS §§ 3648 through 3651, and 3654; formerly RCW 81.32.030 through 81.32.060, and 81.32.090. (vi) RCW 81.32.531; 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-105 Construction against negative implication. The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable. [1965 ex.s. c 157 § 7-105.]

62A.7-201 Who may issue a warehouse receipt; storage under government bond. (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. [1965 ex.s. c 157 § 7-201. Cf. former RCW 22.04.020; 1913 c 99 § 1; RRS § 3587; prior: 1891 c 134 § 1.]

62A.7-202 Form of warehouse receipt; essential terms; optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written, printed, or electronic terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (RCW 62A.7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Title and do not impair his obligation of delivery (RCW 62A.7-403) or his duty of care (RCW 62A.7-204). Any contrary provisions shall be ineffective. [2000 c 58 § 1; 1965 ex.s. c 157 § 7-202. Cf. former RCW sections: (i) RCW 22.04.030; 1913 c 99 § 2; RRS § 3588; prior: 1891 c 134 § 8. (ii) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589.]

62A.7-203 Liability for non-receipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. [1965 ex.s. c 157 § 7-203. Cf. former RCW 22.04.210; 1913 c 99 § 20; RRS § 3606.]

62A.7-204 Duty of care; contractual limitation of warehouseman's liability. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) This section does not impair or repeal the duties of care or liabilities or penalties for breach thereof as provided

in chapters 22.09 and 22.32 RCW. [1981 c 13 § 1; 1965 ex.s. c 157 § 7-204. Cf. former RCW sections: (i) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589. (ii) RCW 22.04.220; 1913 c 99 § 21; RRS § 3607.]

62A.7-205 Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. [1965 ex.s. c 157 § 7-205.]

62A.7-206 Termination of storage at warehouseman's option. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (RCW 62A.7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. [1965 ex.s. c 157 § 7-206. Cf. former RCW 22.04.350; 1913 c 99 § 34; RRS § 3620.]

62A.7-207 Goods must be kept separate; fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is

severally liable to each owner for that owner's share. Where because of over-issue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. [1965 ex.s. c 157 § 7-207. Cf. former RCW sections: (i) RCW 22.04.230; 1913 c 99 § 22; RRS § 3608; prior: 1891 c 134 § 3. (ii) RCW 22.04.240; 1913 c 99 § 23; RRS § 3609.]

62A.7-208 Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. [1965 ex.s. c 157 § 7-208. Cf. former RCW 22.04.140; 1913 c 99 § 13; RRS § 3599.]

62A.7-209 Lien of warehouseman. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt. A warehouseman's lien as provided in this chapter takes priority over all other liens and perfected or unperfected security interests.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (*Article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under RCW 62A.7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1987 c 395 § 1; 1965 ex.s. c 157 § 7-209. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

62A.7-210 Enforcement of warehouseman's lien. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must

be retained by the warehouseman subject to the terms of the receipt and this Article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-210. Cf. former RCW sections: RCW 22.04.340, 22.04.360, and 22.04.370; 1913 c 99 §§ 33, 35, and 36; RRS §§ 3619, 3621, and 3622.]

62A.7-301 Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling. (1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

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(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. [1965 ex.s. c 157 § 7-301. Cf. former RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-302 Through bills of lading and similar documents. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. [1965 ex.s. c 157 § 7-302.]

62A.7-303 Diversion; reconsignment; change of instructions. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can

hold the bailee according to the original terms. [1965 ex.s. c 157 § 7-303.]

62A.7-304 Bills of lading in a set. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. [1965 ex.s. c 157 § 7-304. Cf. former RCW 81.32.061; 1961 c 14 § 81.32.061; prior: 1915 c 159 § 6; RRS § 3652; formerly RCW 81.32.070.]

62A.7-305 Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. [1965 ex.s. c 157 § 7-305.]

62A.7-306 Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. [1965 ex.s. c 157 § 7-306. Cf. former RCW 81.32.161; 1961 c 14 § 81.32.161; prior: 1915 c 159 § 16; RRS § 3662; formerly RCW 81.32.170.]

62A.7-307 Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for

transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1965 ex.s. c 157 § 7-307. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

62A.7-308 Enforcement of carrier's lien. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of RCW 62A.7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-308. Cf. former RCW 22.04.340; 1913 c 99 § 33; RRS § 3619.]

62A.7-309 Duty of care; contractual limitation of carrier's liability. Save as otherwise provided in RCW 81.29.010 and 81.29.020

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. [1965 ex.s. c 157 § 7-309. Cf. former RCW 81.32.031; 1961 c 14 § 81.32.031; prior: 1915 c 159 § 3; RRS § 3649; formerly RCW 81.32.040.]

Common carriers—Limitation on liability: Chapter 81.29 RCW.

62A.7-401 Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt. [1965 ex.s. c 157 § 7-401. Cf. former RCW sections: (i) RCW 22.04.210; 1913 c 99 § 20; RRS § 3606. (ii) RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-402 Duplicate receipt or bill; overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face. [1965 ex.s. c 157 § 7-402. Cf. former RCW sections: (i) RCW 22.04.070; 1913 c 99 § 6; RRS § 3592; prior: 1886 p 121 § 5. (ii) RCW 81.32.071; 1961 c 14 § 81.32.071; prior: 1915 c 159 § 7; RRS § 3653; formerly RCW 81.32.080.]

62A.7-403 Obligation of warehouseman or carrier to deliver; excuse. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (RCW 62A.2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this Article (RCW 62A.7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under RCW 62A.7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document. [1965 ex.s. c 157 § 7-403. Cf. former RCW sections: (i) RCW 22.04.090, and 22.04.100; 1913 c 99 §§ 8 and 9; RRS §§ 3594, and 3595; prior: 1891 c 134 §§ 6, and 7. (ii) RCW 22.04.110, 22.04.130, 22.04.170, and 22.04.200; 1913 c 99 §§ 10, 12, 16, and 19; RRS §§ 3596, 3598, 3602, and 3605. (iii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iv) RCW 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1961 c 14 §§ 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1915 c 159 §§ 11 through 15, 19, and 22; RRS §§ 3657 through 3661, 3665, and 3668; formerly RCW 81.32.120 through 81.32.160, 81.32.200, and 81.32.230.]

62A.7-404 No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. [1965 ex.s. c 157 § 7-404. Cf. former RCW sections: (i) RCW 22.04.110; 1913 c 99 § 10; RRS § 3596. (ii) RCW 81.32.131; 1961 c 14 § 81.32.131; prior: 1915 c 159 § 13; RRS § 3659; formerly RCW 81.32.140.]

62A.7-501 Form of negotiation and requirements of "due negotiation". (1) A negotiable document of title run-

ning to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. [1965 ex.s. c 157 § 7-501. Cf. former RCW sections: (i) RCW 22.04.380 through 22.04.410, and 22.04.480; 1913 c 99 §§ 37 through 40, and 47; RRS §§ 3623 through 3626, and 3633. (ii) RCW 63.04.290, 63.04.300, 63.04.320, 63.04.330, and 63.04.390; 1925 ex.s. c 142 §§ 28, 29, 31, 32, and 38; RRS §§ 5836-28, 5836-29, 5836-31, 5836-32 and 5836-38. (iii) RCW 81.32.281 through 81.32.311, and 81.32.381; 1961 c 14 §§ 81.32.281 through 81.32.311, and 81.32.381; prior: 1915 c 159 §§ 28 through 31, and 38; RRS §§ 3674 through 3677, and 3684; formerly RCW 81.32.370 through 81.32.400, and 81.32.470.]

62A.7-502 Rights acquired by due negotiation. (1) Subject to the following section and to the provisions of RCW 62A.7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;
 (b) title to the goods;
 (c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake,

duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. [1965 ex.s. c 157 § 7-502. Cf. former RCW sections: (i) RCW 22.04.420, and 22.04.480 through 22.04.500; 1913 c 99 §§ 41, and 47 through 49; RRS §§ 3627, and 3633 through 3635. (ii) RCW 63.04.210(4), 63.04.260, 63.04.340, 63.04.390, and 63.04.630; 1925 ex.s. c 142 §§ 20, 25, 33, 38, and 62; RRS §§ 5836-20, 5836-25, 5836-33, 5836-38, and 5836-62. (iii) RCW 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; 1961 c 14 §§ 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; prior: 1915 c 159 §§ 32, 38, 39, 40, and 42; RRS §§ 3678, 3684, 3685, 3686, and 3688; formerly RCW 81.32.410, 81.32.470, 81.32.480, 81.32.490, and 81.32.510.]

62A.7-503 Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (RCW 62A.7-403) or with power of disposition under this Title (RCW 62A.2-403 and 62A.9A-320) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated, but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver. [2000 c 250 § 9A-814; 1965 ex.s. c 157 § 7-503. Cf. former RCW sections: (i) RCW 22.04.420; 1913 c 99 § 41; RRS § 3627. (ii) RCW 63.04.340; 1925 ex.s. c 142 § 33; RRS § 5836-33. (iii) RCW 81.32.321; 1961 c 14 § 81.32.321; prior: 1915 c 159 § 32; RRS § 3678; formerly RCW 81.32.410.]

Effective date—2000 c 250: See RCW 62A.9A-701.

62A.7-504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery. (1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under RCW 62A.7-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under RCW 62A.2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. [1965 ex.s. c 157 § 7-504. Cf. former RCW sections: (i) RCW 22.04.420(2) and 22.04.430; 1913 c 99 §§ 41 and 42; RRS §§ 3627, and 3628. (ii) RCW 63.04.350; 1925 ex.s. c 142 § 34; RRS § 5834-34. (iii) RCW 81.32.321(2) and 81.32.331; 1961 c 14 §§ 81.32.321 and 81.32.331; prior: 1915 c 159 §§ 32 and 33; RRS §§ 3678 and 3679; formerly RCW 81.32.410 and 81.32.420.]

62A.7-505 Indorser not a guarantor for other parties. The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. [1965 ex.s. c 157 § 7-505. Cf. former RCW sections: (i) RCW 22.04.460; 1913 c 99 § 45; RRS § 3631. (ii) RCW 63.04.380; 1925 ex.s. c 142 § 37; RRS § 5836-37. (iii) RCW 81.32.361; 1961 c 14 § 81.32.361; prior: 1915 c 159 § 36; RRS § 3682; formerly RCW 81.32.450.]

62A.7-506 Delivery without indorsement: Right to compel indorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied. [1965 ex.s. c 157 § 7-506. Cf. former RCW sections: (i) RCW 22.04.440; 1913 c 99 § 43; RRS § 3629. (ii) RCW 63.04.360; 1925 ex.s. c 142 § 35; RRS § 5836-35. (iii) RCW 81.32.341; 1961 c 14 § 81.32.341; prior: 1915 c 159 § 34; RRS § 3680; formerly RCW 81.32.430.]

62A.7-507 Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents. [1965 ex.s. c 157 § 7-507. Cf. former RCW sections: (i) RCW 22.04.450; 1913 c 99 § 44; RRS § 3630. (ii) RCW 63.04.370; 1925 ex.s. c 142 § 36; RRS §

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5836-36. (iii) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440.]

62A.7-508 Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. [1965 ex.s. c 157 § 7-508. Cf. former RCW sections: (i) RCW 22.04.470; 1913 c 99 § 46; RRS § 3632. (ii) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

62A.7-509 Receipt or bill: When adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5). [1965 ex.s. c 157 § 7-509.]

62A.7-601 Lost and missing documents. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. [1965 ex.s. c 157 § 7-601. Cf. former RCW sections: (i) RCW 22.04.150; 1913 c 99 § 14; RRS § 3600. (ii) RCW 81.32.171; 1961 c 14 § 81.32.171; prior: 1915 c 159 § 17; RRS § 3663; formerly RCW 81.32.180.]

62A.7-602 Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunc-

tion takes free of the lien imposed by judicial process. [1965 ex.s. c 157 § 7-602. Cf. former RCW sections: (i) RCW 22.04.260; 1913 c 99 § 25; RRS § 3611. (ii) RCW 81.32.241; 1961 c 14 § 81.32.241; prior: 1915 c 159 § 24; RRS § 3670; formerly RCW 81.32.250.]

62A.7-603 Conflicting claims; interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate. [1965 ex.s. c 157 § 7-603. Cf. former RCW sections: (i) RCW 22.04.170 and 22.04.180; 1913 c 99 §§ 16 and 17; RRS §§ 3602 and 3603. (ii) RCW 81.32.201 and 81.32.211; 1961 c 14 §§ 81.32.201 and 81.32.211; prior: 1915 c 159 §§ 20 and 21; RRS §§ 3666 and 3667; formerly RCW 81.32.210 and 81.32.220.]

Article 8

INVESTMENT SECURITIES

Sections

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62A.8-101 Short title. This Article may be cited as Uniform Commercial Code—Investment Securities. [1995 c 48 § 1; 1965 ex.s. c 157 § 8-101.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-102 Definitions. (1) In this Article:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including adoption of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of RCW 62A.8-501(2) (b) or (c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) "Financial asset," except as otherwise provided in RCW 62A.8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in RCW 62A.8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this Article and the sections in which they appear are:

Appropriate person	RCW 62A.8-107
Control	RCW 62A.8-106
Delivery	RCW 62A.8-301
Investment company security	RCW 62A.8-103
Issuer	RCW 62A.8-201
Overissue	RCW 62A.8-210
Protected purchaser	RCW 62A.8-303
Securities account	RCW 62A.8-501

(3) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(4) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule. [1995 c 48 § 2; 1986 c 35 § 1; 1973 c 98 § 1; 1965 ex.s. c 157 § 8-102. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-103 Rules for determining whether certain obligations and interests are securities or financial assets.

(1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly

provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9A-102(a)(15), is not a security or a financial asset. [2000 c 250 § 9A-815; 1995 c 48 § 3; 1986 c 35 § 2; 1965 ex.s. c 157 § 8-103. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.140.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-104 Acquisition of security or financial asset or interest therein. (1) A person acquires a security or an interest therein, under this Article, if:

(a) The person is a purchaser to whom a security is delivered pursuant to RCW 62A.8-301; or

(b) The person acquires a security entitlement to the security pursuant to RCW 62A.8-501.

(2) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5 of this Article, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in RCW 62A.8-503.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2) of this section. [1995 c 48 § 4; 1986 c 35 § 3; 1965 ex.s. c 157 § 8-104.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations—Purchase of own shares: RCW 23B.06.030 and 23B.06.310.

62A.8-105 Notice of adverse claim. (1) A person has notice of an adverse claim if:

(a) The person knows of the adverse claim;

(b) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(c) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is

not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(a) One year after a date set for presentment or surrender for redemption or exchange; or

(b) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(a) Whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under *Article 9 is not notice of an adverse claim to a financial asset. [1995 c 48 § 5; 1986 c 35 § 4; 1965 ex.s. c 157 § 8-105. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-106 Control. (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(a) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) The uncertificated security is delivered to the purchaser; or

(b) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) The purchaser becomes the entitlement holder;

(b) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(c) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired

control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3) or (4) of this section has control even if the registered owner in the case of subsection (3) of this section or the entitlement holder in the case of subsection (4) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder. [2000 c 250 § 9A-816; 1995 c 48 § 6; 1986 c 35 § 5; 1965 ex.s. c 157 § 8-106.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-107 Whether indorsement, instruction, or entitlement is effective. (1) "Appropriate person" means:

(a) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(b) With respect to an instruction, the registered owner of an uncertificated security;

(c) With respect to an entitlement order, the entitlement holder;

(d) If the person designated in (a), (b), or (c) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(e) If the person designated in (a), (b), or (c) of this subsection lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if:

(a) It is made by the appropriate person;

(b) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under RCW 62A.8-106 (3)(b) or (4)(b); or

(c) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) The representative has failed to comply with a controlling instrument or with the law of the state having juris-

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dition of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(b) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances. [1995 c 48 § 7; 1986 c 35 § 6; 1965 ex.s. c 157 § 8-107.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-108 Warranties in direct holding. (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(a) The certificate is genuine and has not been materially altered;

(b) The transferor or indorser does not know of any fact that might impair the validity of the security;

(c) There is no adverse claim to the security;

(d) The transfer does not violate any restriction on transfer;

(e) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(f) The transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(a) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(b) The security is valid;

(c) There is no adverse claim to the security; and

(d) At the time the instruction is presented to the issuer:

(i) The purchaser will be entitled to the registration of transfer;

(ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) The transfer will not violate any restriction on transfer; and

(iv) The requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(a) The uncertificated security is valid;

(b) There is no adverse claim to the security;

(c) The transfer does not violate any restriction on transfer; and

(d) The transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer that:

(a) There is no adverse claim to the security; and

(b) The indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(a) The instruction is effective; and

(b) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7) of this section.

(9) Except as otherwise provided in subsection (7) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1) through (6) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (1) or (2) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer. [1995 c 48 § 8; 1986 c 35 § 7.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-109 Warranties in indirect holding. (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(a) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(b) There is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a secu-

rities account makes to the securities intermediary the warranties specified in RCW 62A.8-108 (1) or (2).

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in RCW 62A.8-108 (1) or (2). [1995 c 48 § 9.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-110 Applicability; choice of law. (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this section, governs:

(a) The validity of a security;

(b) The rights and duties of the issuer with respect to registration of transfer;

(c) The effectiveness of registration of transfer by the issuer;

(d) Whether the issuer owes any duties to an adverse claimant to a security; and

(e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5) of this section, governs:

(a) Acquisition of a security entitlement from the securities intermediary;

(b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection (1)(b) through (e) of this section.

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this Article, or Article 62A.9A RCW, that jurisdiction is the securities intermediary's jurisdiction.

(b) If (a) of this subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular

jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If neither (a) nor (b) of this subsection applies, and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(d) If (a), (b), and (c) of this subsection do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(e) If (a), (b), (c), and (d) of this subsection do not apply, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account. [2001 c 32 § 14; 2000 c 250 § 9A-817; 1995 c 48 § 10.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-111 Clearing corporation rules. A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this Title and affects another party who does not consent to the rule. [1995 c 48 § 11.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-112 Creditor's legal process. (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (4) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (4) of this section.

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (4) of this section.

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

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(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process. [1995 c 48 § 12.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-113 Statute of frauds inapplicable. A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making. [1995 c 48 § 13.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-114 Evidentiary rules concerning certificated securities. The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted. [1995 c 48 § 14.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-115 Securities intermediary and others not liable to adverse claimant. A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim. [1995 c 48 § 15.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-116 Securities intermediary as purchaser for value. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder. [1995 c 48 § 16.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-201 Issuer. (1) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(a) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(b) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(c) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(d) Becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respect to registration of a transfer, issuer means a person on whose behalf transfer books are maintained. [1995 c 48 § 17; 1986 c 35 § 8; 1965 ex.s. c 157 § 8-201. Cf. former RCW sections: RCW 62.01.029, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.029, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 29, and 60 through 62; RRS §§ 3420, and 3451 through 3453.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations, effect of merger or consolidation: RCW 23B.11.060.

Securities Act, issuer: RCW 21.20.005(7).

62A.8-202 Issuer's responsibility and defenses; notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subsection (2)(a) of this section applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in RCW 62A.8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly. [1995 c 48 § 18; 1986 c 35 § 9; 1965 ex.s. c 157 § 8-202. Cf. former RCW sections: RCW 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 16, 23, 28, 56, 57, and 60 through 62; RRS §§ 3407, 3414, 3419, 3447, 3448, and 3451 through 3453.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-203 Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) Is not covered by subsection (1) of this section and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due. [1995 c 48 § 19; 1986 c 35 § 10; 1965 ex.s. c 157 § 8-203. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-204 Effect of issuer's restrictions on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) The security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) The security is uncertificated and the registered owner has been notified by the restriction. [1995 c 48 § 20; 1986 c 35 § 11; 1965 ex.s. c 157 § 8-204. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.160.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations—Stock certificates—Limitations: RCW 23B.06.250.

62A.8-205 Effect of unauthorized signature on security certificate. An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar certificates, or the immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the persons listed in subsection (1) of this section, entrusted with responsible handling of the security certificate. [1995 c 48 § 21; 1986 c 35 § 12; 1965 ex.s. c 157 § 8-205. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-206 Completion or alteration of security certificate. (1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even though the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms. [1995 c 48 § 22; 1986 c 35 § 13; 1965 ex.s. c 157 § 8-206. Cf. former RCW sections: (i) RCW 23.80.160; 1939 c 100 § 16; RRS § 3803-116; formerly RCW 23.20.170. (ii) RCW 62.01.014, 62.01.015, and 62.01.124; 1955 c 35 §§ 62.01.014, 62.01.015, and

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62.01.124; prior: 1899 c 149 §§ 14, 15, and 124; RRS §§ 3405, 3406, and 3514.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-207 Rights and duties of issuer with respect to registered owners. (1) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(2) This Article does not affect the liability of the registered owner of a security for a call, assessment, or the like. [1995 c 48 § 23; 1986 c 35 § 14; 1965 ex.s. c 157 § 8-207. Cf. former RCW 23.80.020 and 23.80.030; 1939 c 100 §§ 2 and 3; RRS §§ 3803-102 and 3803-103; formerly RCW 23.20.030 and 23.20.040.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-208 Effect of signature of authenticating trustee, registrar, or transfer agent. (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(a) The certificate is genuine;

(b) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(c) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing under subsection (1) of this section does not assume responsibility for the validity of the security in other respects. [1995 c 48 § 24; 1986 c 35 § 15; 1965 ex.s. c 157 § 8-208.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-209 Issuer's lien. A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate. [1995 c 48 § 25.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-210 Overissue. (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4) of this section, the provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand. [1995 c 48 § 26.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-301 Delivery. (1) Delivery of a certificated security to a purchaser occurs when:

(a) The purchaser acquires possession of the security certificate;

(b) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser. [2000 c 250 § 9A-818; 1995 c 48 § 27; 1986 c 35 § 16; 1965 ex.s. c 157 § 8-301. Cf. former RCW sections: (i) RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443. (iii) RCW 62.01.057 through 62.01.059; 1955 c 35 §§ 62.01.057 through 62.01.059; prior: 1899 c 149 §§ 57 through 59; RRS §§ 3448 through 3450.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-302 Rights of purchaser. (1) Except as otherwise provided in subsections (2) and (3) of this section, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser. [2000 c 250 § 9A-819; 1995 c 48 § 28; 1986 c 35 § 17; 1965 ex.s. c 157 § 8-302. Cf. former RCW sections: (i) RCW 23.80.230(2); 1939 c 100 § 23; RRS § 3803-123. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-303 Protected purchaser. (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(a) Gives value;

(b) Does not have notice of any adverse claim to the security; and

(c) Obtains control of the certificated or uncertificated security.

(2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim. [1995 c 48 § 29; 1986 c 35 § 18; 1965 ex.s. c 157 § 8-303.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-304 Indorsement. (1) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in RCW 62A.8-108 and not an obligation that the security will be honored by the issuer. [1995 c 48 § 30; 1986 c 35 § 19; 1965 ex.s. c 157 § 8-304. Cf. former RCW sections: RCW 62.01.037 and 62.01.056; 1955 c 35 §§ 62.01.037 and 62.01.056; prior: 1899 c 149 §§ 37 and 56; RRS §§ 3428 and 3447.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-305 Instruction. (1) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by RCW 62A.8-108 and not an obligation that the security will be honored by the issuer. [1995 c 48 § 31; 1986 c 35 § 20; 1965 ex.s. c 157 § 8-305. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and

62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-306 Effect of guaranteeing signature, indorsement, or instruction. (1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(a) The signature was genuine;

(b) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(c) The signer had legal capacity to sign.

(2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(a) The signature was genuine;

(b) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(c) The signer had legal capacity to sign.

(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) of this section and also warrants that at the time the instruction is presented to the issuer:

(a) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(b) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) of this section or a special guarantor under subsection (3) of this section does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) of this section and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) of this section and also warrants the rightfulness of the transfer in all respects.

(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor. [1995 c 48 § 32; 1986 c 35 § 21; 1965 ex.s. c 157 § 8-306. Cf. former RCW sections: (i) RCW 23.80.110 and 23.80.120; 1939 c 100 §§ 11 and 12; RRS §§ 3803-111 and

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3803-112; formerly RCW 23.20.120 and 23.20.130. (ii) RCW 62.01.065 through 62.01.067, and 62.01.069; 1955 c 35 §§ 62.01.065 through 62.01.067, and 62.01.069; prior: 1899 c 149 §§ 65 through 67, and 69; RRS §§ 3456 through 3458, and 3460.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-307 Purchaser's right to requisites for registration of transfer. Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer. [1995 c 48 § 33; 1986 c 35 § 22; 1965 ex.s. c 157 § 8-307. Cf. former RCW sections: (i) RCW 23.80.090; 1939 c 100 § 9; RRS § 3803-109; formerly RCW 23.20.100. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-401 Duty of issuer to register transfer. (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(a) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(b) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(c) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (RCW 62A.8-402);

(d) Any applicable law relating to the collection of taxes has been complied with;

(e) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with RCW 62A.8-204;

(f) A demand that the issuer not register transfer has not become effective under RCW 62A.8-403, or the issuer has complied with RCW 62A.8-403(2) but no legal process or indemnity bond is obtained as provided in RCW 62A.8-403(4); and

(g) The transfer is in fact rightful or is to a protected purchaser.

(2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer. [1995 c 48 § 34; 1986 c 35 § 37; 1965 ex.s. c 157 § 8-401.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-402 Assurance that indorsement or instruction is effective. (1) An issuer may require the following

assurance that each necessary indorsement or each instruction is genuine and authorized:

(a) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(b) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(c) If the indorsement is made or the instruction is originated by a fiduciary pursuant to RCW 62A.8-107(1) (d) or (e), appropriate evidence of appointment or incumbency;

(d) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(2) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) In this section:

(a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(b) "Appropriate evidence of appointment or incumbency" [means]:

(i) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(ii) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considered appropriate. [1995 c 48 § 35; 1986 c 35 § 38; 1965 ex.s. c 157 § 8-402.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-403 Demand that issuer not register transfer.

(1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (a) the person who initiated the demand at the address provided in the demand and (b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(i) The certificated security has been presented for registration of transfer or instruction for registration of transfer of uncertificated security has been received;

(ii) A demand that the issuer not register transfer had previously been received; and

(iii) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in subsection (2)(b)(iii) of this section may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(a) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(b) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective. [1995 c 48 § 36; 1986 c 35 § 39; 1965 ex.s. c 157 § 8-403.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-404 Wrongful registration. (1) Except as otherwise provided in RCW 62A.8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(a) Pursuant to an ineffective indorsement or instruction;

(b) After a demand that the issuer not register transfer became effective under RCW 62A.8-403(1) and the issuer did not comply with RCW 62A.8-403(2);

(c) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(d) By an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by RCW 62A.8-210.

(3) Except as otherwise provided in subsection (1) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or

instruction. [1995 c 48 § 37; 1986 c 35 § 40; 1965 ex.s. c 157 § 8-404.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-405 Replacement of lost, destroyed, or wrongfully taken security certificate. (1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(a) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(b) Files with the issuer a sufficient indemnity bond; and

(c) Satisfies any other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by RCW 62A.8-209. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from the person to whom it was issued or any person taking under that person, except a protected purchaser. [1995 c 48 § 38; 1986 c 35 § 41; 1965 ex.s. c 157 § 8-405. Cf. former RCW 23.80.170; 1939 c 100 § 17; RRS § 3803-117; formerly RCW 23.20.180.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-406 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate. If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under RCW 62A.8-404 or a claim to a new security certificate under RCW 62A.8-405. [1995 c 48 § 39; 1986 c 35 § 42; 1965 ex.s. c 157 § 8-406.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-407 Authenticating trustee, transfer agent, and registrar. A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions. [1995 c 48 § 40; 1986 c 35 § 43.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-501 Securities account; acquisition of security entitlement from securities intermediary. (1) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

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(2) Except as otherwise provided in subsections (4) and (5) of this section, a person acquires a security entitlement if a securities intermediary:

(a) Indicates by book entry that a financial asset has been credited to the person's securities account;

(b) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(c) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(3) If a condition of subsection (2) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement. [1995 c 48 § 41.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-502 Assertion of adverse claim against entitlement holder. An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under RCW 62A.8-501 for value and without notice of the adverse claim. [1995 c 48 § 42.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-503 Property interest of entitlement holder in financial asset held by securities intermediary. (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in RCW 62A.8-511.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under RCW 62A.8-505 through 62A.8-508.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(a) Insolvency proceedings have been initiated by or against the securities intermediary;

(b) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(c) The securities intermediary violated its obligations under RCW 62A.8-504 by transferring the financial asset or interest therein to the purchaser; and

(d) The purchaser is not protected under subsection (5) of this section.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(5) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under RCW 62A.8-504. [1995 c 48 § 43.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-504 Duty of securities intermediary to maintain financial asset. (1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1) of this section.

(3) A securities intermediary satisfies the duty in subsection (1) of this section if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements. [1995 c 48 § 44.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-505 Duty of securities intermediary with respect to payments and distributions. (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary. [1995 c 48 § 45.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-506 Duty of securities intermediary to exercise rights as directed by entitlement holder. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. [1995 c 48 § 46.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-507 Duty of securities intermediary to comply with entitlement order. (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages. [1995 c 48 § 47.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-508 Duty of securities intermediary to change entitlement holder's position to other form of security holding. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be trans-

ferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. [1995 c 48 § 48.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-509 Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder. (1) If the substance of a duty imposed upon a securities intermediary by RCW 62A.8-504 through 62A.8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by RCW 62A.8-504 through 62A.8-508 is subject to:

(a) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(b) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) RCW 62A.8-504 through 62A.8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule. [1995 c 48 § 49.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-510 Rights of purchaser of security entitlement from entitlement holder. (1) In a case not covered by the priority rules in Article 9A or the rules stated in subsection (3) of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under RCW 62A.8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in Article 9A, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a pur-

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chaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (4) of this section, purchasers who have control rank according to priority in time of:

(a) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under RCW 62A.8-106(4)(a);

(b) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under RCW 62A.8-106(4)(b); or

(c) If the purchaser obtained control through another person under RCW 62A.8-106(4)(c), the time on which priority would be based under this subsection if the other person were the secured party.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary. [2001 c 32 § 15; 2000 c 250 § 9A-820; 1995 c 48 § 50.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-511 Priority among security interests and entitlement holders. (1) Except as otherwise provided in subsections (2) and (3) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders. [1995 c 48 § 51.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-601 Savings clause. (1) Chapter 48, Laws of 1995 does not affect an action or proceeding commenced before April 17, 1995.

(2) If a security interest in a security is perfected by April 17, 1995, and the action by which the security interest was perfected would suffice to perfect a security interest under chapter 48, Laws of 1995, no further action is required to continue perfection. If a security interest in a security is perfected by April 17, 1995, but the action by which the security interest was perfected would not suffice to perfect a security

interest under chapter 48, Laws of 1995, the security interest remains perfected through December 31, 1995, and continues perfected thereafter if appropriate action to perfect under chapter 48, Laws of 1995 is taken by that date. If a security interest is perfected by April 17, 1995, and the security interest can be perfected by filing under chapter 48, Laws of 1995, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect. [1995 c 48 § 53.]

Effective date—1995 c 48: See RCW 62A.11-113.

Article 9A

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

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62A.9A-101 Short title. This Article may be cited as the Uniform Commercial Code-Secured Transactions. [2000 c 250 § 9A-101.]

62A.9A-102 Definitions and index of definitions. (a) **Article 9A definitions.** In this Article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2)(A) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

(B) The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business, furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor has an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term "chattel paper" does not include (A) charters or other contracts involving the use or hire of a vessel or (B) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual, and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to, or the death of, an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business, provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs a consumer obligation; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligation" means an obligation which:

(A) Is incurred as part of a transaction entered into primarily for personal, family, or household purposes; and

(B) Arises from an extension of credit, or commitment to extend credit, in an aggregate amount not exceeding forty

thousand dollars, or is secured by personal property used or expected to be used as a principal dwelling.

"Consumer obligor" means an obligor who is an individual and who incurred a consumer obligation.

(26) "Consumer transaction" means a transaction in which (A) an individual incurs a consumer obligation, (B) a security interest secures the obligation, and (C) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in RCW 62A.7-201(2).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to RCW 62A.9A-519(a).

(37) "Filing office" means an office designated in RCW 62A.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to RCW 62A.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying RCW 62A.9A-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (A) fixtures, (B) standing timber that is to be cut and removed under a conveyance or contract for sale, (C) the unborn young of animals, (D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (E) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction or a manufactured home converted to real property under chapter 65.20 RCW.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (A) investment property, (B) letters of credit, (C) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, (D) writings that do not contain a promise or order to pay, or (E) writings that are expressly nontransferable or nonassignable.

(48) "Inventory" means goods, other than farm products, which:

- (A) Are leased by a person as lessor;
- (B) Are held by a person for sale or lease or to be furnished under a contract of service;
- (C) Are furnished by a person under a contract of service; or
- (D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

- (A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (B) An assignee for benefit of creditors from the time of assignment;
- (C) A trustee in bankruptcy from the date of the filing of the petition; or
- (D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a manufactured home or mobile home as defined in RCW 46.04.302.

(54) [Reserved]

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under RCW 62A.9A-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (A) money, (B) money's worth in property, services, or new credit, or (C) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (A) owes payment or other performance of the obligation, (B) has provided property other than the collateral to secure payment or other performance of the obligation, or (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in RCW 62A.9A-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under RCW 62A.9A-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

- (A) The spouse of the individual;
- (B) A brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) An ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

- (A) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) An officer or director of, or a person performing similar functions with respect to, the organization;
- (C) An officer or director of, or a person performing similar functions with respect to, a person described in (63)(A) of this subsection;

(D) The spouse of an individual described in (63)(A), (B), or (C) of this subsection; or

(E) An individual who is related by blood or marriage to an individual described in (63)(A), (B), (C), or (D) of this subsection and shares the same home with the individual.

(64) "Proceeds", except as used in RCW 62A.9A-609(b), means the following property:

- (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) Whatever is collected on, or distributed on account of, collateral;
- (C) Rights arising out of collateral;
- (D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party, which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

- (A) Debt securities are issued;
- (B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and
- (C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a

subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under (A) of this subsection.

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other Articles.** The following definitions in other Articles apply to this Article:

"Applicant." RCW 62A.5-102.

"Beneficiary." RCW 62A.5-102.

"Broker." RCW 62A.8-102.

"Certificated security." RCW 62A.8-102.

"Check." RCW 62A.3-104.

"Clearing corporation." RCW 62A.8-102.

"Contract for sale." RCW 62A.2-106.

"Customer." RCW 62A.4-104.

"Entitlement holder." RCW 62A.8-102.

"Financial asset." RCW 62A.8-102.

"Holder in due course." RCW 62A.3-302.

"Issuer" with respect to a letter of credit or letter-of-credit right. RCW 62A.5-102.

"Issuer" with respect to a security. RCW 62A.8-201.

"Lease." RCW 62A.2A-103.

"Lease agreement." RCW 62A.2A-103.

"Lease contract." RCW 62A.2A-103.

"Leasehold interest." RCW 62A.2A-103.

"Lessee." RCW 62A.2A-103.

"Lessee in ordinary course of business." RCW 62A.2A-103.

"Lessor." RCW 62A.2A-103.

"Lessor's residual interest." RCW 62A.2A-103.

"Letter of credit." RCW 62A.5-102.

"Merchant." RCW 62A.2-104.

"Negotiable instrument." RCW 62A.3-104.

"Nominated person." RCW 62A.5-102.

"Note." RCW 62A.3-104.

"Proceeds of a letter of credit." RCW 62A.5-114.

"Prove." RCW 62A.3-103.

"Sale." RCW 62A.2-106.

"Securities account." RCW 62A.8-501.

"Securities intermediary." RCW 62A.8-102.

"Security." RCW 62A.8-102.

"Security certificate." RCW 62A.8-102.

"Security entitlement." RCW 62A.8-102.

"Uncertificated security." RCW 62A.8-102.

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [2001 c 32 § 16; 2000 c 250 § 9A-102.]

Effective date—2001 c 32: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect July 1, 2001." [2001 c 32 § 55.]

62A.9A-103 Purchase-money security interest; application of payments; burden of establishing. (a) **Definitions.** In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in, or the use of, the collateral, if the value is in fact so used.

(b) **Purchase-money security interest in goods.** A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) **Purchase-money security interest in software.** A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) **Consignor's inventory purchase-money security interest.** The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) **Application of payment in nonconsumer-goods transaction.** In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) **No loss of status of purchase-money security interest in nonconsumer-goods transaction.** In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) **Burden of proof in nonconsumer-goods transaction.** In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) **Nonconsumer-goods transactions; no inference.** The limitation of the rules in subsections (e), (f), and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches. [2000 c 250 § 9A-103.]

62A.9A-104 Control of deposit account. (a) **Requirements for control.** A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) **Debtor's right to direct disposition.** A secured party that has satisfied subsection (a) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account. [2001 c 32 § 17; 2000 c 250 § 9A-104.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-105 Control of electronic chattel paper. A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subsections (4), (5), and (6) of this section, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision. [2001 c 32 § 18; 2000 c 250 § 9A-105.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-106 Control of investment property. (a) **Control under RCW 62A.8-106.** A person has control of a certificated security, uncertificated security, or security entitlement as provided in RCW 62A.8-106.

(b) **Control of commodity contract.** A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) **Effect of control of securities account or commodity account.** A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account. [2000 c 250 § 9A-106.]

62A.9A-107 Control of letter-of-credit right. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under RCW 62A.5-114(3) or otherwise applicable law or practice. [2001 c 32 § 19; 2000 c 250 § 9A-107.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-108 Sufficiency of description in security agreement. (a) **Sufficiency of description.** Except as otherwise provided in subsections (c), (d), and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) **Examples of reasonable identification.** Except as otherwise provided in subsection (d) of this section, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;

(2) Category;

(3) Except as otherwise provided in subsection (e) of this section, a type of collateral defined in the Uniform Commercial Code;

(4) Quantity;

(5) Computational or allocational formula or procedure;

or

(6) Except as otherwise provided in subsection (c) of this section, any other method, if the identity of the collateral is objectively determinable.

(c) **Supergeneric description not sufficient.** A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not

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reasonably identify the collateral. However, as provided in RCW 62A.9A-504, such a description is sufficient in a financing statement.

(d) **Investment property.** Except as otherwise provided in subsection (e) of this section, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) **When description by type insufficient.** A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account. [2000 c 250 § 9A-108.]

62A.9A-109 Scope. (a) **General scope of Article.** Except as otherwise provided in subsections (c) and (d) of this section, this Article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) A consignment;

(5) A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5), as provided in RCW 62A.9A-110; and

(6) A security interest arising under RCW 62A.4-210 or 62A.5-118.

(b) **Security interest in secured obligation.** The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

(c) **Extent to which Article does not apply.** This Article does not apply to the extent that:

(1) A statute, regulation, or treaty of the United States preempts this Article;

(2) Another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under RCW 62A.5-114.

(d) **Inapplicability of Article.** This Article does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but RCW 62A.9A-333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary, or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but RCW 62A.9A-315 and 62A.9A-322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, but:

(A) RCW 62A.9A-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) RCW 62A.9A-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) Liens on real property in RCW 62A.9A-203 and 62A.9A-308;

(B) Fixtures in RCW 62A.9A-334;

(C) Fixture filings in RCW 62A.9A-501, 62A.9A-502, 62A.9A-512, 62A.9A-516, and 62A.9A-519; and

(D) Security agreements covering personal and real property in RCW 62A.9A-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but RCW 62A.9A-315 and 62A.9A-322 apply with respect to proceeds and priorities in proceeds;

(13) An assignment in a consumer transaction of a deposit account on which checks can be drawn, but RCW 62A.9A-315 and 62A.9A-322 apply with respect to proceeds and priorities in proceeds; or

(14) A transfer by this state or a governmental unit of this state. [2000 c 250 § 9A-109.]

62A.9A-110 Security interests arising under Article 2 or 2A. A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5) is subject to this Article. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if RCW 62A.9A-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by Article 2 or 2A; and

(4) The security interest has priority over a conflicting security interest created by the debtor. [2000 c 250 § 9A-110.]

62A.9A-201 General effectiveness of security agreement. (a) **General effectiveness.** Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) **Applicable consumer laws and other law.** A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers and (1) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (2) any consumer-protection statute or regulation.

(c) **Other applicable law controls.** In case of conflict between this Article and a rule of law, statute, or regulation described in subsection (b) of this section, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.

(d) **Further deference to other applicable law.** This Article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b) of this section; or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it. [2001 c 32 § 20; 2000 c 250 § 9A-201.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-202 Title to collateral immaterial. Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this Article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor. [2000 c 250 § 9A-202.]

62A.9A-203 Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites. (a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under RCW 62A.9A-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under RCW 62A.8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 pursuant to the debtor's security agreement.

(c) **Other UCC provisions.** Subsection (b) of this section is subject to RCW 62A.4-210 on the security interest of a collecting bank, RCW 62A.5-118 on the security interest of a letter-of-credit issuer or nominated person, RCW 62A.9A-110 on a security interest arising under Article 2 or 2A, and RCW 62A.9A-206 on security interests in investment property.

(d) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) **Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by RCW 62A.9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **Commodity contracts carried in commodity account.** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account. [2000 c 250 § 9A-203.]

62A.9A-204 After-acquired property; future advances. (a) **After-acquired collateral.** Except as otherwise provided in subsection (b) of this section, a security agreement may create or provide for a security interest in after-acquired collateral.

(b) **When after-acquired property clause not effective.** A security interest does not attach, under a term constituting an after-acquired property clause, to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

(2) A commercial tort claim.

(c) **Future advances and other value.** A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment. [2000 c 250 § 9A-204.]

62A.9A-205 Use or disposition of collateral permissible. (a) **When security interest not invalid or fraudulent.** A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

(A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) Collect, compromise, enforce, or otherwise deal with collateral;

(C) Accept the return of collateral or make repossessions; or

(D) Use, commingle, or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) **Requirements of possession not relaxed.** This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party. [2000 c 250 § 9A-205.]

62A.9A-206 Security interest arising in purchase or delivery of financial asset. (a) **Security interest when person buys through securities intermediary.** A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) **Security interest secures obligation to pay for financial asset.** The security interest described in subsection (a) of this section secures the person's obligation to pay for the financial asset.

(c) **Security interest in payment against delivery transaction.** A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

(A) In the ordinary course of business, is transferred by delivery with any necessary indorsement or assignment; and

(B) Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) **Security interest secures obligation to pay for delivery.** The security interest described in subsection (c) of this section secures the obligation to make payment for the delivery. [2000 c 250 § 9A-206.]

62A.9A-207 Rights and duties of secured party having possession or control of collateral. (a) **Duty of care when secured party in possession.** Except as otherwise provided in subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) **Expenses, risks, duties, and rights when secured party in possession.** Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) **Duties and rights when secured party in possession or control.** Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) **Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignee:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply. [2000 c 250 § 9A-207.]

62A.9A-208 Additional duties of secured party having control of collateral. (a) **Applicability of section.** This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under RCW 62A.9A-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under RCW 62A.9A-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under RCW 62A.9A-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under RCW 62A.8-106(4)(b) or 62A.9A-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter-of-credit right under RCW 62A.9A-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party. [2001 c 32 § 21; 2000 c 250 § 9A-208.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-209 Duties of secured party if account debtor has been notified of assignment. (a) **Applicability of section.** Except as otherwise provided in subsection (c) of this section, this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under RCW 62A.9A-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) **Inapplicability to sales.** This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible. [2000 c 250 § 9A-209.]

62A.9A-210 Request for accounting; request regarding list of collateral or statement of account. (a) **Definitions.** In this section:

(1) "Request" means a record of a type described in (2), (3), or (4) of this subsection.

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) **Duty to respond to requests.** Subject to subsections (c), (d), (e), and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) **Request regarding list of collateral; statement concerning type of collateral.** A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

(d) **Request regarding list of collateral; no interest claimed.** A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of, or successor to, the recipient's interest in the collateral.

(e) **Request for accounting or regarding statement of account; no interest in obligation claimed.** A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of, or successor to, the recipient's interest in the obligations.

(f) **Charges for responses.** A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response. [2000 c 250 § 9A-210.]

62A.9A-301 Law governing perfection and priority of security interests. Except as otherwise provided in RCW 62A.9A-303 through 62A.9A-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4) of this section, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the well-head or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral. [2001 c 32 § 22; 2000 c 250 § 9A-301.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-302 Law governing perfection and priority of agricultural liens. While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products. [2000 c 250 § 9A-302.]

62A.9A-303 Law governing perfection and priority of security interests in goods covered by a certificate of title. (a) **Applicability of section.** This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) **When goods covered by certificate of title.** Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) **Applicable law.** The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title. [2000 c 250 § 9A-303.]

62A.9A-304 Law governing perfection and priority of security interests in deposit accounts. (a) **Law of bank's jurisdiction governs.** The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) **Bank's jurisdiction.** The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this Article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither (1) nor (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If (1) through (3) of this subsection do not apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If (1) through (4) of this subsection do not apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located. [2000 c 250 § 9A-304.]

62A.9A-305 Law governing perfection and priority of security interests in investment property. (a) **Governing law: General rules.** Except as otherwise provided in subsection (c) of this section, the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a

security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in RCW 62A.8-110(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in RCW 62A.8-110(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) **Commodity intermediary's jurisdiction.** The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this Article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither (1) nor (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If (1) through (3) of this subsection do not apply, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If (1) through (4) of this subsection do not apply, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) **When perfection governed by law of jurisdiction where debtor located.** The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary. [2001 c 32 § 23; 2000 c 250 § 9A-305.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-306 Law governing perfection and priority of security interests in letter-of-credit rights. (a) **Governing law: Issuer's or nominated person's jurisdiction.**

Subject to subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) **Issuer's or nominated person's jurisdiction.** For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in RCW 62A.5-116.

(c) **When section not applicable.** This section does not apply to a security interest that is perfected only under RCW 62A.9A-308(d). [2001 c 32 § 24; 2000 c 250 § 9A-306.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-307 Location of debtor. (a) **"Place of business."** In this section, "place of business" means a place where a debtor conducts its affairs.

(b) **Debtor's location: General rules.** Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) **Limitation of applicability of subsection (b).** Subsection (b) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this section does not apply, the debtor is located in the District of Columbia.

(d) **Continuation of location: Cessation of existence, etc.** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) **Location of registered organization organized under state law.** A registered organization that is organized under the law of a state is located in that state.

(f) **Location of registered organization organized under federal law; bank branches and agencies.** Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) In the District of Columbia, if neither (1) nor (2) of this subsection applies.

(g) **Continuation of location: Change in status of registered organization.** A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this section notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) **Location of United States.** The United States is located in the District of Columbia.

(i) **Location of foreign bank branch or agency if licensed in only one state.** A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) **Location of foreign air carrier.** A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) **Section applies only to this part.** This section applies only for purposes of this part. [2000 c 250 § 9A-307.]

62A.9A-308 When security interest or agricultural lien is perfected; continuity of perfection. (a) **Perfection of security interest.** Except as otherwise provided in this section and RCW 62A.9A-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in RCW 62A.9A-310 through 62A.9A-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) **Perfection of agricultural lien.** An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in RCW 62A.9A-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) **Continuous perfection; perfection by different methods.** A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Article and is later perfected by another method under this Article, without an intermediate period when it was unperfected.

(d) **Supporting obligation.** Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) **Lien securing right to payment.** Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) **Security entitlement carried in securities account.** Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) **Commodity contract carried in commodity account.** Perfection of a security interest in a commodity account also perfects a security interest in the commodity

contracts carried in the commodity account. [2000 c 250 § 9A-308.]

62A.9A-309 Security interest perfected upon attachment. The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in RCW 62A.9A-311(b) with respect to consumer goods that are subject to a statute or treaty described in RCW 62A.9A-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer more than fifty thousand dollars, or ten percent of the total amount of the assignor's outstanding accounts and payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under RCW 62A.2-401, 62A.2-505, 62A.2-711(3), or 62A.2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under RCW 62A.4-210;

(8) A security interest of an issuer or nominated person arising under RCW 62A.5-118;

(9) A security interest arising in the delivery of a financial asset under RCW 62A.9A-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate. [2000 c 250 § 9A-309.]

62A.9A-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply. (a) **General rule: Perfection by filing.** Except as otherwise provided in subsections (b) and (d) of this section and RCW 62A.9A-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions: Filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under RCW 62A.9A-308 (d), (e), (f), or (g);

(2) That is perfected under RCW 62A.9A-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in RCW 62A.9A-311(a);

(4) In goods in possession of a bailee which is perfected under RCW 62A.9A-312(d) (1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under RCW 62A.9A-312 (e), (f), or (g);

(6) In collateral in the secured party's possession under RCW 62A.9A-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under RCW 62A.9A-313;

(8) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under RCW 62A.9A-314;

(9) In proceeds which is perfected under RCW 62A.9A-315; or

(10) That is perfected under RCW 62A.9A-316.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(d) **Further exception: Filing not necessary for handler's lien.** The filing of a financing statement is not necessary to perfect the agricultural lien of a handler on orchard crops as provided in RCW 60.11.020(3). [2000 c 250 § 9A-310.]

62A.9A-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.

(a) **Security interest subject to other law.** Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt RCW 62A.9A-310(a);

(2) RCW 46.12.095 or 88.02.070, or chapter 65.12 RCW; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection (d) of this section, RCW 62A.9A-313, and 62A.9A-316 (d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) of this section and RCW 62A.9A-316 (d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this section are governed by the

statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to RCW 46.12.095 or 88.02.070, or chapter 65.12 RCW is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person. [2001 c 32 § 25; 2000 c 250 § 9A-311.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession. (a) **Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) **Control or possession of certain collateral.** Except as otherwise provided in RCW 62A.9A-315 (c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under RCW 62A.9A-314;

(2) And except as otherwise provided in RCW 62A.9A-308(d), a security interest in a letter-of-credit right may be perfected only by control under RCW 62A.9A-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under RCW 62A.9A-313.

(c) **Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) **Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) **Temporary perfection: New value.** A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) **Temporary perfection: Goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the

secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) **Temporary perfection: Delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) **Expiration of temporary perfection.** After the twenty-day period specified in subsection (e), (f), or (g) of this section expires, perfection depends upon compliance with this Article. [2000 c 250 § 9A-312.]

62A.9A-313 When possession by or delivery to secured party perfects security interest without filing. (a)

Perfection by possession or delivery. Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under RCW 62A.8-301.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in RCW 62A.9A-316(d).

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under RCW 62A.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or RCW 62A.8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) **Effect of delivery under subsection (h); no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides. [2001 c 32 § 26; 2000 c 250 § 9A-313.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-314 Perfection by control. (a) **Perfection by control.** A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107.

(b) **Specified collateral: Time of perfection by control; continuation of perfection.** A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under RCW 62A.9A-104, 62A.9A-105, or 62A.9A-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) **Investment property: Time of perfection by control; continuation of perfection.** A security interest in investment property is perfected by control under RCW 62A.9A-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder. [2000 c 250 § 9A-314.]

62A.9A-315 Secured party's rights on disposition of collateral and in proceeds. (a) **Disposition of collateral: Continuation of security interest or agricultural lien; proceeds.** Except as otherwise provided in this Article and in RCW 62A.2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) **When commingled proceeds identifiable.** Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by RCW 62A.9A-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Article with respect to commingled property of the type involved.

(c) **Perfection of security interest in proceeds.** A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) **Continuation of perfection.** A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) A filed financing statement covers the original collateral;

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) of this section when the security interest attaches to the proceeds or within twenty days thereafter.

(e) **When perfected security interest in proceeds becomes unperfected.** If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) of this section becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under RCW 62A.9A-515 or is terminated under RCW 62A.9A-513; or

(2) The twenty-first day after the security interest attaches to the proceeds. [2000 c 250 § 9A-315.]

62A.9A-316 Continued perfection of security interest following change in governing law. (a) **General rule: Effect on perfection of change in governing law.** A security interest perfected pursuant to the law of the jurisdiction designated in RCW 62A.9A-301(1) or 62A.9A-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in subsection (a) of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **Goods covered by certificate of title from this state.** Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) **When subsection (d) security interest becomes unperfected against purchasers.** A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under RCW 62A.9A-311(b) or 62A.9A-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four months after the goods had become so covered.

(f) **Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(2004 Ed.)

(g) **Subsection (f) of this section security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in subsection (f) of this section, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value. [2000 c 250 § 9A-316.]

62A.9A-317 Interests that take priority over or take free of security interest or agricultural lien. (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under RCW 62A.9A-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in RCW 62A.9A-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing. [2001 c 32 § 27; 2000 c 250 § 9A-317.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-318 No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers. (a) **Seller**

retains no interest. A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) **Deemed rights of debtor if buyer's security interest unperfected.** For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold. [2000 c 250 § 9A-318.]

62A.9A-319 Rights and title of consignee with respect to creditors and purchasers. (a) **Consignee has consignor's rights.** Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) **Applicability of other law.** For purposes of determining the rights of a creditor of a consignee, law other than this Article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor. [2000 c 250 § 9A-319.]

62A.9A-320 Buyer of goods. (a) **Buyer in ordinary course of business.** Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) **Buyer of consumer goods.** Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) Without knowledge of the security interest;
- (2) For value;
- (3) Primarily for the buyer's personal, family, or household purposes; and
- (4) Before the filing of a financing statement covering the goods.

(c) **Effectiveness of filing for subsection (b) of this section.** To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by RCW 62A.9A-316 (a) and (b).

(d) **Buyer in ordinary course of business at wellhead or minehead.** A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) **Possessory security interest not affected.** Subsections (a) and (b) of this section do not affect a security interest

in goods in the possession of the secured party under RCW 62A.9A-313. [2000 c 250 § 9A-320.]

62A.9A-321 Licensee of general intangible and lessee of goods in ordinary course of business. (a) **"Licensee in ordinary course of business."** In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) **Rights of licensee in ordinary course of business.** A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) **Rights of lessee in ordinary course of business.** A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence. [2000 c 250 § 9A-321.]

62A.9A-322 Priorities among conflicting security interests in and agricultural liens on same collateral. (a) **General priority rules.** Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) **Time of perfection: Proceeds and supporting obligations.** For the purposes of subsection (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) **Special priority rules: Proceeds and supporting obligations.** Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under RCW 62A.9A-327, 62A.9A-328, 62A.9A-329, 62A.9A-330, or

62A.9A-331 also has priority over a conflicting security interest in:

- (1) Any supporting obligation for the collateral; and
- (2) Proceeds of the collateral if:
 - (A) The security interest in proceeds is perfected;
 - (B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) **First-to-file priority rule for certain collateral.** Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) **Applicability of subsection (d) of this section.** Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) **Limitations on subsections (a) through (e) of this section.** Subsections (a) through (e) of this section are subject to:

- (1) Subsection (g) of this section and the other provisions of this part;
- (2) RCW 62A.4-210 with respect to a security interest of a collecting bank;
- (3) RCW 62A.5-118 with respect to a security interest of an issuer or nominated person; and
- (4) RCW 62A.9A-110 with respect to a security interest arising under Article 2 or 2A.

(g) **Priority under agricultural lien statute.** A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides. Conflicts as to priority between and among security interests in crops and agricultural liens subject to chapter 60.11 RCW are governed by the provisions of that chapter. [2001 c 32 § 28; 2000 c 250 § 9A-322.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-323 Future advances. (a) **When priority based on time of advance.** Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under RCW 62A.9A-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

- (1) Is made while the security interest is perfected only:
 - (A) Under RCW 62A.9A-309 when it attaches; or
 - (B) Temporarily under RCW 62A.9A-312 (e), (f), or (g);

and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under RCW 62A.9A-309 or 62A.9A-312 (e), (f), or (g).

(2004 Ed.)

(b) **Lien creditor.** Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

- (1) Without knowledge of the lien; or
- (2) Pursuant to a commitment entered into without knowledge of the lien.

(c) **Buyer of receivables.** Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) **Buyer of goods.** Except as otherwise provided in subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

- (1) The time the secured party acquires knowledge of the buyer's purchase; or
- (2) Forty-five days after the purchase.

(e) **Advances made pursuant to commitment: Priority of buyer of goods.** Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five day period.

(f) **Lessee of goods.** Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

- (1) The time the secured party acquires knowledge of the lease; or
- (2) Forty-five days after the lease contract becomes enforceable.

(g) **Advances made pursuant to commitment: Priority of lessee of goods.** Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five day period. [2000 c 250 § 9A-323.]

62A.9A-324 Priority of purchase-money security interests. (a) **General rule: Purchase-money priority.** Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in RCW 62A.9A-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) **Inventory purchase-money priority.** Subject to subsection (c) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in RCW

62A.9A-330, and, except as otherwise provided in RCW 62A.9A-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) **Holders of conflicting inventory security interests to be notified.** Subsections (b)(2) through (4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under RCW 62A.9A-312(f), before the beginning of the twenty-day period thereunder.

(d) **Livestock purchase-money priority.** Subject to subsection (e) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in RCW 62A.9A-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) **Holders of conflicting livestock security interests to be notified.** Subsections (d)(2) through (4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under RCW 62A.9A-312(f), before the beginning of the twenty-day period thereunder.

(f) **Software purchase-money priority.** Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in RCW 62A.9A-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) **Conflicting purchase-money security interests.** If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f) of this section:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, RCW 62A.9A-322(a) applies to the qualifying security interests. [2000 c 250 § 9A-324.]

62A.9A-325 Priority of security interests in transferred collateral. (a) **Subordination of security interest in transferred collateral.** Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) **Limitation of subsection (a) of this section subordination.** Subsection (a) of this section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under RCW 62A.9A-322(a) or 62A.9A-324; or

(2) Arose solely under RCW 62A.2-711(3) or 62A.2A-508(5). [2000 c 250 § 9A-325.]

62A.9A-326 Priority of security interests created by new debtor. (a) **Subordination of security interest created by new debtor.** Subject to subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under RCW 62A.9A-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under RCW 62A.9A-508.

(b) **Priority under other provisions; multiple original debtors.** The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under RCW 62A.9A-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of

the new debtor's having become bound. [2000 c 250 § 9A-326.]

62A.9A-327 Priority of security interests in deposit account. The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under RCW 62A.9A-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in [subsections] (3) and (4) of this section, security interests perfected by control under RCW 62A.9A-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in [subsection] (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under RCW 62A.9A-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained. [2000 c 250 § 9A-327.]

62A.9A-328 Priority of security interests in investment property. The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under RCW 62A.9A-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under RCW 62A.9A-106 rank according to priority in time of:

(a) If the collateral is a security, obtaining control;

(b) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under RCW 62A.8-106(4)(a), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under RCW 62A.8-106(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under RCW 62A.8-106(4)(c), the time on which priority would be based under this paragraph if the other person were the secured party; or

(c) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in RCW 62A.9A-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained

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with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under RCW 62A.9A-313(a) and not by control under RCW 62A.9A-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under RCW 62A.9A-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by RCW 62A.9A-322 and 62A.9A-323. [2001 c 32 § 29; 2000 c 250 § 9A-328.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-329 Priority of security interests in letter-of-credit right. The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under RCW 62A.9A-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under RCW 62A.9A-314 rank according to priority in time of obtaining control. [2000 c 250 § 9A-329.]

62A.9A-330 Priority of purchaser of chattel paper or instrument. (a) **Purchaser's priority: Security interest claimed merely as proceeds.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under RCW 62A.9A-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) **Purchaser's priority: Other security interests.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under RCW 62A.9A-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) **Chattel paper purchaser's priority in proceeds.** Except as otherwise provided in RCW 62A.9A-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:

(1) RCW 62A.9A-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods,

even if the purchaser's security interest in the proceeds is unperfected.

(d) **Instrument purchaser's priority.** Except as otherwise provided in RCW 62A.9A-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) **Holder of purchase-money security interest gives new value.** For purposes of subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) **Indication of assignment gives knowledge.** For purposes of subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party. [2000 c 250 § 9A-330.]

62A.9A-331 Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8. (a) **Rights under Articles 3, 7, and 8 not limited.** This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

(b) **Protection under Article 8.** This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8.

(c) **Filing not notice.** Filing under this Article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section. [2001 c 32 § 30; 2000 c 250 § 9A-331.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-332 Transfer of money; transfer of funds from deposit account. (a) **Transferee of money.** A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) **Transferee of funds from deposit account.** A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party. [2000 c 250 § 9A-332.]

62A.9A-333 Priority of certain liens arising by operation of law. (a) **"Possessory lien."** In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) **Priority of possessory lien.** A possessory lien on goods has priority over a security interest in the goods only if the lien is created by a statute that expressly so provides.

(c) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest. [2001 c 32 § 31; 2000 c 250 § 9A-333.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-334 Priority of security interests in fixtures and crops. (a) **Security interest in fixtures under this Article.** A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

(b) **Security interest in fixtures under real-property law.** This Article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) **General rule: Subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h) of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in, or is in possession of, the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use in the operation of the real property; or

(C) Replacements of domestic appliances that are consumer goods; or

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.

(f) **Priority based on consent, disclaimer, or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) **Continuation of subsection (f)(2) priority.** The priority of the security interest under subsection (f)(2) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) **Priority of construction mortgage.** A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) **Priority of security interest in crops.** A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) **Subsection (i) prevails.** Subsection (i) of this section prevails over inconsistent provisions of any other statute except RCW 60.11.050. [2001 c 32 § 32; 2000 c 250 § 9A-334.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-335 Accessions. (a) **Creation of security interest in accession.** A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) **Perfection of security interest.** If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) **Priority of security interest.** Except as otherwise provided in subsection (d) of this section, the other provisions of this part determine the priority of a security interest in an accession.

(d) **Compliance with certificate-of-title statute.** A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under RCW 62A.9A-311(b).

(2004 Ed.)

(e) **Removal of accession after default.** After default, subject to Part 6 of this Article, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) **Reimbursement following removal.** A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. [2000 c 250 § 9A-335.]

62A.9A-336 Commingled goods. (a) **"Commingled goods."** In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) **No security interest in commingled goods as such.** A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) **Attachment of security interest to product or mass.** If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) **Perfection of security interest.** If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) **Priority of security interest.** Except as otherwise provided in subsection (f) of this section, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

(f) **Conflicting security interests in product or mass.** If more than one security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) of this section has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods. [2001 c 32 § 33; 2000 c 250 § 9A-336.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-337 Priority of security interests in goods covered by certificate of title. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or con-

tain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under RCW 62A.9A-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest. [2000 c 250 § 9A-337.]

62A.9A-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral. [2000 c 250 § 9A-338.]

62A.9A-339 Priority subject to subordination. This Article does not preclude subordination by agreement by a person entitled to priority. [2000 c 250 § 9A-339.]

62A.9A-340 Effectiveness of right of recoupment or set-off against deposit account. (a) **Exercise of recoupment or set-off.** Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) **Recoupment or set-off not affected by security interest.** Except as otherwise provided in subsection (c) of this section, the application of this Article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) **When set-off ineffective.** The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under RCW 62A.9A-104(a)(3), if the set-off is based on a claim against the debtor. [2000 c 250 § 9A-340.]

62A.9A-341 Bank's rights and duties with respect to deposit account. Except as otherwise provided in RCW 62A.9A-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect

to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party. [2000 c 250 § 9A-341.]

62A.9A-342 Bank's right to refuse to enter into or disclose existence of control agreement. This Article does not require a bank to enter into an agreement of the kind described in RCW 62A.9A-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer. [2000 c 250 § 9A-342.]

62A.9A-401 Alienability of debtor's rights. (a) **Other law governs alienability; exceptions.** Except as otherwise provided in subsection (b) of this section and RCW 62A.9A-406, 62A.9A-407, 62A.9A-408, and 62A.9A-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Article.

(b) **Agreement does not prevent transfer.** An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect. [2000 c 250 § 9A-401.]

62A.9A-402 Secured party not obligated on contract of debtor or in tort. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions. [2000 c 250 § 9A-402.]

62A.9A-403 Agreement not to assert defenses against assignee. (a) **"Value."** In this section, "value" has the meaning provided in RCW 62A.3-303(a).

(b) **Agreement not to assert claim or defense.** Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;

(2) In good faith;

(3) Without notice of a claim of a property or possessory right to the property assigned; and

(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under RCW 62A.3-305(a).

(c) **When subsection (b) of this section not applicable.** Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under RCW 62A.3-305(b).

(d) **Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article

requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) The record has the same effect as if the record included such a statement; and

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) **Other law not displaced.** Except as otherwise provided in subsection (d) of this section, this section does not displace law other than this Article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee. [2000 c 250 § 9A-403.]

62A.9A-404 Rights acquired by assignee; claims and defenses against assignee. (a) **Assignee's rights subject to terms, claims, and defenses; exceptions.** Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e) of this section, the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) **Account debtor's claim reduces amount owed to assignee.** Subject to subsection (c) of this section, and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.

(c) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) **Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable. [2000 c 250 § 9A-404.]

(2004 Ed.)

62A.9A-405 Modification of assigned contract. (a) **Effect of modification on assignee.** A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d) of this section.

(b) **Applicability of subsection (a) of this section.** Subsection (a) of this section applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under RCW 62A.9A-406(a).

(c) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable. [2000 c 250 § 9A-405.]

62A.9A-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective. (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (j) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment

has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e) of this section and RCW 62A.2A-303 and 62A.9A-407, and subject to subsections (h) and (j) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) [Reserved]

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) **Rule for individual under other law.** This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j)(1) **Inapplicability of subsection (d) of this section to certain transactions.** After July 1, 2003, subsection (d) of this section does not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW. [2003 c 87 § 1; 2001 c 32 § 34; 2000 c 250 § 9A-406.]

Effective date—2003 c 87: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 87 § 3.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest. (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation,

attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) **Effectiveness of certain terms.** Except as otherwise provided in RCW 62A.2A-303(7), a term described in subsection (a)(2) of this section is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) **Security interest not material impairment.** The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of RCW 62A.2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor. [2001 c 32 § 35; 2000 c 250 § 9A-407.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective. (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) of this section to sales of certain rights to payment.** Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) **Legal restrictions on assignment generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory

note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c) of this section.** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e)(1) **Inapplicability of subsections (a) and (c) of this section to certain payment intangibles.** After July 1, 2003, subsections (a) and (c) of this section do not apply to the assignment or transfer of or creation of a security interest in:

(A) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Sec. 104(a)(1) or (2); or

(B) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Sec. 1396p(d)(4).

(2) This subsection will not affect a transfer of structured settlement payment rights under chapter 19.205 RCW. [2003 c 87 § 2; 2000 c 250 § 9A-408.]

Effective date—2003 c 87: See note following RCW 62A.9A-406.

(2004 Ed.)

62A.9A-409 Restrictions on assignment of letter-of-credit rights ineffective. (a) **Term or law restricting assignment generally ineffective.** A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) **Limitation on ineffectiveness under subsection (a) of this section.** To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this Article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party. [2000 c 250 § 9A-409.]

62A.9A-501 Filing office. (a) **Filing offices.** Except as otherwise provided in subsection (b) of this section, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The department of licensing, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) **Filing office for transmitting utilities.** The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the department of licensing. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures. [2000 c 250 § 9A-501.]

62A.9A-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement. (a) **Sufficiency of financing statement.** Subject to subsection (b) of this section, a financing statement is sufficient only if it:

- (1) Provides the name of the debtor;
- (2) Provides the name of the secured party or a representative of the secured party; and
- (3) Indicates the collateral covered by the financing statement.

(b) **Real-property-related financing statements.** Except as otherwise provided in RCW 62A.9A-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

- (1) Indicate that it covers this type of collateral;
- (2) Indicate that it is to be filed for record in the real property records;
- (3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
- (4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) **Record of mortgage as financing statement.** A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) The record indicates the goods or accounts that it covers;
- (2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
- (3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and
- (4) The record is recorded.

(d) **Filing before security agreement or attachment.** A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. [2000 c 250 § 9A-502.]

62A.9A-503 Name of debtor and secured party. (a) **Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:

- (1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;
- (2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;
- (3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
 - (A) Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to

distinguish the debtor from other trusts having one or more of the same settlors; and

(B) Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) In other cases:

(A) If the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) **Additional debtor-related information.** A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(4)(B) of this section, names of partners, members, associates, or other persons comprising the debtor.

(c) **Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) **Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) **Multiple debtors and secured parties.** A financing statement may provide the name of more than one debtor and the name of more than one secured party. [2000 c 250 § 9A-503.]

62A.9A-504 Indication of collateral. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to RCW 62A.9A-108; or

(2) An indication that the financing statement covers all assets or all personal property. [2000 c 250 § 9A-504.]

62A.9A-505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions. (a) **Use of terms other than "debtor" and "secured party."** A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in RCW 62A.9A-311(a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor."

(b) **Effect of financing statement under subsection (a) of this section.** This part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under RCW 62A.9A-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner,

or buyer which attaches to the collateral is perfected by the filing or compliance. [2000 c 250 § 9A-505.]

62A.9A-506 Effect of errors or omissions. (a) **Minor errors and omissions.** A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) **Financing statement seriously misleading.** Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with RCW 62A.9A-503(a) is seriously misleading.

(c) **Financing statement not seriously misleading.** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with RCW 62A.9A-503(a), the name provided does not make the financing statement seriously misleading.

(d) **"Debtor's correct name."** For purposes of RCW 62A.9A-508(b), the "debtor's correct name" in subsection (c) of this section means the correct name of the new debtor. [2000 c 250 § 9A-506.]

62A.9A-507 Effect of certain events on effectiveness of financing statement. (a) **Disposition.** A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) **Information becoming seriously misleading.** Except as otherwise provided in subsection (c) of this section and RCW 62A.9A-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under RCW 62A.9A-506.

(c) **Change in debtor's name.** If a debtor so changes its name that a filed financing statement becomes seriously misleading under RCW 62A.9A-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change. [2000 c 250 § 9A-507.]

62A.9A-508 Effectiveness of financing statement if new debtor becomes bound by security agreement. (a) **Financing statement naming original debtor.** Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) **Financing statement becoming seriously misleading.** If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under RCW 62A.9A-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under RCW 62A.9A-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under RCW 62A.9A-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) **When section not applicable.** This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under RCW 62A.9A-507(a). [2000 c 250 § 9A-508.]

62A.9A-509 Persons entitled to file a record. (a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under RCW 62A.9A-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under RCW 62A.9A-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under RCW 62A.9A-315(a)(2).

(d) **Person entitled to file certain amendments.** A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by RCW 62A.9A-513 (a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) **Multiple secured parties of record.** If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an

amendment under subsection (d) of this section. [2001 c 32 § 36; 2000 c 250 § 9A-509.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-510 Effectiveness of filed record. (a) **Filed record effective if authorized.** A filed record is effective only to the extent that it was filed by a person that may file it under RCW 62A.9A-509.

(b) **Authorization by one secured party of record.** A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) **Continuation statement not timely filed.** A continuation statement that is not filed within the six-month period prescribed by RCW 62A.9A-515(d) is ineffective. [2000 c 250 § 9A-510.]

62A.9A-511 Secured party of record. (a) **Secured party of record.** A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under RCW 62A.9A-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) **Amendment naming secured party of record.** If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under RCW 62A.9A-514(b), the assignee named in the amendment is a secured party of record.

(c) **Amendment deleting secured party of record.** A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person. [2000 c 250 § 9A-511.]

62A.9A-512 Amendment of financing statement. (a) **Amendment of information in financing statement.** Subject to RCW 62A.9A-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in RCW 62A.9A-501(a)(1), provides the information specified in RCW 62A.9A-502(b).

(b) **Period of effectiveness not affected.** Except as otherwise provided in RCW 62A.9A-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) **Effectiveness of amendment adding collateral.** A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) **Effectiveness of amendment adding debtor.** A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) **Certain amendments ineffective.** An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record. [2000 c 250 § 9A-512.]

62A.9A-513 Termination statement. (a) **Consumer goods.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) **Time for compliance with subsection (a) of this section.** To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

(c) **Other collateral.** In cases not governed by subsection (a) of this section, within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) **Effect of filing termination statement.** Except as otherwise provided in RCW 62A.9A-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in RCW 62A.9A-510, for purposes of RCW 62A.9A-519(g), 62A.9A-522(a), and 62A.9A-523(c), the filing with the filing office of a termination statement relating to a financing statement that indi-

cates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse. [2001 c 32 § 37; 2000 c 250 § 9A-513.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-514 Assignment of powers of secured party of record. (a) **Assignment reflected on initial financing statement.** Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) **Assignment of filed financing statement.** Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

- (1) Identifies, by its file number, the initial financing statement to which it relates;
- (2) Provides the name of the assignor; and
- (3) Provides the name and mailing address of the assignee.

(c) **Assignment of record of mortgage.** An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under RCW 62A.9A-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than the Uniform Commercial Code. [2000 c 250 § 9A-514.]

62A.9A-515 Duration and effectiveness of financing statement; effect of lapsed financing statement. (a) **Five-year effectiveness.** Except as otherwise provided in subsections (b), (e), (f), and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) [Reserved]

(c) **Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **When continuation statement may be filed.** A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the thirty-year period specified in subsection (b) of this section, whichever is applicable.

(e) **Effect of filing continuation statement.** Except as otherwise provided in RCW 62A.9A-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would

have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) **Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) **Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under RCW 62A.9A-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property. [2000 c 250 § 9A-515.]

62A.9A-516 What constitutes filing; effectiveness of filing. (a) **What constitutes filing.** Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

- (1) The record is not communicated by a method or medium of communication authorized by the filing office;
- (2) An amount equal to or greater than the applicable filing fee is not tendered or, in the case of a filing office described in RCW 62A.9A-501(a)(1), an amount equal to the applicable filing fee is not tendered;
- (3) The filing office is unable to index the record because:
 - (A) In the case of an initial financing statement, the record does not provide a name for the debtor;
 - (B) In the case of an amendment or correction statement, the record:
 - (i) Does not identify the initial financing statement as required by RCW 62A.9A-512 or 62A.9A-518, as applicable; or
 - (ii) Identifies an initial financing statement whose effectiveness has lapsed under RCW 62A.9A-515;
 - (C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or
 - (D) In the case of a record filed or recorded in the filing office described in RCW 62A.9A-501(a)(1), the record does not provide a name for the debtor or a sufficient description of the real property to which the record relates;
- (4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not

previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the debtor is an individual or an organization; or

(C) If the financing statement indicates that the debtor is an organization, provide:

(i) A type of organization for the debtor;

(ii) A jurisdiction of organization for the debtor; or

(iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under RCW 62A.9A-514(a) or an amendment filed under RCW 62A.9A-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by RCW 62A.9A-515(d).

(c) **Rules applicable to subsection (b) of this section.**

For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by RCW 62A.9A-512, 62A.9A-514, or 62A.9A-518, is an initial financing statement.

(d) **Refusal to accept record; record effective as filed record.** A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files. [2001 c 32 § 38; 2000 c 250 § 9A-516.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-517 Effect of indexing errors. The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record. [2000 c 250 § 9A-517.]

62A.9A-518 Claim concerning inaccurate or wrongfully filed record. (a) **Correction statement.** A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) **Sufficiency of correction statement.** A correction statement must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) **Record not affected by correction statement.** The filing of a correction statement does not affect the effective-

ness of an initial financing statement or other filed record. [2000 c 250 § 9A-518.]

62A.9A-519 Numbering, maintaining, and indexing records; communicating information provided in records. (a) **Filing office duties.** For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d), and (e) of this section.

(b) **File number.** A file number assigned after January 1, 2002, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) **Indexing: General.** Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) **Indexing: Real-property-related financing statement.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) **Indexing: Real-property-related assignment.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under RCW 62A.9A-514(a) or an amendment filed under RCW 62A.9A-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) **Retrieval and association capability.** The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) **Removal of debtor's name.** The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under RCW 62A.9A-515 with respect to all secured parties of record.

(h) **Timeliness of filing office performance.** The filing office shall perform the acts required by subsections (a) through (e) of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

(i) **Inapplicability to real-property-related filing office.** Subsections (b) and (h) of this section do not apply to a filing office described in RCW 62A.9A-501(a)(1). [2000 c 250 § 9A-519.]

62A.9A-520 Acceptance and refusal to accept record.

(a) **Mandatory refusal to accept record.** The filing office described in RCW 62A.9A-501(a)(2) shall refuse to accept a record for filing for a reason set forth in RCW 62A.9A-516(b). A filing office described in RCW 62A.9A-501(a)(1) shall refuse to accept a record for filing for a reason set forth in RCW 62A.9A-516(b) (1) through (4) and any filing office may refuse to accept a record for filing only for a reason set forth in RCW 62A.9A-516(b).

(b) **Communication concerning refusal.** If a filing office refuses to accept a record for filing, it shall communi-

cate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in RCW 62A.9A-501(a)(2), in no event more than two business days after the filing office receives the record.

(c) **When filed financing statement effective.** A filed financing statement satisfying RCW 62A.9A-502 (a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a) of this section. However, RCW 62A.9A-338 applies to a filed financing statement providing information described in RCW 62A.9A-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) **Separate application to multiple debtors.** If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately. [2001 c 32 § 39; 2000 c 250 § 9A-520.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-521 Uniform form of written financing statement and amendment. (a) **Initial financing statement form.** A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in RCW 62A.9A-516(b):

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID #: ADD'L INFO RE 1e. TYPE OF 1f. JURISDICTION OF 1g. ORGANIZATIONAL
SSN OR EIN ORGANIZATION DEBTOR ORGANIZATION ORGANIZATION ID #, If any

NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: ADD'L INFO RE 2e. TYPE OF 2f. JURISDICTION OF 2g. ORGANIZATIONAL
SSN OR EIN ORGANIZATION DEBTOR ORGANIZATION ORGANIZATION ID #, If any

NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

- 3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX
- 3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
- 4. This FINANCING STATEMENT covers the following collateral:
- 5. ALTERNATIVE DESIGNATION [if applicable]: LESSEE/LESSOR CONSIGNEE/CONSIGNOR
 BAILEE/BAILOR SELLER/BUYER AG LIEN NON-UCC FILING
- 6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]
- 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) All Debtors Debtor 1 Debtor 2
 [Additional Fee] [optional]
- 8. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 11e. TYPE OF ORGANIZATION 11f. JURISDICTION OF ORGANIZATION 11g. ORGANIZATIONAL ID #, If any NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing. 16. Additional collateral description:

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box. Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box. Debtor is a TRANSMITTING UTILITY Filed in connection with a Manufactured-Home Transaction - effective 30 years Filed in connection with a Public-Finance Transaction - effective 30 years

NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/29/98)

(b) **Amendment form.** A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in RCW 62A.9A-516(b):

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

- 1a. INITIAL FINANCING STATEMENT FILE #
- 1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.
- 2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.
- 3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.
- 4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.
- 5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name changed) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 7e. TYPE OF ORGANIZATION 7f. JURISDICTION OF ORGANIZATION 7g. ORGANIZATIONAL ID #, If any NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box. Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 07/29/98)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

- 11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)
 - 12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)
 - 12a. ORGANIZATION'S NAME
- OR

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

NATIONAL UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC3Ad) (REV. 07/29/98)

[2000 c 250 § 9A-521.]

62A.9A-522 Maintenance and destruction of records.

(a) **Post-lapse maintenance and retrieval of information.** The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under RCW 62A.9A-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) **Destruction of written records.** Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this section. [2000 c 250 § 9A-522.]

62A.9A-523 Information from filing office; sale or license of records. (a) **Acknowledgment of filing written record.** If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to RCW 62A.9A-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to RCW 62A.9A-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) **Acknowledgment of filing other record.** If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to RCW 62A.9A-519(a)(1); and

(3) The date and time of the filing of the record.

(c) **Communication of requested information.** The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) Designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(B) Has not lapsed under RCW 62A.9A-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under RCW 62A.9A-515 and a record of which is maintained by the filing office under RCW 62A.9A-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) **Medium for communicating information.** In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(e) **Timeliness of filing office performance.** The filing office described in RCW 62A.9A-501(a)(2) shall perform the acts required by subsections (a) through (d) of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) **Public availability of records.** At least weekly, the filing office described in RCW 62A.9A-501(a)(2) shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office. If information provided pursuant to this section includes a list of individuals, disclosure of the list is specifically authorized. [2001 c 32 § 40; 2000 c 250 § 9A-523.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-524 Delay by filing office. Delay by the filing office beyond a time limit prescribed by this part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances. [2000 c 250 § 9A-524.]

62A.9A-525 Fees. (a) **Filing with department of licensing.** Except as otherwise provided in subsection (b) or (e) of this section, the fee for filing and indexing a record under this part is the fee set by department of licensing rule pursuant to subsection (f) of this section. Without limitation, different fees may be charged for:

(1) A record that is communicated in writing and consists of one or two pages;

(2) A record that is communicated in writing and consists of more than two pages, which fee may be a multiple of the fee described in (1) of this subsection; and

(3) A record that is communicated by another medium authorized by department of licensing rule, which fee may be a fraction of the fee described in (1) of this subsection.

(b) **Filing with other filing offices.** Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part that is filed in a filing office described in RCW 62A.9A-501(a)(1) is the fee that would otherwise be applicable to the recording of a mortgage in that filing office, as set forth in RCW 36.18.010.

(c) **Number of names.** The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) **Response to information request.** The fee for responding to a request for information from a filing office, including for issuing a certificate showing, or otherwise communicating, whether there is on file any financing statement naming a particular debtor, is the fee set by department of licensing rule pursuant to subsection (f) of this section; provided however, if the request is to a filing office described in RCW 62A.9A-501(a)(1) and that office charges a different fee, then that different fee shall apply instead. Without limitation, different fees may be charged:

(1) If the request is communicated in writing;

(2) If the request is communicated by another medium authorized by filing-office rule; and

(3) If the request is for expedited service.

(e) **Record of mortgage.** This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under RCW 62A.9A-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) **Filing office rules.** The department of licensing shall by rule set the fees called for in this section for filing with, and obtaining information from, the department of licensing. The director shall set fees at a sufficient level to defray the costs of administering the program. All receipts from fees collected under this title, except fees for services covered under RCW 62A.9A-501(a)(1), shall be deposited to the uniform commercial code fund in the state treasury. Moneys in the fund may be spent only after appropriation and may be used only to administer the uniform commercial code program.

(g) **Transition.** This section continues the fee-setting authority conferred on the department of licensing by former *RCW 62A.9-409 and nothing herein shall invalidate fees set by the department of licensing under the authority of former *RCW 62A.9-409. [2000 c 250 § 9A-525.]

*Reviser's note: RCW 62A.9-409 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

62A.9A-526 Filing-office rules. (a) **Adoption of filing-office rules.** The department of licensing shall adopt and publish rules to implement this Article. The filing-office rules must be:

(1) Consistent with this Article; and

(2) Adopted and published in accordance with chapter 34.05 RCW.

(b) **Harmonization of rules.** To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by

filing offices in other jurisdictions that enact substantially this part, the department of licensing, so far as is consistent with the purposes, policies, and provisions of this Article, in adopting, amending, and repealing filing-office rules, shall:

(1) Consult with filing offices in other jurisdictions that enact substantially this part; and

(2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part. [2000 c 250 § 9A-526.]

62A.9A-527 Duty to report. The department of licensing shall report annually on or before December 31st to the governor on the operation of the filing office. [2000 c 250 § 9A-527.]

62A.9A-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes. (a) **Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise provided in RCW 62A.9A-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) **Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 has the rights and duties provided in RCW 62A.9A-207.

(c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) of this section and RCW 62A.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in RCW 62A.9A-607(c), this

part imposes no duties upon a secured party that is a con-signor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(h) **Enforcement restrictions.** All rights and remedies provided in this part with respect to promissory notes or an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, are subject to RCW 62A.9A-408 to the extent applicable. [2000 c 250 § 9A-601.]

62A.9A-602 Waiver and variance of rights and duties. Except as otherwise provided in RCW 62A.9A-624, to the extent that they give rights to an obligor (other than a secondary obligor) or a debtor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) RCW 62A.9A-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) RCW 62A.9A-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) RCW 62A.9A-607(c), which deals with collection and enforcement of collateral;

(4) RCW 62A.9A-608(a) and 62A.9A-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) RCW 62A.9A-608(a) and 62A.9A-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) RCW 62A.9A-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) RCW 62A.9A-610(b), 62A.9A-611, 62A.9A-613, and 62A.9A-614, which deal with disposition of collateral;

(8) [Reserved]

(9) RCW 62A.9A-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) RCW 62A.9A-623, which deals with redemption of collateral;

(12) RCW 62A.9A-624, which deals with permissible waivers; and

(13) RCW 62A.9A-625 and 62A.9A-626, which deal with the secured party's liability for failure to comply with this Article. [2000 c 250 § 9A-602.]

62A.9A-603 Agreement on standards concerning rights and duties. (a) **Agreed standards.** The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in RCW 62A.9A-602 if the standards are not manifestly unreasonable.

(b) **Agreed standards inapplicable to breach of peace.** Subsection (a) of this section does not apply to the duty under RCW 62A.9A-609 to refrain from breaching the peace. [2000 c 250 § 9A-603.]

62A.9A-604 Procedure if security agreement covers real property, fixtures, or manufactured home. (a) **Enforcement: Personal and real property.** If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) **Enforcement: Fixtures.** Subject to subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this part; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) **Removal of fixtures or manufactured home.** Subject to the other provisions of this part, if a secured party holding a security interest in fixtures or a manufactured home has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) **Injury caused by removal.** A secured party that removes collateral consisting of fixtures or a manufactured home shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. [2000 c 250 § 9A-604.]

62A.9A-605 Unknown debtor or secondary obligor. A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person. [2000 c 250 § 9A-605.]

62A.9A-606 Time of default for agricultural lien. For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created. [2000 c 250 § 9A-606.]

62A.9A-607 Collection and enforcement by secured party. (a) **Collection and enforcement generally.** If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under RCW 62A.9A-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under RCW 62A.9A-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under RCW 62A.9A-104(a) (2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) **Nonjudicial enforcement of mortgage.** If necessary to enable a secured party to exercise, under subsection (a)(3) of this section, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded the secured party's sworn affidavit stating that:

(1) Default has occurred under the security agreement that creates or provides for a security interest in the obligations secured by the mortgage;

(2) A copy of the security agreement is attached to the affidavit; and

(3) The secured party is entitled to enforce the mortgage nonjudicially.

If the secured party's affidavit and attached copy of the security agreement in the form prescribed by chapter 65.04 RCW are presented with the applicable fee to the office in which a record of the mortgage is recorded, the affidavit and attached copy of the security agreement shall be recorded pursuant to RCW 65.04.030(3).

(c) **Commercially reasonable collection and enforcement.** A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) **Expenses of collection and enforcement.** A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorneys' fees and legal expenses incurred by the secured party.

(e) **Duties to secured party not affected.** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party. [2000 c 250 § 9A-607.]

62A.9A-608 Application of proceeds of collection or enforcement; liability for deficiency and right to surplus. (a) Application of proceeds, surplus, and deficiency if

obligation secured. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under RCW 62A.9A-607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under (1)(C) of this subsection.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under RCW 62A.9A-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency. [2001 c 32 § 41; 2000 c 250 § 9A-608.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-609 Secured party's right to take possession after default. (a) Possession; rendering equipment unusable; disposition on debtor's premises. After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under RCW 62A.9A-610.

(b) **Judicial and nonjudicial process.** A secured party may proceed under subsection (a) of this section:

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) **Assembly of collateral.** If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. [2000 c 250 § 9A-609.]

62A.9A-610 Disposition of collateral after default.

(a) **Disposition after default.** After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) **Commercially reasonable disposition.** Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) **Purchase by secured party.** A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) **Warranties on disposition.** A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) **Disclaimer of warranties.** A secured party may disclaim or modify warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) **Record sufficient to disclaim warranties.** A record is sufficient to disclaim under subsection (e) of this section all warranties included under subsection (d) of this section if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import. [2000 c 250 § 9A-610.]

62A.9A-611 Notification before disposition of collateral. (a) **"Notification date."** In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) **Notification of disposition required.** Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under RCW 62A.9A-610 shall send to the persons specified in subsection (c) of this section a reasonable authenticated notification of disposition.

(c) **Persons to be notified.** To comply with subsection (b) of this section, the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(B) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in RCW 62A.9A-311(a).

(d) **Subsection (b) of this section inapplicable: Perishable collateral; recognized market.** Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) **Compliance with subsection (c)(3)(A) of this section.** A secured party complies with the requirement for notification prescribed by subsection (c)(3)(A) of this section if:

(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(A) of this section; and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral. [2000 c 250 § 9A-611.]

62A.9A-612 Timeliness of notification before disposition of collateral. (a) **Reasonable time is question of fact.** Except as otherwise provided in subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) **Ten-day period sufficient in nonconsumer transaction.** In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition. [2000 c 250 § 9A-612.]

62A.9A-613 Contents and form of notification before disposition of collateral: General. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in subsection (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in subsection (1) of this section are sufficient, even if the notification includes:

(A) Information not specified by subsection (1) of this section; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in RCW 62A.9A-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, *as applicable*] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: _____

Time: _____

Place: _____

[For a private disposition:]

We will sell [or lease or license, *as applicable*] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] [for a charge of \$_____]. You may request an accounting by calling us at [telephone number].

[2001 c 32 § 42; 2000 c 250 § 9A-613.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-614 Contents and form of notification before disposition of collateral: Consumer-goods transaction. In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in RCW 62A.9A-613(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under RCW 62A.9A-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

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(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will charge you \$ _____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

(4) A notification in the form of [subsection] (3) of this section is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of [subsection] (3) of this section is sufficient, even if it includes errors in information not required by [subsection] (1) of this section, unless the error is misleading with respect to rights arising under this Article.

(6) If a notification under this section is not in the form of [subsection] (3) of this section, law other than this Article determines the effect of including information not required by [subsection] (1) of this section. [2000 c 250 § 9A-614.]

62A.9A-615 Application of proceeds of disposition; liability for deficiency and right to surplus. (a) **Application of proceeds.** A secured party shall apply or pay over for application the cash proceeds of disposition under RCW 62A.9A-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys' fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) **Proof of subordinate interest.** If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3) of this section.

(c) **Application of noncash proceeds.** A secured party need not apply or pay over for application noncash proceeds of disposition under RCW 62A.9A-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) **Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subsection (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) [Reserved]

(g) **Cash proceeds received by junior secured party.** A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that

is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus. [2001 c 32 § 43; 2000 c 250 § 9A-615.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-616 Explanation of calculation of surplus or deficiency. (a) **Definitions.** In this section:

(1) "Explanation" means a writing that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of this section of how the secured party calculated the surplus or deficiency;

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) Authenticated by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under RCW 62A.9A-610.

(b) **Explanation of calculation.** In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under RCW 62A.9A-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) **Required information.** To comply with subsection (a)(1)(B) of this section, a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the

collateral, not more than thirty-five days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorneys' fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) **Substantial compliance.** A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) **Charges for responses.** A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response. [2000 c 250 § 9A-616.]

62A.9A-617 Rights of transferee of collateral. (a) **Effects of disposition.** A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) **Rights of good-faith transferee.** A transferee that acts in good faith takes free of the rights and interests described in subsection (a) of this section, even if the secured party fails to comply with this Article or the requirements of any judicial proceeding.

(c) **Rights of other transferee.** If a transferee does not take free of the rights and interests described in subsection (a) of this section, the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien. [2000 c 250 § 9A-617.]

62A.9A-618 Rights and duties of certain secondary obligors. (a) **Rights and duties of secondary obligor.** A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) **Effect of assignment, transfer, or subrogation.** An assignment, transfer, or subrogation described in subsection (a) of this section:

(1) Is not a disposition of collateral under RCW 62A.9A-610; and

(2) Relieves the secured party of further duties under this Article. [2000 c 250 § 9A-618.]

62A.9A-619 Transfer of record or legal title. (a) **"Transfer statement."** In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) **Effect of transfer statement.** A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) **Transfer not a disposition; no relief of secured party's duties.** A transfer of the record or legal title to collateral to a secured party under subsection (b) of this section or otherwise is not of itself a disposition of collateral under this Article and does not of itself relieve the secured party of its duties under this Article. [2000 c 250 § 9A-619.]

62A.9A-620 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral. (a) **Conditions to acceptance in satisfaction.** A secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c) of this section;

(2) The secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:

(A) A person to which the secured party was required to send a proposal under RCW 62A.9A-621; or

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal; and

(3) Subsection (e) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to RCW 62A.9A-624.

(b) **Purported acceptance ineffective.** A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) of this section are met.

(c) **Debtor's consent.** For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) Does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

(d) **Effectiveness of notification.** To be effective under subsection (a)(2) of this section, a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to RCW 62A.9A-621, within twenty days after notification was sent to that person; and

(2) In other cases:

(A) Within twenty days after the last notification was sent pursuant to RCW 62A.9A-621; or

(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c) of this section.

(e) **Mandatory disposition of consumer goods.** A secured party that has taken possession of collateral shall dispose of the collateral pursuant to RCW 62A.9A-610 within the time specified in subsection (f) of this section if:

(1) Sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(f) **Compliance with mandatory disposition requirement.** To comply with subsection (e) of this section, the secured party shall dispose of the collateral:

(1) Within ninety days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default. [2000 c 250 § 9A-620.]

62A.9A-621 Notification of proposal to accept collateral. (a) **Persons to which proposal to be sent.** A secured

party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(2) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in RCW 62A.9A-311(a).

(b) **Proposal to be sent to secondary obligor in partial satisfaction.** A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section. [2000 c 250 § 9A-621.]

62A.9A-622 Effect of acceptance of collateral. (a) **Effect of acceptance.** A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) **Discharge of subordinate interest notwithstanding noncompliance.** A subordinate interest is discharged or terminated under subsection (a) of this section, even if the secured party fails to comply with this Article. [2000 c 250 § 9A-622.]

62A.9A-623 Right to redeem collateral. (a) **Persons that may redeem.** A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) **Requirements for redemption.** To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorneys' fees described in RCW 62A.9A-615(a)(1).

(c) **When redemption may occur.** A redemption may occur at any time before a secured party:

(1) Has collected collateral under RCW 62A.9A-607;

(2) Has disposed of collateral or entered into a contract for its disposition under RCW 62A.9A-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under RCW 62A.9A-622. [2000 c 250 § 9A-623.]

62A.9A-624 Waiver. (a) **Waiver of disposition notification.** A debtor may waive the right to notification of dispo-

sition of collateral under RCW 62A.9A-611 only by an agreement to that effect entered into and authenticated after default.

(b) **Waiver of mandatory disposition.** A debtor may waive the right to require disposition of collateral under RCW 62A.9A-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) **Waiver of redemption right.** Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under RCW 62A.9A-623 only by an agreement to that effect entered into and authenticated after default. [2000 c 250 § 9A-624.]

62A.9A-625 Remedies for secured party's failure to comply with Article. (a) **Judicial orders concerning non-compliance.** If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d), and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article or by filing a false statement under RCW 62A.9A-607(b) or 62A.9A-619. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction.** Except as otherwise provided in RCW 62A.9A-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under RCW 62A.9A-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor may not recover under subsection (b) or (c)(2) of this section for non-compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance to the extent that its deficiency is eliminated or reduced under RCW 62A.9A-626.

(e) **Statutory damages: Noncompliance with specified provisions.** In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

(1) Fails to comply with RCW 62A.9A-208;

(2) Fails to comply with RCW 62A.9A-209;

(3) Files a record that the person is not entitled to file under RCW 62A.9A-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by RCW

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62A.9A-513 (a) or (c) within twenty days after the secured party receives an authenticated demand from a debtor;

(5) Fails to comply with RCW 62A.9A-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with RCW 62A.9A-616(b)(2).

(f) **Statutory damages: Noncompliance with RCW 62A.9A-210.** A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under RCW 62A.9A-210. A recipient of a request under RCW 62A.9A-210 which never claimed an interest in the collateral or obligations that are the subject of a request under RCW 62A.9A-210 has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: Noncompliance with RCW 62A.9A-210.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under RCW 62A.9A-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure. [2001 c 32 § 44; 2000 c 250 § 9A-625.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-626 Action in which deficiency or surplus is in issue. (a) **Applicable rules if amount of deficiency or surplus in issue.** In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in RCW 62A.9A-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorneys' fees exceeds the greater of:

(A) The proceeds of the collection, enforcement, disposition, or acceptance; or

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of (3)(B) of this subsection, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorneys' fees unless the secured party proves that the amount is less than that sum.

(b) [Reserved] [2000 c 250 § 9A-626.]

62A.9A-627 Determination of whether conduct was commercially reasonable. (a) **Greater amount obtainable**

under other circumstances; no preclusion of commercial reasonableness. The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) **Dispositions that are commercially reasonable.** A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

- (1) In the usual manner on any recognized market;
- (2) At the price current in any recognized market at the time of the disposition; or
- (3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) **Approval by court or on behalf of creditors.** A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

- (1) In a judicial proceeding;
- (2) By a bona fide creditors' committee;
- (3) By a representative of creditors; or
- (4) By an assignee for the benefit of creditors.

(d) **Approval under subsection (c) of this section not necessary; absence of approval has no effect.** Approval under subsection (c) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable. [2000 c 250 § 9A-627.]

62A.9A-628 Nonliability and limitation on liability of secured party; liability of secondary obligor. (a) **Limitation of liability of secured party for noncompliance with article.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

(2) The secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

(b) **Limitation of liability based on status as secured party.** A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

- (A) That the person is a debtor or obligor;
- (B) The identity of the person; and
- (C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (A) That the person is a debtor; and
- (B) The identity of the person.

(c) **Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured

party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) **Limitation of liability for statutory damages.** A secured party is not liable to any person under RCW 62A.9A-625(c)(2) for its failure to comply with RCW 62A.9A-616.

(e) **Limitation of multiple liability for statutory damages.** A secured party is not liable under RCW 62A.9A-625(c)(2) more than once with respect to any one secured obligation. [2001 c 32 § 45; 2000 c 250 § 9A-628.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-701 Effective date—2000 c 250. This act takes effect July 1, 2001. [2000 c 250 § 9A-701.]

62A.9A-702 Savings clause. (a) **Preeffective-date transactions or liens.** Except as otherwise provided in this section, Article 62A.9A RCW applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2001.

(b) **Continuing validity.** Except as otherwise provided in subsection (c) of this section and RCW 62A.9A-703 through 62A.9A-709:

(1) Transactions and liens that were not governed by *Article 62A.9 RCW, were validly entered into or created before July 1, 2001, and would be subject to Article 62A.9A RCW if they had been entered into or created after July 1, 2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001; and

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by Article 62A.9A RCW or by the law that otherwise would apply if Article 62A.9A RCW had not taken effect.

(c) **Preeffective-date proceedings.** Article 62A.9A RCW does not affect an action, case, or proceeding commenced before July 1, 2001. [2001 c 32 § 46; 2000 c 250 § 9A-702.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-703 Security interest perfected before effective date. (a) **Continuing priority over lien creditor: Perfection requirements satisfied.** A security interest that is enforceable immediately before July 1, 2001, and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under Article 62A.9A RCW if, on or before July 1, 2001, the applicable requirements for enforceability and perfection under Article 62A.9A RCW are satisfied without further action.

(b) **Continuing priority over lien creditor: Perfection requirements not satisfied.** Except as otherwise provided in RCW 62A.9A-705, if, immediately before July 1, 2001, a security interest is enforceable and would have priority over

the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under Article 62A.9A RCW are not satisfied on or before July 1, 2001, the security interest:

- (1) Is a perfected security interest for one year after July 1, 2001;
- (2) Remains enforceable thereafter only if the security interest becomes enforceable under RCW 62A.9A-203 before the year expires; and
- (3) Remains perfected thereafter only if the applicable requirements for perfection under Article 62A.9A RCW are satisfied before the year expires. [2001 c 32 § 47; 2000 c 250 § 9A-703.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-704 Security interest unperfected before effective date. A security interest that is enforceable immediately before July 1, 2001, but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

- (1) Remains an enforceable security interest for one year after July 1, 2001;
- (2) Remains enforceable thereafter if the security interest becomes enforceable under RCW 62A.9A-203 on or before July 1, 2001, or within one year thereafter; and
- (3) Becomes perfected:
 - (A) Without further action, on July 1, 2001, if the applicable requirements for perfection under Article 62A.9A RCW are satisfied before or at that time; or
 - (B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time. [2001 c 32 § 48; 2000 c 250 § 9A-704.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-705 Effectiveness of action taken before effective date. (a) **Preeffective-date action; one-year perfection period unless reperfected.** If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under Article 62A.9A RCW within one year after July 1, 2001. An attached security interest becomes unperfected one year after July 1, 2001, unless the security interest becomes a perfected security interest under Article 62A.9A RCW before the expiration of that period.

(b) **Preeffective-date filing.** The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Article 62A.9A RCW.

(c) **Preeffective-date filing in jurisdiction formerly governing perfection.** Article 62A.9A RCW does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former *RCW 62A.9-103. However, except as otherwise provided in subsections (d) and (e) of this section and RCW 62A.9A-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) **Continuation statement.** The filing of a continuation statement after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

(e) **Application of subsection (c)(2) of this section to transmitting utility financing statement.** Subsection (c)(2) of this section applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former *RCW 62A.9-103 only to the extent that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) **Application of Part 5.** A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement. [2001 c 32 § 49; 2000 c 250 § 9A-705.]

***Reviser's note:** RCW 62A.9-103 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-706 When initial financing statement suffices to continue effectiveness of financing statement. (a) **Initial financing statement in lieu of continuation statement.** The filing of an initial financing statement in the office specified in RCW 62A.9A-501 continues the effectiveness of a financing statement filed before July 1, 2001, if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under Article 62A.9A RCW;

(2) The preeffective-date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(b) **Period of continued effectiveness.** The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the preeffective-date financing statement:

(1) If the initial financing statement is filed before July 1, 2001, for the period provided in *RCW 62A.9-403 with respect to a financing statement; and

(2) If the initial financing statement is filed after July 1, 2001, for the period provided in RCW 62A.9A-515 with respect to an initial financing statement.

(c) **Requirements for initial financing statement under subsection (a) of this section.** To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of Part 5 for an initial financing statement;

(2) Identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the preeffective-date financing statement remains effective. [2001 c 32 § 50; 2000 c 250 § 9A-706.]

***Reviser's note:** RCW 62A.9-403 was repealed by 2000 c 250 § 9A-901, effective July 1, 2001.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-707 Amendment of preeffective-date financing statement. (a) **Preeffective-date financing statement.** In this section, "preeffective-date financing statement" means a financing statement filed before July 1, 2001.

(b) **Applicable law.** On or after July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: General rule.** Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a preeffective-date financing statement may be amended on or after July 1, 2001, only if:

(1) The preeffective-date financing statement and an amendment are filed in the office specified in RCW 62A.9A-501;

(2) An amendment is filed in the office specified in RCW 62A.9A-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies RCW 62A.9A-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies RCW 62A.9A-706(c) is filed in the office specified in RCW 62A.9A-501.

(d) **Method of amending: Continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under RCW 62A.9A-705 (d) and (f) or 62A.9A-706.

(e) **Method of amending: Additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this state may be terminated on or after July 1, 2001, by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies RCW 62A.9A-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement. [2001 c 32 § 51; 2000 c 250 § 9A-707.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-708 Persons entitled to file initial financing statement or continuation statement. A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before July 1, 2001; or

(B) To perfect or continue the perfection of a security interest. [2001 c 32 § 52; 2000 c 250 § 9A-708.]

Effective date—2001 c 32: See note following RCW 62A.9A-102.

62A.9A-709 Priority. (a) **Law governing priority.** Article 62A.9A RCW determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, *Article 62A.9 RCW determines priority.

(b) **Priority if security interest becomes enforceable under RCW 62A.9A-203.** For purposes of RCW 62A.9A-322(a), the priority of a security interest that becomes enforceable under RCW 62A.9A-203 dates from July 1, 2001, if the security interest is perfected under Article 62A.9A RCW by the filing of a financing statement before July 1, 2001, which would not have been effective to perfect the security interest under *Article 62A.9 RCW. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement. [2001 c 32 § 53.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Article 10

EFFECTIVE DATE AND REPEALER

Sections

62A.10-101	Effective date—1965 ex.s. c 157.
62A.10-102	Specific repealer; provision for transition.
62A.10-103	General repealer.
62A.10-104	Laws not repealed.

62A.10-101 Effective date—1965 ex.s. c 157. This Title shall become effective at midnight on June 30, 1967. It applies to transactions entered into and events occurring after that date. [1965 ex.s. c 157 § 10-101.]

62A.10-102 Specific repealer; provision for transition. (1) The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

(a)(i) RCW 22.04.010 through 22.04.610;

(ii) RCW 23.80.010 through 23.80.250;

(iii) RCW 30.16.020, 30.16.030, 30.16.040 and 30.16.050;

(iv) RCW 30.40.030, 30.40.040 and 30.40.050;

(v) RCW 30.52.010 through 30.52.160;

(vi) RCW 61.04.010 through 61.04.090;

(vii) RCW 61.08.010 through 61.08.120;

(viii) RCW 61.12.160;

(ix) RCW 61.16.040, 61.16.050 and 61.16.070;

(x) RCW 61.20.010 through 61.20.190;

- (xi) RCW 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050;
 - (xii) RCW 63.04.010 through 63.04.780;
 - (xiii) RCW 63.08.010 through 63.08.060;
 - (xiv) RCW 63.12.010 through 63.12.030;
 - (xv) RCW 63.16.010 through 63.16.900;
 - (xvi) RCW 65.08.010, 65.08.020 and 65.08.040; and
 - (xvii) RCW 81.32.010 through 81.32.561: PROVIDED,
- That such repeal shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050).
- (b)(i) Chapter 99, Laws of 1913;
 - (ii) Chapter 100, Laws of 1939;
 - (iii) Section 4, chapter 106, Laws of 1959 and sections 30.16.020, 30.16.030, 30.16.040 and 30.16.050, chapter 33, Laws of 1955;
 - (iv) Sections 30.40.030, 30.40.040 and 30.40.050, chapter 33, Laws of 1955;
 - (v) Section 3, chapter 194, Laws of 1963 and sections 30.52.010 through 30.52.160, chapter 33, Laws of 1955;
 - (vi) Section 11, chapter 263, Laws of 1959, section 3, chapter 214, Laws of 1953, sections 1, 2 and 3, chapter 284, Laws of 1943, section 1, chapter 76, Laws of 1943, section 1, chapter 121, Laws of 1939, section 1, chapter 156, Laws of 1929, sections 1, 2, 3, 4, 5, 6 and 7, chapter 98, Laws of 1899, sections 1986, 1987 and 1988, Code of 1881, section 1, page 104, Laws of 1879, section 1, page 286, Laws of 1877 and section 1, page 43, Laws of 1875;
 - (vii) Sections 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998, Code of 1881, sections 4, 5, 6, 7, 8, 9, 10, 11 and 12, pages 105 and 106, Laws of 1879 and sections 18, 19, 20, 22, 23, 24 and 28, page 47, Laws of 1875;
 - (viii) Sections 618 and 619, Code of 1881 and section 572, page 147, Laws of 1869;
 - (ix) Section 12, chapter 263, Laws of 1959, section 4, chapter 214, Laws of 1953, section 4, chapter 284, Laws of 1943, sections 1 and 2, chapter 133, Laws of 1937 and sections 8, 9 and 11, chapter 98, Laws of 1899;
 - (x) Sections 1 and 2, chapter 249, Laws of 1957 and chapter 71, Laws of 1943;
 - (xi) Sections 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050, chapter 35, Laws of 1955;
 - (xii) Chapter 142, Laws of 1925 extraordinary session;
 - (xiii) Sections 1, 2, 3 and 4, chapter 247, Laws of 1953, section 1, chapter 98, Laws of 1943, sections 1, 2, 3 and 4, chapter 122, Laws of 1939 and sections 1, 2, 3 and 4, chapter 135, Laws of 1925 extraordinary session;
 - (xiv) Section 22, chapter 236, Laws of 1963, section 1, chapter 159, Laws of 1961, sections 1 and 2, chapter 196, Laws of 1937, sections 1 and 2, chapter 129, Laws of 1933, section 1, chapter 120, Laws of 1925 extraordinary session, section 1, chapter 95, Laws of 1915, sections 1 and 2, chapter 6, Laws of 1903 and sections 1 and 2, chapter 106, Laws of 1893;
 - (xv) Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, chapter 8, Laws of 1947;
 - (xvi) Sections 1 and 2, chapter 72, Laws of 1899, section 2327, Code of 1881, section 4, page 413, Laws of 1863 and section 4, page 404, Laws of 1854; and
 - (xvii) Chapter 159, Laws of 1915 and sections 81.32.011 through 81.32.561, chapter 14, Laws of 1961.

(2004 Ed.)

(2) Transactions validly entered into before the effective date specified in RCW 62A.10-101 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Title as though such repeal or amendment had not occurred. [1965 ex.s. c 157 § 10-102.]

62A.10-103 General repealer. Except as provided in the following section, all acts and parts of acts inconsistent with this Title are hereby repealed. [1965 ex.s. c 157 § 10-103.]

62A.10-104 Laws not repealed. The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (RCW 62A.1-201). [1995 c 48 § 71; 1965 ex.s. c 157 § 10-104.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Article 11

EFFECTIVE DATE AND TRANSITION PROVISIONS

Sections

62A.11-101	Effective date—1981 c 41.
62A.11-102	Preservation of old transition provisions.
62A.11-103	Transition to the Uniform Commercial Code as amended by chapter 41, Laws of 1981; general rule.
62A.11-104	Transition provision on change of requirement of filing.
62A.11-105	Transition provision on change of place of filing.
62A.11-106	Required refilings.
62A.11-107	Transition provisions as to priorities.
62A.11-108	Presumption that rule of law continues unchanged.
62A.11-109	Effective financing statement; certificate by county auditor.
62A.11-110	Effective date—1993 c 230.
62A.11-111	Recovery of attorneys' fees.
62A.11-112	Effective date—1993 c 229.
62A.11-113	Effective date—1995 c 48.

Reviser's note: Throughout Article 11, "chapter 41, Laws of 1981" is a translation of the term "this act."

62A.11-101 Effective date—1981 c 41. This act shall take effect at midnight on June 30, 1982. [1981 c 41 § 47.]

62A.11-102 Preservation of old transition provisions. The provisions of Article 10 shall continue to apply to the Uniform Commercial Code as amended by chapter 41, Laws of 1981 and for this purpose the Uniform Commercial Code before midnight June 30, 1982 and the Uniform Commercial Code as amended by chapter 41, Laws of 1981 shall be considered one continuous statute. [1981 c 41 § 38.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-103 Transition to the Uniform Commercial Code as amended by chapter 41, Laws of 1981; general rule. Transactions validly entered into after June 30, 1967 and before midnight June 30, 1982, and which were subject to the provisions of the Uniform Commercial Code as it

existed before midnight June 30, 1982 and which would be subject to the Uniform Commercial Code as amended if they had been entered into after midnight June 30, 1982 and the rights, duties and interests flowing from such transactions remain valid after midnight June 30, 1982 and may be terminated, completed, consummated or enforced as required or permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981. Security interests arising out of such transactions which are perfected by midnight June 30, 1982 shall remain perfected until they lapse as provided in the Uniform Commercial Code as amended by chapter 41, Laws of 1981, and may be continued as permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981, except as stated in RCW 62A.11-105. [1981 c 41 § 39.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-104 Transition provision on change of requirement of filing. A security interest for the perfection of which filing or the taking of possession was required under the Uniform Commercial Code as it existed before midnight June 30, 1982 and which attached prior to midnight June 30, 1982 but was not perfected shall be deemed perfected on midnight June 30, 1982 if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made. [1981 c 41 § 40.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-105 Transition provision on change of place of filing. (1) A financing statement or continuation statement filed prior to midnight June 30, 1982 which shall not have lapsed prior to midnight June 30, 1982, shall remain effective for the period provided in the Uniform Commercial Code as it existed before midnight June 30, 1982, but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to midnight June 30, 1982, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under chapter 41, Laws of 1981.

(3) The effectiveness of any financing statement or continuation statement filed prior to midnight June 30, 1982 may be continued by a continuation statement as permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981, except that if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 requires a filing in an office where there was no previous financing statement, a new financing statement conforming to RCW 62A.11-106 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under subsection (6) of *RCW 62A.9-402 as amended by chapter 41, Laws of 1981 on midnight June 30, 1982. [1981 c 41 § 41.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-106 Required refilings. (1) If a security interest is perfected or has priority on midnight June 30, 1982, as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the Uniform Commercial Code as amended by chapter 41, Laws of 1981, the perfection and priority rights of the security interest continue until three years after midnight June 30, 1982. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when the Uniform Commercial Code as amended by chapter 41, Laws of 1981 takes effect under a law other than the Uniform Commercial Code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse three years after the Uniform Commercial Code as amended by chapter 41, Laws of 1981 takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under subsection (3) of *RCW 62A.9-302 the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by chapter 41, Laws of 1981 which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by chapter 41, Laws of 1981), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the Uniform Commercial Code or under any statute or other law repealed or modified by chapter 41, Laws of 1981 is still effective. *RCW 62A.9-401 and 62A.9-103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of *RCW 62A.9-403(3) for continuation statements apply to such a financing statement. [1981 c 41 § 42.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-107 Transition provisions as to priorities. Except as otherwise provided in this article, the Uniform

Commercial Code as it existed before midnight June 30, 1982 shall apply to any questions of priority if the positions of the parties were fixed prior to midnight June 30, 1982. In other cases questions of priority shall be determined by the Uniform Commercial Code as amended by chapter 41, Laws of 1981. [1981 c 41 § 43.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-108 Presumption that rule of law continues unchanged. Unless a change in law has clearly been made, the provisions of the Uniform Commercial Code as amended by chapter 41, Laws of 1981 shall be deemed declaratory of the meaning of the Uniform Commercial Code as it existed before midnight June 30, 1982. [1981 c 41 § 44.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-109 Effective financing statement; certificate by county auditor. From and after midnight June 30, 1982, upon request of any person, the county auditor shall issue his certificate showing whether there is on file with the county auditor's office on the date and hour stated therein, any presently effective financing statement filed with the county auditor's office before midnight June 30, 1982, naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be four dollars. Upon request the county auditor shall issue his certificate and shall furnish a copy of any filed financing statements or statements of assignment for a uniform fee of ten dollars for each particular debtor's statements requested. [1981 c 41 § 45.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-110 Effective date—1993 c 230. This act shall take effect July 1, 1994. [1993 c 230 § 2A-605.]

62A.11-111 Recovery of attorneys' fees. No provision in this act changes or modifies existing common law or other law of Washington state concerning the recovery of attorneys' fees. [1993 c 229 § 119.]

62A.11-112 Effective date—1993 c 229. This act shall take effect July 1, 1994. [1993 c 229 § 120.]

62A.11-113 Effective date—1995 c 48. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995. [1995 c 48 § 72.]

Savings—1995 c 48: See RCW 62A.8-601.